

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF IOWA WESTERN DIVISION**

CITY OF COUNCIL BLUFFS, IOWA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; RYAN K. ZINKE, in his official capacity as Secretary of the United States Department of the Interior; NATIONAL INDIAN GAMING COMMISSION; JONODEV OSCEOLA CHAUDHURI, in his official capacity as Chairman of the National Indian Gaming Commission; and KATHRYN ISOM-CLAUSE, in her official capacity as Vice Chair of the National Indian Gaming Commission,

Defendants.

No. 1:17-cv-00033-SMR-CFB

DEFENDANTS' ANSWER

The United States Department of the Interior (“Interior”), Ryan K. Zinke, in his official capacity as Secretary of the Interior, the National Indian Gaming Commission (“NIGC”), Jonodev Osceola Chaudhuri, in his official capacity as Chairman of NIGC, and Kathryn Isom-Clause, in her official capacity as Vice Chair of NIGC, by undersigned counsel, answer the allegations contained in Plaintiff’s Complaint as follows. The responses are numbered to correspond with the paragraphs in the Complaint. Defendants deny any of the Complaint’s allegations, express or implied, that are not otherwise expressly admitted, denied, or qualified herein.

NATURE OF THE ACTION

1. The allegations in the first sentence characterize this action, to which no response is required. The allegations of the second sentence characterize the NIGC's 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required. The allegations in the third sentence present legal conclusions as to the scope of the Indian Gaming Regulatory Act ("IGRA"), to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

2. Defendants admit that NIGC's 2017 Decision is an amendment to its previous decision of December 31, 2007, addressing the eligibility for gaming under IGRA of a parcel in Carter Lake, Iowa, held in trust by the United States for the benefit of the Ponca Tribe of Nebraska. Defendants otherwise deny the allegations and characterizations in the first and second sentences of this paragraph. As to the third sentence, Defendants admit that Interior did not concur in the 2007 NIGC Decision. The third sentence otherwise presents conclusions of law regarding IGRA and BIA regulations, to which no response is required. To the extent a response is required, Defendants deny the allegations of this sentence.

3. The allegations in the first sentence characterize the prior lawsuit by Iowa and Nebraska against NIGC and Interior and Plaintiff's intervention in it, to which no response is required. The remaining allegations in the first, second, and third sentences characterize the U.S. District Court and the Eighth Circuit Court's opinions in that lawsuit, which speak for themselves and are the best evidence of their contents. Defendants admit that they appealed the district court's decision, which resulted in a remand to the NIGC but otherwise deny the remaining allegations in this paragraph.

4. The allegations in this paragraph characterize the 2017 NIGC Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

5. Defendants admit the allegations in this paragraph.

6. Defendants deny the allegations in this paragraph.

JURISDICTION AND VENUE

7. The allegations in this paragraph consist of conclusions of law and characterizations of this action, to which no response is required.

8. The allegations in this paragraph consist of conclusions of law and characterizations of this action, to which no response is required.

PARTIES

9. This paragraph contains Plaintiff's characterizations of itself and legal arguments to which no response is required. To the extent a response is required, Defendants deny the allegations.

10. Defendants admit that Interior concurred in the analysis of the 2017 NIGC Decision, but deny the remaining allegations in the first sentence and aver that the United States holds the Carter Lake Tract in trust for the Tribe. Defendants admit the allegations in the second, third, fourth, and fifth sentences.

THE PONCA TRIBE'S STATUS UNDER FEDERAL LAW

11. Defendants admit the allegations in this paragraph.

12. The first sentence in this paragraph consists of a conclusion of law, to which no response is required. Defendants admit the allegations in the second sentence of this paragraph.

13. Defendants admit the allegations in the first sentence of this paragraph. The second sentence seeks to characterize the contents of a resolution issued by the Tribe, which

speaks for itself and is the best evidence of its contents. The second sentence also references and relies on a legal opinion issued by the Interior Board of Indian Appeals (“IBIA”), which speaks for itself and is the best evidence of its contents; therefore, no response is required.

14. The first sentence in this paragraph references and relies on an IBIA decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required. To the extent a response is required, Defendants deny the allegation. As to the second sentence, Defendants admit that the BIA Great Plains Regional Director did not send notice to Council Bluffs but aver that Interior’s regulation only requires the Secretary to notify “the state and local governments *having regulatory jurisdiction over the land to be acquired.*” 25 C.F.R. § 151.10 (emphasis added). The BIA sent notice to the State of Iowa, City of Carter Lake, and the Pottawattamie County Board of Supervisors.

15. Defendants admit that Iowa and Pottawatomie County administratively appealed the BIA Great Plains Regional Director’s decision to take the Carter Lake Tract into trust. The rest of the sentence characterizes that appeal, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

16. Defendants admit that the IBIA affirmed the BIA Great Plains Regional Director’s decision to take the Carter Lake Tract into trust. The rest of the sentence consists of conclusions of law and purports to quote the IBIA’s ruling, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

17. Defendants admit that on December 6, 2002, the BIA published a corrected notice of intent to take the Carter Lake Tract into trust in the *Council Bluffs Daily Nonpareil*. The rest of the sentence characterizes the corrected notice, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

18. This paragraph contains Plaintiff's characterizations of the purpose of the corrected notice, relying on a preamble to a BIA regulation and the NIGC Final Decision and Order of December 31, 2007. The preamble and NIGC Final Decision and Order speak for themselves and are the best evidence of their contents; therefore, no response is required.

19. The first sentence in this paragraph consists of conclusions of law, to which no response is required. The second sentence contains Plaintiff's characterization of the corrected notice, which speaks for itself and is the best evidence of its contents; therefore, no response is required. The second and third sentences otherwise consist of conclusions of law, to which no response is required, and to the extent a response is required, Defendants deny the allegations and respectfully refer the Court to the prior court record, which speaks for itself and is the best evidence of its content.

20. Defendants admit the allegations in this paragraph.

**THE TRIBE'S EFFORTS TO OBTAIN AN AMENDMENT TO THE CARTER
LAKE TRACT ORDINANCE TO ALLOW FOR GAMING**

21. Defendants admit that the Tribe submitted a site-specific Class II gaming ordinance on July 23, 2007 to the NIGC Chair for review and approval. The remaining allegations in this paragraph describe the ordinance, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

22. Defendants admit that a memorandum was issued by Michael Gross, NIGC Associate General Counsel, to the NIGC Chair on October 22, 2007 and that the NIGC Chair disapproved the Tribe's ordinance based in part on the reasoning detailed in the October 22 memorandum. The remaining allegations in this paragraph purport to quote the October 22 memorandum, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

STATUTORY AUTHORITY REGARDING TRIBAL LANDS

23. The allegations in this paragraph contain conclusions of law to which no response is required.

24. The allegations in this paragraph contain conclusions of law to which no response is required.

25. Defendants deny the allegations in this paragraph.

26. The allegations of this paragraph contain conclusions of law to which no response is required.

27. The allegations in this paragraph contain conclusions of law to which no response is required.

THE 2007 NIGC DECISION AND APPEAL TO THE EIGHTH CIRCUIT

28. Defendants admit that the Tribe filed an administrative appeal of the NIGC Chair's October 22, 2007 disapproval of its ordinance and that the City of Council Bluffs did not participate in the appeal. The remaining allegations characterize the 2007 NIGC Decision, which speaks for itself and is the best evidence of its content; therefore, no response is required.

29. Defendants admit the allegations in this paragraph.

30. The allegations in this paragraph characterize the complaint in the prior lawsuit by Iowa and Nebraska against the NIGC and Interior, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

31. The allegations in this paragraph contain conclusions of law as well as Plaintiff's characterizations of and purported quotations from the U.S. District Court's opinion in the prior lawsuit, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

32. The allegations in this paragraph contains conclusions of law and Plaintiff's characterizations of the U.S. District Court's opinion and judgment in the prior lawsuit, which speak for themselves and are the best evidence of their contents; therefore, no response is required.

33. Defendants admit that they appealed the U.S. District Court's decision to the Eighth Circuit Court of Appeals. Defendants' appellate briefs speak for themselves and are the best evidence of their contents; therefore, no response is required to this paragraph's characterization of such appeal.

34. The allegations in this paragraph characterize Defendants' appeal. Defendants' appellate briefs speak for themselves and are the best evidence of their contents; therefore, no response is required.

35. The allegations in this paragraph characterize the relief Defendants sought on appeal. Defendants' appellate brief speaks for itself and is the best evidence of its contents; therefore, no response is required.

36. The allegations in this paragraph characterize Iowa and Nebraska's arguments on appeal. Their appellate briefs speak for themselves and are the best evidence of their contents; therefore, no response is required.

37. The allegations in this paragraph characterize the Eighth Circuit Court of Appeals' opinion and order, which speaks for themselves and are the best evidence of their contents; therefore, no response is required.

38. The allegations in this paragraph contain conclusions of law and Plaintiff's characterizations of the Eighth Circuit Court of Appeals' opinion as well as the dissenting

opinion, which speak for themselves and are the best evidence of their contents; therefore, no response is required.

**THE CHALLENGED DECISION: THE NIGC’S NOVEMBER 2017
“AMENDMENT TO FINAL DECISION AND ORDER”**

39. Defendants admit that NIGC’s 2017 Decision affirms its 2007 Decision but aver that the basis for the affirmation and the supporting analysis are set forth in the 2017 Decision. Defendants admit that the 2017 Decision determines that the Carter Lake Tract is restored lands for a restored tribe. The remaining allegations in this paragraph characterize the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

40. The allegations in this paragraph characterize the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

41. The allegations in the first sentence purport to quote the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents. The allegations in the second sentence characterize the NIGC’s 2007 Decision, which also speaks for itself and is the best evidence of its contents. Therefore, no response is required.

42. The allegations in this paragraph characterize the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

43. The allegations in this paragraph purport to quote the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

44. The allegations in the first sentence characterize the NIGC’s 2017 Decision, which speaks for itself and is the best evidence of its contents; therefore no response is required. The second sentence contains conclusions of law and Plaintiff’s characterizations of the Ponca Restoration Act, which speaks for itself and is the best evidence of its contents; therefore no

response is required. To the extent that a response is required, Defendants deny the allegations in this paragraph.

45. The allegations in this paragraph characterize the NIGC's 2017 Decision, the 25 C.F.R. Part 292 regulations, and the Ponca Restoration Act, which speak for themselves and are the best evidence of their contents; therefore, no response is required. Defendants deny the last sentence of this paragraph.

46. The allegations in this paragraph contain characterizations of the NIGC's 2017 Decision and the Eighth Circuit Court of Appeals' decision, which speak for themselves and are the best evidence of their contents; therefore, no response is required. The second sentence contains a conclusion of law as to the scope of the U.S. District Court's remand order and the Eighth Circuit Court of Appeals' decision, to which no response is required. Defendants deny Plaintiff's allegations that the 2017 Decision contains "questionable analysis" or fails to abide by the remand order.

47. Defendants admit that an approved ordinance is one of the requirements necessary for initiating Class II gaming on Indian lands eligible for gaming under IGRA but deny that an approved ordinance is the only requirement necessary for initiating Class II gaming in those circumstances.

48. This paragraph contains Plaintiff's own characterization of its authority, to which no response is required. Defendants deny Plaintiff or its citizens are injured by the 2017 Decision. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and thus deny them.

CLAIM FOR RELIEF (DECLARATORY JUDGMENT)

49. Defendants' responses to the allegations of paragraphs 1 through 48 are incorporated by reference here.

50. The allegations in this paragraph are conclusions of law to which no response is required.

51. The allegation in this paragraph is a conclusion of law to which no response is required.

52. Defendants deny this allegation.

53. Defendants deny this allegation.

54. Defendants deny this allegation.

55. Defendants deny the allegations in this paragraph.

56. The allegation in this paragraph is a conclusion of law to which no response is required. To the extent that a response is required, the allegation is denied.

57. The allegation in this paragraph is Plaintiff's characterization of this action, to which no response is required.

58. Defendants deny this allegation.

PRAYER FOR RELIEF

The remaining paragraphs of Plaintiff's Complaint set forth its request for relief and do not require a response. To the extent that a further response is necessary, Defendants deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim or cause of action upon which relief can be granted.

2. Defendants have fulfilled any and all responsibilities under law.
3. Plaintiff lacks standing to bring its claim.
4. Plaintiff has failed to exhaust administrative remedies for its claim.
5. Plaintiff is estopped or has waived its ability to challenge a final agency action.
6. Defendants reserve the right to assert any other affirmative defenses.

WHEREFORE, Defendants request that the Court enter judgment in favor of Defendants and grant Defendants such other relief as may be appropriate.

Dated: April 27, 2018

Respectfully submitted,

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/s/ JoAnn Kintz
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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2018, a true and correct copy of the foregoing was submitted to the Clerk of the Court for the U.S. District Court, Southern District of Iowa, along with Plaintiff's counsel, using the ECF system of the Court.

/s/ JoAnn Kintz

JoAnn Kintz

Trial Attorney

U.S. Department of Justice