



Freedom of Information Act (FOIA) requests and as a result of other requests and research of the historical facts on this matter.

2. At the time of the filing of the stipulation, briefs and other documents relied upon by the Tribe, in support of its motion for contempt, the Village was not aware of the fact that the U. S. did not recognize the 20 railroad parcels as being in trust.
3. It was not until 2013, that the Village embarked upon a series of FOIA requests and the collection of other data in an attempt to determine if the U.S. recognized the railroad parcels as being in trust. The following chart is a summary of seven FOIA requests, other inquiries, and a summary of the responses.

DATE	AGENCY	REQUEST	RESPONSE
8/23/13	Solicitor's Office	Any documents prepared in response to a 5/13/09 Memorandum drafted by the Tribe's attorney and submitted to DOI asking the federal government to consider the Tribe's position the railroad parcels were in trust. Attached as <u>Exhibit 1</u> .	9/27/13 & 10/29/13: Response from DOI Office of the Secretary containing 201 documents showing the Tribe's request to have the U.S. to acknowledge the railroad parcels as being in trust. <b><i>None of the documents received in any way indicate the U.S. recognizes the parcels as in trust or in any way agrees with the Tribe's wishes in this regard.</i></b> Additionally, 94 documents were withheld as exempt from disclosure. 9/27/13 Transmittal letter attached as <u>Exhibit 2</u> ; 10/29/13 Transmittal letter attached as <u>Exhibit 3</u> .
8/26/13	Division of Land Titles and Records	Title status reports and any other documents showing title of the 20 railroad parcels. Attached as <u>Exhibit 4</u> .	12/20/13: Response from BIA, Great Plains Regional Office – Documents represented as showing land reorganized by the U.S. in federal trust in the requested area. <b><i>The railroad parcels were not among those parcels listed by the U.S. as in trust.</i></b> Transmittal letter attached as <u>Exhibit 5</u> .

10/7/13	Brown County, Wisconsin	Public records requests for all records relating to Brown County changing the designation of the railroad parcels from in fee, owned by the railroad, to in trust for the Tribe. Attached as <u>Exhibit 6</u> .	11/7/13: Response from Brown County Corp Counsel indicating the only documents the County had was the Affidavit of Easement Cancellation drafted by and recorded at the request of the Tribe. <b><i>No documents suggesting federal approval of or knowledge of the Easement Cancellation</i></b> provided. Transmittal letter attached as <u>Exhibit 7</u> . The Village also specifically requested a copy of any easement on file at the County and was told none exist.
2/27/14	BIA, Midwest Regional Office	Any and all documents stating whether the railroad parcels were recognized as in trust. Attached as <u>Exhibit 8</u> .	3/27/14: Response indicating the request was internally forwarded to the Great Lakes Agency – In a subsequent telephone conversation with Atty. Jenna Clevers, representing the Village, Ms. Duffy of the Great Lakes office stated her office was the best place to contact to determine whether the railroad parcels were in trust. In a 3/27/14 correspondence from the Great Lakes office, it indicated they <b><i>“have not located any documents responsive to your request.”</i></b> In a subsequent phone call, Ms. Duffy indicated <b><i>“I can tell you that we did a search and we came up with nothing.”</i></b> Transmittal letter attached as <u>Exhibit 9</u> .

2/27/14	Division of Land Titles and Records	Land index reports, title status reports, title documents and any other document showing the status of title ownership for all trust parcels located within the Village and (a) Section 3, T23N, R19E, (b) Section 34, T24N, R19E, (c) Section 27, T24N, R19E, and (d) Section 25, T24N, R19E, which encompass some of the railroad parcels. Attached as <u>Exhibit 10</u> .	4/15/14: Response from U.S. DOI, Office of the Secretary, indicating they completed a search in the BIA central office trust services, DIBIA, and AS-AI records “and <b><i>found no responsive documents</i></b> ....” Transmittal letter attached as <u>Exhibit 11</u> .
6/2/14	Department of Interior	Brown County requested information regarding ownership of railroad property in front of the golf course.	6/19/14: “In response to your request, <b><i>the Bureau of Land Management transferred title to the property in question on June 13, 1892 under the Indian Allotment Act</i></b> of February 8, 1887 (24 Stat. 388). At which time the lands were already designated as native lands under the Treaty of February 8, 1831 (7 Stat. 342). Current title would appear to be under the jurisdiction of Oneida Tribe.” Transmittal letter attached as <u>Exhibit 12</u> .
7/9/14	Division of Land Titles and Records	Tribe status reports, ownership records and any other documents showing the status of title ownership for all trust land located within 39 separating section, township, range areas within the Village, encompassing the areas which would include the railroad parcels. Attached as <u>Exhibit 13</u> .	5/19/15: Response from DOI, Office of the Secretary, containing <b><i>6,537 documents, none of which show the railroad parcels recognized as in trust by the U.S.</i></b> Given the recent date of this response, a more thorough review is underway. Transmittal letter attached as <u>Exhibit 14</u> .

7/10/14	U.S. DOI, Office of Solicitor	All documents of any nature sent to and received from the Oneida Tribe of Indians of Wisconsin regarding the title status of the railroad. Attached as <u>Exhibit 15</u> .	On March 21 (“March 21, 2015 FOIA Response”) and April 22, 2015 (“April 22, 2015 FOIA Response”), received 2,240 documents from DOI, Officer of the Solicitor showing the Tribe’s total lack of success in its attempts to get DOI to agree the railroad parcels are in trust. <i>None of the documents designated the parcels as being in trust or in any way suggest the U.S. believes these parcels are in trust.</i> 3/21/15 Transmittal letter attached as <u>Exhibit 16</u> . 4/22/15 Transmittal letter attached as <u>Exhibit 17</u> .
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4. On February 24, 2014, the Village commenced a FOIA litigation against the U.S., Case No. 14-CV-00201-WCG, in an attempt to get further clarification and disclosure of the 94 documents withheld by the DOI, relative to the Village’s August 23, 2013 FOIA request.
5. In its May 2, 2014 Answer to paragraph seven of the Complaint in Case No. 14-CV-00201-WCG, the U.S. denied having information sufficient to form a belief as to the Tribe’s recording of the Affidavit of Easement Cancellation at the Brown County Register of Deeds. Attached as Exhibit 18.
6. In its May 2, 2014 Answer to paragraph nine, in Case No. 14-CV-201-WCG, the U.S. stated “[t]he Department of Interior has not issued any decision accepting the Parcels into trust for the benefit of Tribe.” Attached as Exhibit 18.
7. On July 1, 2014, in Case No. 14-CV-00201-WCG, Attorney Rebecca Ross, Branch of Environmental and Lands, Division of Indian Affairs, filed with the Court a Declaration stating the following: “On August 13, 2001, the Tribe submitted a request to . . . BIA, asking the Department confirm that the land comprising an abandoned railroad right-of-way running across the Tribe’s

reservation is held in trust by the United States.” The Declaration went on to state that *“The Tribe has renewed its request for a determination on multiple occasions* by sending letters to various offices within the Department.” Attorney Ross’s Declaration then goes on to state the following: “...the Solicitor’s Office has never finalized its legal opinion on the matter and *no final legal opinion has ever been issued to our client offices.*” Attached as Exhibit 19. (emphasis added).

8. As of March 8, 2006, the date upon which the Village filed its Complaint relative to the ownership of the railroad parcels, Brown County Case No. 06-CV-480, the Brown County Register of Deeds office then referenced the railroad parcels as being owned in fee by Wisconsin Central Ltd. Attached hereto as Exhibit 20 is a printout for each of the 20 parcels which compose the railroad right-of-way, obtained on June 2, 2015 from Brown County Records through access on Laredo showing that Wisconsin Central Ltd. was the owner of record prior to the Tribe’s filing of its Affidavit of Easement Cancellation on October 18, 2007.
9. It was not until October 18, 2007 that the Tribe unilaterally, without the knowledge of the Village or the U.S., filed the document it created, entitled “Affidavit of Easement Cancellation” which is the document which resulted in the Brown County Register of Deeds office changing the title of the land from being owned by Fox Valley & Western Ltd. to being held in trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin. Attached as Exhibit 21.

10. The responses to the seven FOIA requests, the U.S.'s statements in the FOIA litigation, and the other data collected by this office and the Village, all confirm that (1) the federal government does not list the railroad parcels within its inventory of property held in trust for the Tribe and (2) that this was known by the Tribe before during and after all of the its filings and representations in this case to the contrary.
11. On February 19, 2010, the Tribe filed this action asserting that "1,420 acres in Hobart were held in trust by the United States for the Tribe". (Dkt. #1, Complaint, ¶8) The 1,420 acres included the railroad parcels.
12. On May 13, 2009, nine months before it commenced this action, the Tribe sent a communication to the DOI stating that "the Oneida Tribe originally sought, and still seeks, confirmation that the land...approved for a railroad easement and right-of-way.... remains titled to the United States of America for the beneficial use of the Tribe." Attached as Exhibit 22 and received as part of the March 21, 2015 FOIA Response.
13. On February 11, 2010, Tribal Counsel sent an email to Pilar Thomas of the Solicitor's office, notifying her that this suit was filed and stating "[a]nd the stormwater management fee is a part of the Village's [sic] overall plan to challenge the Tribe's status, land, and reservation at every turn." Attached as Exhibit 23 and received as part of the March 21, 2015 FOIA Response.
14. On March 10, 2010, nineteen days after filing this lawsuit, the Tribe sent a correspondence to Pilar Thomas of U.S. referencing a February 3<sup>rd</sup> meeting where the parties met to discuss: (1) an agreement on the documents to be deemed

useable; (2) a consensus on the documents to use moving forward and (3) a discussion regarding Congress' intent with the railroad right-of-way. As to No. 3, the Tribe noted that "in comparing the Tribe's findings and the DOI's findings concerning the Boardman Surveys and the Lamb and Kelsey Allotment Books, the Tribe agrees with the DOI's findings. However, the Tribe's findings and the DOI's findings concerning the Lamb and Kelsey Allotment Books are inconsistent. The differences are laid out in the attached chart." The Tribe also changed tactics and stated the 2003 Oberly Report it previously relied on to advance its position the railroad parcels were in trust, is "unusable... due to the number of errors... in its contents...." Attached as Exhibit 24 and received as part of the March 21, 2015 FOIA Response.

15. On April 2, 2010, Tribal Counsel sent an email to Pilar Thomas stating that "[w]ithout a clear resolution of the reservation boundary issue, there will remain on-going disputes between the Village [sic] and the Tribe" and "the Tribe desires a definitive determination of the reservation boundary issue...." Attached as Exhibit 25 and received as part of the April 22, 2015 FOIA Response.

16. On December 2, 2010, the Tribe sent a correspondence to the Assistant Secretary-Indian Affairs and to the Office of Solicitor General in which the Tribe stated the following:

"Considering the Tribe has been corresponding with and providing documentation to the BIA-DOI over the past five years, I anticipate that you have access to all the additional documents referenced within this letter. I hope you find this information useful and am optimistic that it will assist the DOI in determining that the former railroad right-of-way was not allotted to tribal members and, in fact, remains treaty reserved trust land."

Attached as Exhibit 26 and received as part of the April 22, 2015 FOIA Response.

17. On April 3, 2014, Tribal Counsel sent an email to several people at the Solicitor

Office of DOI stating the following:

“If you’ll recall, the Oneida Tribe claims that an abandoned RR right-of-way across its reservation has reverted to the status of treaty trust land. The Tribe has announced plans to build a nature path on the right-of-way. That announcement prompted the attached letter from Rich Heidel, President of the Hobart Board of Trustees. It is certain that this issue, too, will end up in court – only question being who sues who. Also likely that Hobart will attempt to involve the U.S., given the recent FOIA request at Interior. The Oneida Business Committee will be meeting on this (and other Hobart matters) on April 18<sup>th</sup>. I expect to receive instructions from the Tribe then. I will keep you posted.”

Attached as Exhibit 27 and received as part of the April 22, 2015 FOIA Response.

18. On April 15, 2014, Tribal Counsel sent an email to DOI stating the Tribe retained

her to help them with the railroad claim and that “the Tribe expects to be in litigation with the Village of Hobart soon on this issue, either as plaintiff or defendant.” She also states that “one of the issues on the table for consideration by the business committee is the position of the United States on this issue. As you recall, a few years ago the Tribe had submitted a request to the Solicitor’s office to confirm the trust status of the right-of-way, then agreed to back burner the request. I wonder whether there is any update on the U.S. position on the issue that I can report to the Business Committee.” Attached as Exhibit 28 and received as part of the April 22, 2015 FOIA Response.

19. On April 15, 2014, a DOI Solicitor sent an email to Tribal Counsel stating the following about the railroad:

“As far as I know there is no U.S. position on this issue yet.”

Attached as Exhibit 28 and received as part of the April 22, 2015 FOIA Response.

20. On April 15, 2014, Tribal Counsel sent an email to a DOI Solicitor stating the following:

“At this point, I doubt the Tribe will be making a litigation request to the U.S., mostly because of uncertainty about where the U.S. is on the issue. But we are concerned because the Village of Hobart has FOIAD all material relating to the right-of-way and is likely, we think, to try and drag the U.S. into any litigation.”

Attached as Exhibit 28 and received as part of the April 22, 2015 FOIA Response.

21. On May 7, 2014, Tribal Counsel sent an email to a DOI Solicitor stating the following:

“Your nemesis bugging you again! Have your folks gotten back to you about a meeting on the Oneida railroad right-of-way?”

Attached as Exhibit 29 and received as part of the April 22, 2015 FOIA Response.

22. Attached hereto as Exhibit 30 are substantially all of the Patents using Indian Claims which are affected by the Railroad right-of-way. None of these patents exclude the railroad from the land being patented.

23. Attached hereto as Exhibit 31 is the Patent for Lot 11 of Section 24, T24N, R19E given to Adam King which is not independently surveyed by N. Boardman. This patent includes Claim No. 133 which is not next to the railroad.

24. Attached hereto as Exhibit 32 is the Patent for Lot 14, Section 24, T24N, R19E given to Margaret Nelson, formerly Margaret Woodman for 26 acres which was not independently surveyed by N. Boardman.

25. Attached hereto as Exhibit 33 is the Patent for Lot 18, Section 24, T24N, R19E given to The Heirs of Kate Peters Antone for 25 acres which was not independently surveyed by N. Boardman.

26. None of the patents, whether by claim number or lot number give an indication the railroad portion of the land was to be excluded from the patent.
27. Attached hereto as Exhibit 34 is a compilation of 4 printouts from the Brown County Planning and Land Services' GIS Mapping program accessed at [maps.gis.co.brown.wi.us](http://maps.gis.co.brown.wi.us), showing the boundary lines for the Claims and lots referenced in the patents and including the property which was formerly the railroad right-of-way. The railroad and the relevant claim and lot numbers are highlighted in yellow by this office for ease of reference.
28. Attached hereto as Exhibit 35 is a copy of the historic Federal map of the entire T24N, R19E upon which the County created its GIS mapping referenced in paragraph 27 which is linked to the Brown County Survey Index and Tie Sheet viewer available on Brown County's website at <http://browncounty.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=e278e8ad14e24e218c26563da6aa6f16>.
29. Attached hereto as Exhibit 36 is a partial enlarged image of the map referred to in paragraph 28 showing the railroad properties. The map lists acreage for each of the allottees/owners. You can see that nothing in the map identifying the land to be patented contains any indication the railroad right-of-way is to be excluded. According to this map, the total acreage for each 40 acre plot is allotted with no exception for the railroad.
30. Attached hereto as Exhibit 37 is the survey, patent and subsequent deed relating to Claim 153. The patent was recorded on September 11, 1914. A mere year and a

half later, on March 20, 1916 a portion of Claim 153 was deeded and described as follows:

All that part of claim one hundred fifty three (153) in Township twenty four (24) Range Nineteen (19) lying between the wagon road and the right of way of the Green Bay and Western Railroad, described as follows: - beginning at the point of intersection of the South line of right of way of Green Bay and Western Railroad with the section line between Section thirty three (33) and thirty four (34) Township twenty four (24) Range nineteen (19) thence along said Section line... to a point in the center of highway; thence along center of highway... to the northeast boundary line of claim one hundred fifty three, thence along said boundary line... to the southerly line of right of way of the Green Bay and Western R.R. thence along the latter line ... to the place of beginning.... *including above mentioned right of way....* (Emphasis added)

Reviewing this description along with the survey map shows that the belief at or near the time of the patents was that the railroad right-of-way was part of the patent and available for subsequent sale.

31. Attached hereto as Exhibit 38 is a copy of correspondence from your affiant to Mr. Blaney at the Brown County Treasurer's office dated March 6, 2013 transmitting a copy of the Judge Griesbach's Decision dated September 5, 2012.
32. Attached hereto as Exhibit 39 is a copy of the 1887 Annual Report of the Commissioner of Indian Affairs.
33. Attached hereto as Exhibit 40 is a copy of the 1891 Annual Report of the Commissioner of Indian Affairs.
34. Attached hereto as Exhibit 41 is a copy of the Report of Commissioner of Indian Affairs dated June 30, 1929.
35. Attached hereto as Exhibit 42 is a copy of Some Observations of the Results of the Allotment System Among the Oneidas of Wisconsin, dated January 24, 1933.

36. Attached hereto as Exhibit 43 is a copy of correspondence of Mr. Watkins dated January 31, 1934.
37. Attached hereto as Exhibit 44 is a copy of a memo from Commissioner Collier to Secretary Ickes dated February 26, 1934.
38. On August 13, 2001, the Tribe sent correspondence to the BIA stating “the question of who owns the right-of-way has been a frequent question.... [t]his question of ownership was present to the Great Lakes Agency Superintendent in 1972...” See attached Exhibit 45 and received as part of the March 21, 2015 FOIA Response.
39. On July 19, 2005 the Tribe sent correspondence to BIA to notify them of the existence of a treaty-reserved trust land on the Oneida Reservation. See attached Exhibit 46 and received as part of the March 21, 2015 FOIA Response.
40. On May 29, 2008, the Tribe sent correspondence to DOI referencing a meeting on April 24, 2008 where they met “to discuss the trust status of a former railroad right-of-way traversing the Oneida Reservation.” See attached Exhibit 47 and received as part of the March 21, 2015 FOIA Response.
41. Attached as Exhibit 48 is a copy of *Stevens v. County of Brown*, C.A. No. 307, E.D. Wis. 10 (1933).
42. Attached as Exhibit 49 is a copy of *United States v. Hall*, 171 F. 214 (1909).
43. Attached hereto as Exhibit 50 is a copy of an email that was sent to the Solicitor’s Office on July 21, 2010.

Dated this 2<sup>nd</sup> day of June, 2015

s/ Frank W. Kowalkowski  
Frank W. Kowalkowski

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of June, 2015.

s/Kay A. Marquardt  
Notary Public in and for the State of Wisconsin  
My Commission expires: 9/19/2017.

**Marquardt, Kay A.**

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**From:** sol.foia@sol.doi.gov  
**Sent:** Friday, August 23, 2013 2:37 PM  
**To:** Clevers, Jenna E.  
**Subject:** Receipt of Your DOI FOIA Request

On 08/23/2013 at 1:36:53 PM you submitted the following request to [sol.foia@sol.doi.gov](mailto:sol.foia@sol.doi.gov):

1. Bureau or office to receive request:  
**Office of the Solicitor (SOL)**
2. Description of records being sought:  
**Carl J. Artman, Godfrey & Kahn, s.c., prepared a Memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor, dated May 13, 2009, regarding Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation. I am requesting a copy of any documents which were prepared in response to the May 13, 2009 Memorandum, including any correspondence or memorandum addressed to Carl J. Artman. I am also requesting a copy of any documents which reference the May 13, 2009 Memorandum.**
3. Desired Format of Disclosure:  
**Electronic format via email**
4. Expedite process of request?  
If yes, why:  
Certification:
5. Filing a request on behalf of another party? **No**  
If yes, which party?

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**FEES AND WAIVERS**

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1. Requestor:
  - o **affiliated with a private corporation and am seeking information for use in the company's business**
  - o Affiliation:
2. Willing to pay for FOIA request processing? **I agree to pay all applicable fees.**
3. Meet fee waiver criteria?  
Fee Waiver Justification:

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**NAME AND CONTACT INFORMATION**

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Name: **Jenna Clevers**  
Street: **318 S. Washington Street, Suite 300**  
City: **Green Bay**  
State or Country: **WI**  
Zip or Postal Code: **54301**  
Home or business address: **Business**  
E-mail address: [jclevers@dkattorneys.com](mailto:jclevers@dkattorneys.com)

Organization (if applicable): **Davis & Kuelthau, s.c.**  
Phone: **920.431.2227**  
Fax: **920.431.2267**



United States Department of the Interior  
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS  
Washington, D.C. 20240

SOL-2013-0102

September 27, 2013

Jenna Clevers  
Davis & Kuelthau, s.c.  
318 S. Washington Street, Suite 300  
Green Bay, WI 54301

Dear Ms. Clevers:

On August 23, 2013, you filed a Freedom of Information Act (FOIA) request with the U.S. Department of the Interior, Office of the Solicitor. Your request was regarding information concerning:

“Carl J. Artman, Godfrey & Kahn, s.c., prepared a Memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor, dated May 13, 2009, regarding Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation. I am requesting a copy of any documents which were prepared in response to the May 13, 2009 Memorandum, including any correspondence or memorandum addressed to Carl J. Artman. I am also requesting a copy of any documents which reference the May 13, 2009 Memorandum.”

I am writing today to respond to your request on behalf of the Office of the Solicitor. In response to your letter, the Department has searched its records and located 94 pages documents responsive to your request. However, the documents have been withheld in full on the basis of FOIA Exemption 5, which protects internal Federal government documents that are both pre-decisional and deliberative, or are work-product or attorney-client privileged.

**Attorney Client**

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency” (5 U.S.C. § 552 (b)(5)). As such, the Exemption 5 “exempt[s] those documents... normally privileged in the civil discovery context.” National Labor Relations Bd. v. Sears Roebuck & Co., 421 U.S. 132 (1975). The exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. *Id.* at 149; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

### Attorney Work-Product Privilege

The attorney work-product privilege protects documents and other memoranda prepared by an agency attorney in contemplation of litigation, including administrative proceedings. See Hickman v. Taylor, 329 U.S. 495, 509-10 (1947); Fed. R. Civ. P. 26(b)(3). Its purpose is to protect the adversarial trial process by insulating the attorneys' preparation from scrutiny. It covers all litigation-related documents prepared by an attorney or under his/her direction, such as reports prepared by a consultant or a program employee, which were prepared in reasonable anticipation of litigation. The privilege still applies after a case has ended, or even if it never was begun, as long as it was reasonably contemplated. Attorney work-product documents may be withheld in their entirety because the attorney work-product privilege protects facts.

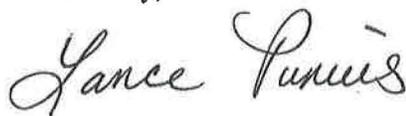
Angela Kelsey, Attorney-Advisor with the Office of the Solicitor, Division of Indian Affairs, was consulted in reaching this decision. Lance Purvis, Acting FOIA Officer, Office of the Solicitor, is responsible for making this decision.

You may file a FOIA appeal by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS 6556 - MIB, Washington, D.C. 20240. Your appeal letter must be received no later than 30 workdays after the date of our final response. Your appeal letter must be marked, both on its envelope and at the top of its first page, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal letter must be accompanied by a copy of your original FOIA request, a copy of this letter, and a brief explanation of why you believe that this decision is in error.

There is no billable fee for the processing of this request. This concludes the Office of the Solicitor's response to your request.

If you have any questions regarding any of the issues discussed in this letter, you may contact me by fax at 202-208-5206, email at [lance.purvis@sol.doi.gov](mailto:lance.purvis@sol.doi.gov), or by mail at U.S. Department of the Interior, Office of the Solicitor, MS 6429, Washington, D.C. 20240.

Sincerely,



Lance Purvis  
Acting Office of the Solicitor FOIA Officer



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**OCT 29 2013**

Jenna Clevers, Associate  
Davis & Kuelthau, S.C.  
318 S. Washington Street, Suite 300  
Green Bay, WI 54301

RE: FOIA Request BIA-2013-02027

Dear Ms. Clevers,

This letter is in response to your Freedom of Information Act (FOIA) request of August 23, 2013, in which you seek, *“Carl J. Artman, Godfrey & Kahn, s.c., prepared a Memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor, dated May 13, 2009, regarding Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation. I am requesting a copy of any documents which were prepared in response to the May 13, 2009 Memorandum, including any correspondence or memorandum addressed to Carl J. Artman. I am also requesting a copy of any documents which reference the May 13, 2009 Memorandum.”*

Your request was referred to the Bureau of Indian Affairs FOIA Office for processing on September 9, 2013 and assigned Request No. BIA-2013-02027. Please reference this number in any future communications regarding your request.

We have classified your request as an “other-use” request. As an “other-use” requester, you are entitled to receive 2 hours of search time and 100 pages of duplication of responsive records without charge before being asked to pay for document search and reproduction. However, the Department of the Interior does not bill for FOIA fees when they do not exceed \$50.00. (43 C.F.R. §2.49). The fee incurred in responding to your request did not exceed \$50.00 and has been waived.

We have conducted a search for documents in the Midwest BIA Region, Assistant Secretary – Indian Affairs (AS-IA), and American Indian Records Repository (AIRR) in Lenexa, Kansas. Five documents were located, consisting of 201 pages of which are being released to you in entirety. You may also submit a FOIA request to the Office of the Solicitor or Office of the Secretary, this response is a search of Indian Affairs records only.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See U.S.C. §552(c) (2006) & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This concludes our response to your request. If you have any questions regarding this response, please contact Hillary Renick, FOIA Specialist, at (202) 513-7781.

Sincerely,

A handwritten signature in cursive script that reads "Daphne J. Berwald". The signature is written in dark ink and is positioned above the printed name.

Daphne J. Berwald  
Acting IA FOIA Officer

August 26, 2013

Mr. Quentin M. Jones, Chief (Acting)  
Division of Land Titles and Records  
MS-4620-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: FOIA Request

Dear Mr. Jones:

The following is a request for information under the federal Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Village of Hobart, in Brown County, Wisconsin, I am requesting access to and/or copies of the following:

1. Title documents, ownership records, title status reports, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for the period of 2000 to the present, for the following parcels of land in the Village of Hobart, as described in the enclosed Affidavit of Easement Cancellation, and accompanying documents, including the Railroad Survey, recorded with the Brown County Register of Deeds on October 18, 2007:

HB-1036 (Tax Legal Description: 12.946 AC M/L; R-O-W OVER SEC 19 T24N R20E).

HB-1330 (Tax Legal Description: 1.047 AC M/L; R-O-W OVER INDIAN CLAIM 153 ONEIDA RESERVATION).

HB-1342-1 (Tax Legal Description: 1.408 AC M/L; R-O-W OVER INDIAN CLAIM 154 ONEIDA RESERVATION).

HB-1364-1 (Tax Legal Description: 0.533 AC M/L; R-O-W OVER INDIAN CLAIM 164A ONEIDA RESERVATION).

Phone 920.435.9378 Direct 920.431.2227 Fax 920.431.2267  
318 S. Washington Street Suite 300, Green Bay, WI 54301  
jclevers@dkattorneys.com

HB-1368-1 (Tax Legal Description: 1.113 AC M/L; R-O-W OVER INDIAN CLAIM 171 ONEIDA RESERVATION).

HB-1372 (Tax Legal Description: 1.910 AC M/L; R-O-W OVER INDIAN CLAIM 172 ONEIDA RESERVATION).

HB-1380 (Tax Legal Description: 1.197 AC M/L; R-O-W OVER INDIAN CLAIM 173 ONEIDA RESERVATION).

HB-1389 (Tax Legal Description: 6.011 AC M/L; R-O-W OVER INDIAN CLAIMS 174 & 177 ONEIDA RESERVATION).

HB-1409-1 (Tax Legal Description: 0.786 AC M/L; R-O-W OVER INDIAN CLAIM 194 ONEIDA RESERVATION).

HB-1410-1 (Tax Legal Description: 2.601 AC M/L; R-O-W OVER INDIAN CLAIM 195 ONEIDA RESERVATION).

HB-1414-1 (Tax Legal Description: 1.051 AC M/L; R-O-W OVER INDIAN CLAIM 196 ONEIDA RESERVATION).

HB-1416 (Tax Legal Description: 1.991 AC M/L; R-O-W OVER INDIAN CLAIM 197 ONEIDA RESERVATION).

HB-1420-1 (Tax Legal Description: 3.274 AC M/L; R-O-W OVER INDIAN CLAIM 198 ONEIDA RESERVATION).

HB-1422 (Tax Legal Description: 3.056 AC M/L; R-O-W OVER INDIAN CLAIM 199 ONEIDA RESERVATION).

HB-1425-1 (Tax Legal Description: 2.933 AC M/L; R-O-W OVER INDIAN CLAIM 200 ONEIDA RESERVATION).

HB-1426-1 (Tax Legal Description: 1.314 AC M/L; R-O-W OVER INDIAN CLAIM 201 ONEIDA RESERVATION).

HB-1428-1 (Tax Legal Description: 1.461 AC M/L; R-O-W OVER INDIAN CLAIM 202 ONEIDA RESERVATION).

HB-1429-1 (Tax Legal Description: 5.861 AC M/L; R-O-W OVER INDIAN CLAIM 203 ONEIDA RESERVATION).

Page 3

HB-742 (Tax Legal Description: 7.234 AC M/L; R-O-W OVER SEC 24 T24N R19E).

HB-786 (Tax Legal Description: 2.241 AC M/L; R-O-W SEC 26 T24N R19E).

I would like to receive the information in electronic format.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500.00. However, please notify me prior to incurring any expenses in excess of that amount.

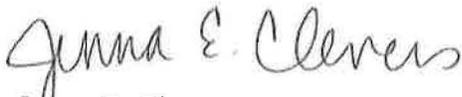
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance. I can be reached at 920.431.2227 with any questions or concerns.

Very truly yours,

Davis & Kuelthau, s.c.

  
Jenna E. Clevers

Enclosure

cc: Village of Hobart (via e-mail)



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E.  
Aberdeen, South Dakota 57401

IN REPLY REFER TO:  
FOIA #BIA-2013-02012

DEC 20 2013

Jenna E. Clevers, Attorney  
Davis & Kuelthau  
318 S. Washington Street, Suite 300  
Green Bay, WI 54301

Dear Ms. Clevers:

This is in response to your Freedom of Information Act (FOIA) request dated August 26, 2013, FOIA No. BIA-2013-02012. In this request you are asking for copies of title documents, ownership records, title status reports, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for the period of 2000 to present for 20 parcels of land in the Village of Hobart, in Brown County, Wisconsin.

We have received notification that your payment in the amount of \$2,403 was received in Reston, VA. Enclosed are copies of the documents you requested.

We have been asked to inform all of our FOIA requestors that Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. § 552(c) (2006) & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requestors and should not be taken as an indication that excluded records do, or do not, exist.

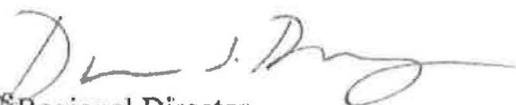
As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requestors and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
(OGIS) 8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <http://ogis.archives.gov>  
Telephone: 202-741-5770  
Facsimile: 202-741-5769  
Toll-free: 1-877-684-6448

This completes our response to your request.

If you have any questions or require further information, please contact Charissa Peterson, Legal Instruments Examiner, at (605) 226-7393, or Peggy Geffre, Regional FOIA Coordinator, at (605) 226-7343.

Sincerely,

  
ACTING Regional Director

Enclosures

October 7, 2013

Brown County Property Listing Department  
Attn: Custodian of Records  
P.O. Box 23600  
Green Bay, WI 54305-3600

Brown County Register of Deeds  
Attn: Custodian of Records  
P.O. Box 23600  
Green Bay, WI 54305-3600

Atty. Juliana M. Ruenzel  
Brown County Corporation Counsel  
P.O. Box 23600  
Green Bay, WI 54305-3600

RE: Public Records Request

To Whom It May Concern:

This is a public records request pursuant to Wis. Stat. § 19.35. Inasmuch as some of the documents requested may be in the custody of one or more legal custodians, this correspondence is addressed to all of you in the hopes of facilitating a coordinated response.

Please forward me copies of the following documents:

1. Any and all documents, including e-mail correspondence, related to the Affidavit of Easement Cancellation recorded with the Register of Deeds on October 18, 2007 as Document No. 2337382.
2. Any and all documents, including e-mail correspondence, related to the change in title that occurred for the parcels listed below after October 18, 2007:

HB-1036 (Tax Legal Description: 12.946 AC M/L; R-O-W OVER SEC 19 T24N R20E).

HB-1330 (Tax Legal Description: 1.047 AC M/L; R-O-W OVER INDIAN CLAIM 153 ONEIDA RESERVATION).

Phone 920.435.9378 Direct 920.431.2221 Fax 920.431.2261  
318 S. Washington Street Suite 300, Green Bay, WI 54301  
fkowalkowski@dkattorneys.com

HB-1342-1 (Tax Legal Description: 1.408 AC M/L; R-O-W OVER INDIAN CLAIM 154 ONEIDA RESERVATION).

HB-1364-1 (Tax Legal Description: 0.533 AC M/L; R-O-W OVER INDIAN CLAIM 164A ONEIDA RESERVATION).

HB-1368-1 (Tax Legal Description: 1.113 AC M/L; R-O-W OVER INDIAN CLAIM 171 ONEIDA RESERVATION).

HB-1372 (Tax Legal Description: 1.910 AC M/L; R-O-W OVER INDIAN CLAIM 172 ONEIDA RESERVATION).

HB-1380 (Tax Legal Description: 1.197 AC M/L; R-O-W OVER INDIAN CLAIM 173 ONEIDA RESERVATION).

HB-1389 (Tax Legal Description: 6.011 AC M/L; R-O-W OVER INDIAN CLAIMS 174 & 177 ONEIDA RESERVATION).

HB-1409-1 (Tax Legal Description: 0.786 AC M/L; R-O-W OVER INDIAN CLAIM 194 ONEIDA RESERVATION).

HB-1410-1 (Tax Legal Description: 2.601 AC M/L; R-O-W OVER INDIAN CLAIM 195 ONEIDA RESERVATION).

HB-1414-1 (Tax Legal Description: 1.051 AC M/L; R-O-W OVER INDIAN CLAIM 196 ONEIDA RESERVATION).

HB-1416 (Tax Legal Description: 1.991 AC M/L; R-O-W OVER INDIAN CLAIM 197 ONEIDA RESERVATION).

HB-1420-1 (Tax Legal Description: 3.274 AC M/L; R-O-W OVER INDIAN CLAIM 198 ONEIDA RESERVATION).

HB-1422 (Tax Legal Description: 3.056 AC M/L; R-O-W OVER INDIAN CLAIM 199 ONEIDA RESERVATION).

HB-1425-1 (Tax Legal Description: 2.933 AC M/L; R-O-W OVER INDIAN CLAIM 200 ONEIDA RESERVATION).

HB-1426-1 (Tax Legal Description: 1.314 AC M/L; R-O-W OVER INDIAN CLAIM 201 ONEIDA RESERVATION).

HB-1428-1 (Tax Legal Description: 1.461 AC M/L; R-O-W OVER INDIAN CLAIM 202 ONEIDA RESERVATION).

HB-1429-1 (Tax Legal Description: 5.861 AC M/L; R-O-W OVER INDIAN CLAIM 203 ONEIDA RESERVATION).

HB-742 (Tax Legal Description: 7.234 AC M/L; R-O-W OVER SEC 24 T24N R19E).

HB-786 (Tax Legal Description: 2.241 AC M/L; R-O-W SEC 26 T24N R19E).

3. Any and all documents showing federal approval of the change in title that occurred for the above-referenced parcels after October 18, 2007.
4. Any and all documents in the Register of Deeds' records and any other departments' records showing why the title to the above-referenced parcels was changed after October 18, 2007.
5. To the extent not produced in response to the above requests, any and all documents received from the Oneida Tribe of Indians of Wisconsin related to the above-referenced parcels from 2000 to the present.
6. To the extent not produced in response to the above requests, any and all documents received from the United States, or any of its departments or agencies, related to the above-referenced parcels from 2000 to the present.

Pursuant to the guidelines set by the Attorney General, please forward these documents to us within ten (10) days. In the event that there are any questions or any clarification needed regarding these requests, please feel free to contact me. In the event that the documents requested are voluminous, please contact me to explore the possibility of viewing the documents. Also, please let me know if there is a requirement of prepayment for any of these documents.

Very truly yours,

Davis & Kuelthau, s.c.

*Jenna E. Clevers*

Frank W. Kowalkowski  
Jenna E. Clevers

CORPORATION COUNSEL OFFICE

*Brown County*

305 E. Walnut Street, Suite 680  
P.O. Box 23600  
Green Bay, WI 54305-3600

Juliana M. Ruenzel  
Corporation Counsel

PHONE (920) 448-4006  
FAX (920) 448-4003  
ruenzel\_jm@co.brown.wi.us

November 7, 2013

Attorney Frank Kowalkowski  
Davis & Kuelthau  
318 S. Washington Street, Suite 300  
Green Bay, WI 54301

RE: Open Records Request Easement Cancellation recorded October 18, 2007

Dear Mr. Kowalkowski:

The County has located your documents regarding your open records request on the Easement Cancellation recorded on October 18, 2007. The departments have submitted the documents attached which meet your request. As it is clear you already have the Quit Claim Deed, document No. 1403221, I have not included that document with your request, nor charged you for said document.

Please find attached the time sheets for location fees from the Brown County Property Lister, Register of Deeds and Corporation Counsel office indicating the total actual cost involved in the location of the documents your requested to be as follows:

Register of Deeds Office	10.33 hours @ \$27.54 per hour =	\$ 284.49
Property Listing Office	8.5 hours @ \$49.02 per hour =	\$ 416.67
Corporation Counsel Office	7.25 hours @ \$65.75 per hour =	\$ 476.69
Total location fee		\$1,177.85

Further, you will find attached the cost sheet for copies of the documents requested totaling \$643.00.

Based on the costs involved the total due for this request is as follows:

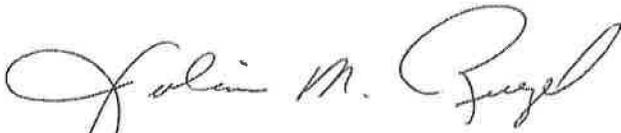
Location Costs	\$1,177.85
Copy Charge	643.00
Postage and Handling 3 lbs. 3.8 oz	8.45 (\$7.45 postage + \$1.00 envelope)
TOTAL DUE	\$1,829.30

Prepayment	\$ 2,181.44
Total Due	<u>- 1,829.30</u>
Refund enclosed	\$ 352.14

Please find enclosed a check from Brown County in the amount of \$ 352.14 as the refund due you on this request.

Open records denials are subject to review by mandamus under Wis. Stat. §19.37 (1) or upon application to the Attorney General or District Attorney. Wis. Stat. §19.35 (4)(b).

Very truly yours,



Juliana M. Ruenzel  
Brown County Corporation Counsel

Enc: Copies as requested  
Location cost sheets for Register of Deeds, Property Lister and Corporation Counsel  
Copy charge sheet  
Refund check

cc: Cathy, Williquette Lindsay, Register of Deeds  
James Wallen, Manager Property Listing

February 27, 2014

Midwest Region Office  
Bureau of Indian Affairs  
Department of the Interior  
Norman Pointe II Building  
5600 W. American Blvd., Suite 500  
Bloomington, MN 55347

Re: FOIA Request

To Whom It May Concern:

The following is a request for information under the federal Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Village of Hobart, in Brown County, Wisconsin, I am requesting copies of the following:

1. Any and all documents showing whether the parcels of land listed below are in trust, including land index reports, title status reports, maps, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership for the following parcels of land located within the Village of Hobart, Brown County, WI:

HB-1036 (Tax Legal Description: 12.946 AC M/L; R-O-W OVER SEC 19 T24N R20E).

HB-1330 (Tax Legal Description: 1.047 AC M/L; R-O-W OVER INDIAN CLAIM 153 ONEIDA RESERVATION).

HB-1342-1 (Tax Legal Description: 1.408 AC M/L; R-O-W OVER INDIAN CLAIM 154 ONEIDA RESERVATION).

HB-1364-1 (Tax Legal Description: 0.533 AC M/L; R-O-W OVER INDIAN CLAIM 164A ONEIDA RESERVATION).

Phone 920.435.9378 Direct 920.431.2227 Fax 920.431.2267  
318 S. Washington Street Suite 300, Green Bay, WI 54301  
jclevers@dkattorneys.com

HB-1368-1 (Tax Legal Description: 1.113 AC M/L; R-O-W OVER INDIAN CLAIM 171 ONEIDA RESERVATION).

HB-1372 (Tax Legal Description: 1.910 AC M/L; R-O-W OVER INDIAN CLAIM 172 ONEIDA RESERVATION).

HB-1380 (Tax Legal Description: 1.197 AC M/L; R-O-W OVER INDIAN CLAIM 173 ONEIDA RESERVATION).

HB-1389 (Tax Legal Description: 6.011 AC M/L; R-O-W OVER INDIAN CLAIMS 174 & 177 ONEIDA RESERVATION).

HB-1409-1 (Tax Legal Description: 0.786 AC M/L; R-O-W OVER INDIAN CLAIM 194 ONEIDA RESERVATION).

HB-1410-1 (Tax Legal Description: 2.601 AC M/L; R-O-W OVER INDIAN CLAIM 195 ONEIDA RESERVATION).

HB-1414-1 (Tax Legal Description: 1.051 AC M/L; R-O-W OVER INDIAN CLAIM 196 ONEIDA RESERVATION).

HB-1416 (Tax Legal Description: 1.991 AC M/L; R-O-W OVER INDIAN CLAIM 197 ONEIDA RESERVATION).

HB-1420-1 (Tax Legal Description: 3.274 AC M/L; R-O-W OVER INDIAN CLAIM 198 ONEIDA RESERVATION).

HB-1422 (Tax Legal Description: 3.056 AC M/L; R-O-W OVER INDIAN CLAIM 199 ONEIDA RESERVATION).

HB-1425-1 (Tax Legal Description: 2.933 AC M/L; R-O-W OVER INDIAN CLAIM 200 ONEIDA RESERVATION).

HB-1426-1 (Tax Legal Description: 1.314 AC M/L; R-O-W OVER INDIAN CLAIM 201 ONEIDA RESERVATION).

HB-1428-1 (Tax Legal Description: 1.461 AC M/L; R-O-W OVER INDIAN CLAIM 202 ONEIDA RESERVATION).

HB-1429-1 (Tax Legal Description: 5.861 AC M/L; R-O-W OVER INDIAN CLAIM 203 ONEIDA RESERVATION).

Page 3

HB-742 (Tax Legal Description: 7.234 AC M/L; R-O-W OVER SEC 24 T24N R19E).

HB-786 (Tax Legal Description: 2.241 AC M/L; R-O-W SEC 26 T24N R19E).

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500.00. However, please notify me prior to incurring any expenses in excess of that amount.

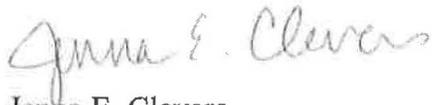
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance. I can be reached at 920.431.2227 with any questions or concerns regarding this FOIA Request.

Very truly yours,

Davis & Kuelthau, s.c.



Jenna E. Clevers

cc: Village of Hobart (via e-mail)



United States Department of the Interior  
BUREAU OF INDIAN AFFAIRS  
Great Lakes Agency  
916 Lake Shore Drive West  
Ashland, Wisconsin 54806-1357



IN REPLY REFER TO:

BIA-2014-00646

CERTIFIED MAIL RECEIPT NO.: 7004 2890 0003 9320 7851  
Return receipt requested

March 27, 2014

Jenna E. Clevers  
Davis & Kuelthau, S.C.  
318 S. Washington Street  
Suite 300  
Green Bay, WI 54301

Dear Ms. Clevers:

This letter acknowledges receipt as well as provides a final response to your Freedom of Information Act (FOIA) request, dated February 27, 2014, and received at the Great Lakes Agency on March 05, 2014, in which you requested copies of "Any and all documents showing whether the parcels of land listed below are in trust, including land index reports, title status reports, maps, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership for the following parcels of land located within the Village of Hobart, Brown County, WI:

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2. HB-1330 (Tax Legal Description: 1.047 AC M/L; R-O-W OVER INDIAN CLAIM 153 ONEIDA RESERVATION).
3. HB-1342-1 (Tax Legal Description: 1.408 AC M/L; R-O-W OVER INDIAN CLAIM 154 ONEIDA RESERVATION).
4. HB-1364-1 (Tax Legal Description: 0.533 AC M/L; R-O-W OVER INDIAN CLAIM 164A ONEIDA RESERVATION).
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6. HB-1372 (Tax Legal Description: 1.910 AC M/L; R-O-W OVER INDIAN CLAIM 172 ONEIDA RESERVATION).
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11. HB-1414-1 (Tax Legal Description: 1.051 AC M/L; R-O-W OVER INDIAN CLAIM 196

- ONEIDA RESERVATOIN).
12. HB-1416 (Tax Legal Description: 1.991 AC M/L; R-O-W OVER INDIAN CLAIM 197 ONEIDA RESERVATOIN).
  13. HB-1420-1 (Tax Legal Description: 3.274 AC M/L; R-O-W OVER INDIAN CLAIM 198 ONEIDA RESERVATOIN).
  14. HB-1422 (Tax Legal Description: 3.056 AC M/L; R-O-W OVER INDIAN CLAIM 199 ONEIDA RESERVATOIN).
  15. HB-1425-1 (Tax Legal Description: 2.933 AC M/L; R-O-W OVER INDIAN CLAIM 200 ONEIDA RESERVATOIN).
  16. HB-1426-1 (Tax Legal Description: 1.314 AC M/L; R-O-W OVER INDIAN CLAIM 201 ONEIDA RESERVATOIN).
  17. HB-1428-1 (Tax Legal Description: 1.461 AC M/L; R-O-W OVER INDIAN CLAIM 202 ONEIDA RESERVATOIN).
  18. HB-1429-1 (Tax Legal Description: 5.861 AC M/L; R-O-W OVER INDIAN CLAIM 203 ONEIDA RESERVATOIN).
  19. HB-742 (Tax Legal Description: 7.234 AC M/L; R-O-W OVER SEC 24 T24N R19E).
  20. HB-786 (Tax Legal Description: 2.241 AC M/L; R-O-W OVER SEC 26 T24N R19E)."

Requests for Department records are processed as one made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 and 43 CFR Part 2. Your FOIA request has been assigned FOIA Control No. BIA-2014-00646. Please include this number on all correspondence associated with this particular FOIA.

There are four categories of requestors for the purposes of determining fees: commercial, educational and non-commercial scientific institutions, new media and all other. The bureau's decision to place your client's FOIA request in a particular fee category is made on a case-by-case basis depending on the information submitted in the request and the requestor identity (43 CFR §2.7). We have determined that your client's FOIA request falls under the "All Other" requester category for determining fees for processing this FOIA request. As stated in 43 CFR §2.39 (a), "All Other" requesters are charged fees for document search and duplication, except the first two hours of search time and the first 100 pages of duplication are without charge. As a matter of policy, the Department does not bill FOIA requesters for fees incurred for processing their FOIA request when the fees do not exceed \$50.00. You would have been notified in writing and asked for your written assurance to pay the appropriate fees associated with your FOIA request if the processing fees exceeds the \$500.00 you agreed to pay for processing this FOIA request(43 CFR §2.6).

We have conducted a thorough and diligent search of the records maintained at the Bureau of Indian Affairs, Great Lakes Agency, and the Midwest Regional Office, and have not located any documents responsive to your request.

In accordance with 43 CFR §2.57 (a)(3) you must be advised of your appeal rights when informing you we have no records responsive to your FOIA request. If you believe this response to be incorrect or that the search was inaccurate, then you may treat this

correspondence as a full denial of your request and may appeal this response to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

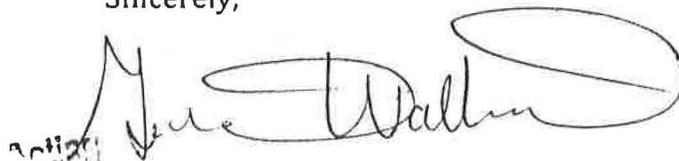
Freedom of Information Act Appeals Officer  
Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS 6556  
Washington, DC 20240

You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including a copy of your original FOIA request and this denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the bureau's response is in error.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. §552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requestors and should not be taken as an indication that excluded records do, or do not, exist.

If you have additional questions, you may contact Marion K. Duffy, FOIA Coordinator at: (715) 682-4527 ext. 401.

Sincerely,

A handwritten signature in black ink, appearing to read "M. K. Duffy", written over a large, stylized oval shape.

Superintendent

cc: M. McCormick, FOIA Coordinator, Midwest Region



Page 2

otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance. I can be reached at 920.431.2227 with any questions or concerns regarding this FOIA Request.

Very truly yours,

Davis & Kuelthau, s.c.

A handwritten signature in cursive script that reads "Jenna E. Clevers".

Jenna E. Clevers

cc: Village of Hobart (via e-mail)



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

APR 15 2014

Ms. Jenna Clevers  
Davis Kuelthau Attorneys At Law  
318 S. Washington Street, Suite 300  
Green Bay, WI 54301

RE: FOIA Control No. BIA-2014-00846

Dear Jenna Clevers,

This letter is in response to your Freedom of Information Act (FOIA) request of February 27, 2014, in which you seek, "*Land index reports, title status reports, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for all trust land located within the following section, township, ranges, in the Village of Hobart, Brown County, WI: a. Section 3, Township 23 North, Range 19 East; b. Section 34, Township 24 North, Range 19 East; c. Section 27, Township 24 North, Range 19 East; d. Section 25, Township 24 North, Range 19 East.*"

Your request was referred to the Bureau of Indian Affairs FOIA Office for processing on April 2, 2014, and assigned Request No. BIA-2014-00846. Please reference this number in any future communications regarding your request.

We have conducted a search in the Bureau of Indian Affairs (BIA) Central Office Trust Services, D/BIA and AS-IA records and found no responsive documents. The Midwest Regional BIA Office responded to this request under BIA-2014-00646. You initially addressed this request to Mr. Quentin Jones, who recently retired, and we apologize for the delay in assigning this request.

If you feel this decision was made in error, you may appeal this decision to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA Appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer  
Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS 6556  
Washington, DC 20240

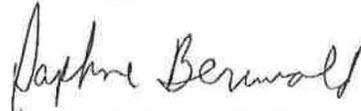
You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including a copy of your original FOIA request and this denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the bureau's response is in error. As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road, Room 2510  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (301) 837-1996  
Facsimile: (301) 837-0348  
Toll-Free: (877) 684-6448

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. §552(c) (2006) & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This concludes our response to your request. If you have any questions regarding this response, please feel free to contact Hillary Renick at (202) 513-7781 or [Hillary.Renick@Bia.Gov](mailto:Hillary.Renick@Bia.Gov).

Sincerely,



Daphne J. Berwald, Acting IA FOIA Officer



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Eastern States  
7450 Boston Boulevard  
Springfield, Virginia 22153  
<http://www.es.blm.gov>

In Reply Refer To:  
1278 (952)  
FOIA ES-2014-26

June 19, 2014

Attorney Juliana M. Ruenzel  
305 E. Walnut Street  
Green Bay, WI 54301

Dear Ms. Ruenzel:

This letter is in response to your Freedom of Information Act (FOIA) request dated and received on June 2, 2014.

In order to obtain an easement on a driveway to the Brown County's Golf Course, you have requested information and/or documentation regarding who has ownership of the property in Brown County, Wisconsin.

In response to your request, the Bureau of Land Management transferred title to the property in question on June 13, 1892 under the Indian Allotment Act of February 8, 1887 (24 Stat. 388). At which time the lands were already designated as Native lands under the Treaty of February 8, 1831 (7 Stat. 342). Current title would appear to be under the jurisdiction of the Oneida Tribe.

To obtain an easement for Brown County you will need to contact:

Oneida Nation of Wisconsin  
Division of Land Management  
470 Airport Drive  
Oneida, Wisconsin 54155  
(920) 869-1690  
(920) 869-1689 (Fax)

Generally, the FOIA provides for the collection and processing of fees for FOIA requests. These fees can cover research, duplication, and review costs. However, the Department of the Interior's FOIA regulations provides for the waiver of fees if they do not exceed the \$50 threshold. The fee associated with your request was under \$50; therefore you will not be charged.

As of October 1, 2012, it is required for us to provide you with the following information: Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a

standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.”

If you have any questions concerning your request, please contact Pam Mozina, FOIA Coordinator, at (703) 440-1561.

Sincerely,

*/s/ Pam Mozina*

Pam Mozina  
FOIA Coordinator

July 9, 2014

VIA CERTIFIED RETURN RECEIPT MAIL

Division of Land Titles and Records  
MS-4620-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: FOIA Request

Dear FOIA Coordinator:

This office represents the Village of Hobart ("Village"). The following is a request for information under the federal Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Village, I am requesting copies of the following:

1. Land index reports, title status reports, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for all trust land located within the following section, township, ranges, in the Village of Hobart, Brown County, WI:
  - a. Section 3, Township 24 North, Range 19 East
  - b. Section 10, Township 24 North, Range 19 East
  - c. Section 11, Township 24 North, Range 19 East
  - d. Section 12, Township 24 North, Range 19 East
  - e. Section 15, Township 24 North, Range 19 East
  - f. Section 14, Township 24 North, Range 19 East
  - g. Section 13, Township 24 North, Range 19 East
  - h. Section 22, Township 24 North, Range 19 East
  - i. Section 23, Township 24 North, Range 19 East

Phone 920.436.9378 Direct 920.431.2227 Fax 920.431.2267  
318 S. Washington Street Suite 300, Green Bay, WI 54301  
jclevers@dkattorneys.com

- j. Section 35, Township 24 North, Range 19 East
- k. Section 36, Township 24 North, Range 19 East
- l. Section 2, Township 23 North, Range 19 East
- m. Section 1, Township 23 North, Range 19 East
- n. Section 10, Township 23 North, Range 19 East
- o. Section 11, Township 23 North, Range 19 East
- p. Section 12, Township 23 North, Range 19 East
- q. Section 15, Township 23 North, Range 19 East
- r. Section 14, Township 23 North, Range 19 East
- s. Section 13, Township 23 North, Range 19 East
- t. Section 22, Township 23 North, Range 19 East
- u. Section 23, Township 23 North, Range 19 East
- v. Section 24, Township 23 North, Range 19 East
- w. Section 27, Township 23 North, Range 19 East
- x. Section 26, Township 23 North, Range 19 East
- y. Section 25, Township 23 North, Range 19 East
- z. Section 34, Township 23 North, Range 19 East
- aa. Section 35, Township 23 North, Range 19 East
- bb. Section 3, Township 22 North, Range 19 East
- cc. Section 2, Township 22 North, Range 19 East

- dd. Section 10, Township 22 North, Range 19 East
- ee. Section 18, Township 24 North, Range 20 East
- ff. Section 17, Township 24 North, Range 20 East
- gg. Section 20, Township 24 North, Range 20 East
- hh. Section 6, Township 23 North, Range 20 East
- ii. Section 7, Township 23 North, Range 20 East
- jj. Section 8, Township 23 North, Range 20 East
- kk. Section 18, Township 23 North, Range 20 East
- ll. Section 17, Township 23 North, Range 20 East
- mm. Section 19, Township 23 North, Range 20 East

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500.00. Please contact me prior to incurring any expenses in excess of that amount.

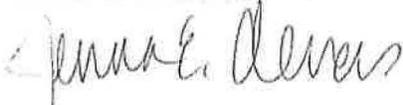
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within twenty (20) business days, as the statute requires.

Thank you for your assistance. I can be reached at 920.431.2227 with any questions or concerns regarding this FOIA Request.

Very truly yours,

Davis & Kuelthau, s.c.



Jenna E. Clevers

cc: Village of Hobart (via e-mail)



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 19 2015**

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street, Suite 300  
Green Bay, Wisconsin 54301

REF: BIA-2015-00933

Dear Mr. Kowalkowski:

Through this letter, the Bureau of Indian Affairs (“BIA”) is providing responsive records in connection with your firm’s July 19, 2014, Freedom of Information Act (“FOIA”) request on behalf of the Village of Hobart. The FOIA request is the subject of litigation before the United States District Court for the Eastern District of Wisconsin: *Village of Hobart v. U.S. Dep’t of the Interior*, No. 15-cv-234 (filed Mar. 2, 2015).

Through the FOIA, the Village sought the following records:

Land index reports, title status reports, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for all trust land located within the following section, township, ranges, in the Village of Hobart, Brown County, WI:

- a) Section 3, Township 24 North, Range 19 East
- b) Section 10, Township 24 North, Range 19 East
- c) Section 11, Township 24 North, Range 19 East
- d) Section 12, Township 24 North, Range 19 East
- e) Section 15, Township 24 North, Range 19 East
- f) Section 14, Township 24 North, Range 19 East
- g) Section 13, Township 24 North, Range 19 East
- h) Section 22, Township 24 North, Range 19 East
- i) Section 23, Township 24 North, Range 19 East
- j) Section 35, Township 24 North, Range 19 East
- k) Section 36, Township 24 North, Range 19 East
- l) Section 2, Township 23 North, Range 19 East
- m) Section 1, Township 23 North, Range 19 East
- n) Section 10, Township 23 North, Range 19 East
- o) Section 11, Township 23 North, Range 19 East
- p) Section 12, Township 23 North, Range 19 East
- q) Section 15, Township 23 North, Range 19 East
- r) Section 14, Township 23 North, Range 19 East
- s) Section 13, Township 23 North, Range 19 East

- t) Section 22, Township 23 North, Range 19 East
- u) Section 23, Township 23 North, Range 19 East
- v) Section 24, Township 23 North, Range 19 East
- w) Section 27, Township 23 North, Range 19 East
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- ff) Section 17, Township 24 North, Range 20 East
- gg) Section 20, Township 24 North, Range 20 East
- hh) Section 6, Township 23 North, Range 20 East
- ii) Section 7, Township 23 North, Range 20 East
- jj) Section 8, Township 23 North, Range 20 East
- kk) Section 18, Township 23 North, Range 20 East
- ll) Section 17, Township 23 North, Range 20 East
- mm) Section 19, Township 23 North, Range 20 East.

See Complaint at ¶ 5.

The BIA has located 6,559 pages of responsive records. Of these, 5,469 pages are hereby provided in full, and 1,090 have been withheld in part pursuant to FOIA Exemption 6, 5 U.S.C. 552(b)(6), as described below. Copies of these records may be found on the enclosed CD-ROM.

With respect to the partial withholdings, the BIA has redacted personal information—such as addresses, dates of birth, personal telephone numbers, and tribal census numbers—pursuant to 5 U.S.C. § 552(b)(6), otherwise known as Exemption 6. This FOIA exemption allows the withholding of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).

To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, the BIA is required to balance the privacy interest that would be affected by disclosure against any public interest in the information. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989). Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would ‘she[d] light on an agency’s performance of its statutory duties’ or otherwise let citizens ‘know what their government is up to.’” *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*,

541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. *See Reporters Comm.*, 489 U.S. at 771.

As noted above, the information that the BIA has withheld under Exemption 6 consists of personal information, such as birth dates and tribal census numbers. The BIA has determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, the Village of Hobart has not provided information that explains a relevant public interest in the disclosure of this personal information under the FOIA, and the BIA has determined that its disclosure would shed little or no light on the bureau's performance of its statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals. Accordingly, the BIA is withholding such information under Exemption 6.

This is our final response to your firm's request. On behalf of the BIA, I apologize for the delay in providing these materials to you.

Sincerely,



Daniel Largo, Jr.  
Indian Affairs – FOIA Officer

Enclosure (1) – CD Rom

cc: Chris Larsen  
Assistant United States Attorney  
United States Attorney's Office  
517 East Wisconsin Avenue, Room 530  
Milwaukee, Wisconsin 53202

July 10, 2014

**VIA CERTIFIED RETURN RECEIPT MAIL**

Office of the Solicitor  
U.S. Department of the Interior  
Mail Stop 6415  
1849 C Street, NW  
Washington, DC 20240

Re: **FOIA REQUEST**

Dear Sir or Madam:

The following is a request for information under the federal Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Village of Hobart, in Brown County, Wisconsin, I am requesting access to and/or copies of the documents referenced below.

1. Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the Oneida Tribe of Indians of Wisconsin and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).
2. Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the United States Department of the Interior, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting

Phone 920.435.9378 Direct 920.431.2221 Fax 920.431.2261  
318 S. Washington Street, Suite 300, Green Bay, WI 54301  
fkowalkowski@dkattorneys.com

BROOKFIELD | GREEN BAY | MADISON | MILWAUKEE | OSHKOSH | SHEBOYGAN

July 10, 2014  
Page 2

the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

I would like to receive the information in electronic format.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500.00. However, please notify me prior to your incurring any expenses in excess of that amount.

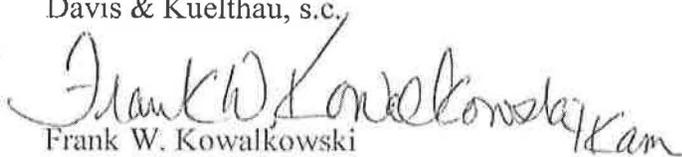
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Very truly yours,

Davis & Kuelthau, s.c.

  
Frank W. Kowalkowski

FWK:kam

cc: Village of Hobart

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Street, Apt No.  
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City, State, ZIP+4  
Washington, DC 20040

PS Form 3800, August 2006

See Reverse for Instructions



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

SOL-2014-00072

March 19, 2015

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street  
Suite 300  
Green Bay, WI 54301

Dear Mr. Kowalkowski:

This letter serves to release records in connection with *Village of Hobart v. U.S. Dep't of the Interior*, Civ. No. 1:15-cv-00234-WCG (E.D. Wisc., filed Mar. 3, 2015), which concerns, in part, a July 10, 2014, FOIA request to the Office of the Solicitor, to which we assigned a control number of SOL-2014-00072. The July 10, 2014, request sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the Oneida Tribe of Indians of Wisconsin* and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation and the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

The request further sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the United States Department of the Interior*, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting

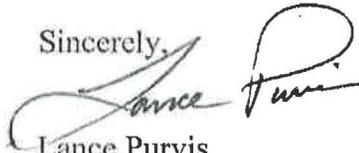
the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

Through this letter, the Office of the Solicitor is releasing 24 files, which may be found on the enclosed CD-ROM, and are being released to you in their entirety.

As for fees, three components fall under the rubric of fees: search fees, review fees, and duplication fees. Due to our failure to comply with statutory time limits, no search fees may be assessed here. Review fees are inapplicable as well, given that the "other requester" category, in which the Village of Hobart falls, is not subject to such fees. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.49(a)(1).

This constitutes our final response to the July 10, 2014, FOIA request. We thank you for your interest in matters concerning the Office of the Solicitor.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Purvis". The signature is written in a cursive style with a large initial "L" and "P".

Lance Purvis  
FOIA Officer, Office of the Solicitor

Enclosure – 1 CD-ROM

cc: Chris Larsen, Assistant U.S. Attorney  
United States Attorney's Office  
*Chris.Larsen@usdoj.gov*



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

SOL-2014-00072

April 22, 2015

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street  
Suite 300  
Green Bay, WI 54301

Dear Mr. Kowalkowski:

This letter serves to supplement our earlier release records in connection with *Village of Hobart v. U.S. Dep't of the Interior*, Civ. No. 1:15-cv-00234-WCG (E.D. Wisc., filed Mar. 3, 2015), which concerns, in part, a July 10, 2014, FOIA request to the Office of the Solicitor, to which we assigned a control number of SOL-2014-00072. We apologize for not having disgorged all responsive records in one fell swoop.

As you recall, the July 10, 2014, FOIA request sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the *Oneida Tribe of Indians of Wisconsin* and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation and the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

The request further sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the *United States Department of the Interior*, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida

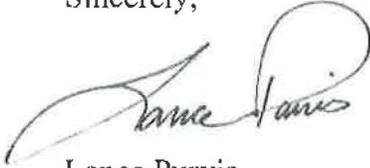
Reservation” located within Brown County, Wisconsin, as described in “an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin.” 16 Stat. 588 (March 3, 1871).

Through this letter, the Office of the Solicitor is releasing 104 pages of documents, which may be found on the enclosed CD-ROM . No FOIA exemptions are being asserted; the records are released in full.

No fees are being assessed for the processing of the Village’s FOIA request.

This supplemental release constitutes our final response to the July 10, 2014, FOIA request. We thank you for your interest in matters concerning the Office of the Solicitor.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Purvis", with a large, stylized flourish at the end.

Lance Purvis  
FOIA Officer, Office of the Solicitor

Enclosure – 1 CD-ROM

cc: Chris Larsen, Assistant U.S. Attorney  
United States Attorney’s Office  
*Chris.Larsen@usdoj.gov*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

VILLAGE OF HOBART,

Plaintiff,

v.

Case No. 14-cv-201

UNITED STATES DEPARTMENT  
OF THE INTERIOR,

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF SOLICITOR,  
DIVISION OF INDIAN AFFAIRS, and

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF THE SPECIAL TRUSTEE  
FOR AMERICAN INDIANS,

Defendants.

---

**ANSWER TO COMPLAINT**

---

Defendants United States Department of the Interior (“DOI”); DOI Office of the Solicitor, Division of Indian Affairs; and DOI Office of the Special Trustee for American Indians, by their attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Chris R. Larsen, Assistant United States Attorney for said district, hereby answer plaintiff’s Complaint as follows:

1. *This is an action under the Freedom of information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. § § 701 et seq., for injunctive and other appropriate relief, seeking the immediate processing and release of records requested by Plaintiff from Defendants.*

**Answer:** In response to paragraph 1, admit that plaintiff seeks the relief set forth in paragraph 1, but denies that plaintiff is entitled to such relief.

2. *This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § § 701-706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).*

**Answer:** In response to paragraph 2, admit.

3. *Plaintiff, Village of Hobart ("Hobart"), is a Wisconsin municipality which maintains its principal offices at 2990 South Pine Tree Road, Hobart, Wisconsin.*

**Answer:** In response to paragraph 3, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

4. *Defendant, Department of Interior ("DOI") is a Department of the Executive Branch of the United States Government. DOI is an agency within the meaning of 5 U.S.C. § 552(f). The components of DOI include the Office of the Solicitor and Division of Indian Affairs.*

**Answer:** In response to paragraph 4, admit that DOI is a Department of the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f). Defendants deny that the Office of the Solicitor and the Division of Indian Affairs are separate components of DOI. The Division of Indian Affairs is a component of the Office of the Solicitor, which in turn is part of the Office of the Secretary for DOI.

5. *The following parcels of land are located within the Village of Hobart ("Village"): HB-1036; HB-1330; HB-1342-1; HB-1364-1; HB-1368-1; HB-1372; HB-1380; HB-1389; HB-1409-1; HB-1410-1; HB-1414-1; HB-1416; HB-1420-1; HB-1422; HB-1425-1; HB-1426-1; HB-1428-1; HB-1429-1; HB-742; HB-786 ("Parcels").*

**Answer:** In response to paragraph 5, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

6. *Until approximately November 2007, the Parcels were titled in the name of Fox Valley & Western Ltd., and were previously used as a railroad right-of-way by Fox Valley & Western Ltd. and its predecessors in interest.*

**Answer:** In response to paragraph 6, deny that the Parcels referred to in paragraph 5 were titled in the name of Fox Valley & Western Ltd. until approximately November 2007. Defendants are without information sufficient to form a belief as to the truth of the allegation that the parcels were previously used as a railroad right-of-way by Fox Valley & Western Ltd. and its predecessors in interest, and therefore deny that allegation.

7. *On October 18, 2007, the Oneida Tribe of Indians of Wisconsin ("Tribe") filed an Affidavit of Easement Cancellation ("Affidavit") relating to the Parcels with the Brown County Register of Deeds and recorded as Document No. 2337382.*

**Answer:** In response to paragraph 7, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

8. *In approximately November 2007, as requested by the Tribe in its October 18, 2007 Affidavit of Easement Cancellation, the Brown County Wisconsin Register of Deeds changed title to the parcels referenced in Paragraph 3 to "USA IN TRUST FOR ONEIDA TRIBE OF INDIANS OF WI."*

**Answer:** In response to paragraph 8, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

9. *The Village never received notification of a fee-to-trust application, nor a copy of any decision by the Defendants' or any other federal agency or department accepting the Parcels into trust for the benefit of the Tribe.*

**Answer:** In response to paragraph 9, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them, but state that the Department of the Interior has not issued any decision accepting the Parcels into trust for the benefit of the Tribe.

10. *Upon information and belief, the Department of Interior questioned the Tribe's action relating to its attempts to claim trust status for the railroad parcels.*

**Answer:** In response to paragraph 10, deny that the Department of the Interior questioned the Tribe's action relating to its attempts to claim trust status for the railroad parcels, but state that the Department received a request from the Tribe for confirmation of the trust status of the railroad right-of-way, and that the Department's analysis of this issue is ongoing.

11. *On or about May 13, 2009, Attorney Carl J. Artman sent a memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor ("Memorandum"). The Memorandum indicated, in relevant part, that "The GB & LP right-of-way runs through Oneida reservation lands and individual parcels. The railroad continued to use the right-of-way until 2000. The Fox Valley & Western Ltd. ("FVW") sought official abandonment approval of the Railway and the right-of-way in 2000, and received this grant in 2001. FVW entered into a Mutual Release Agreement ("Mutual Release") with the Oneida Tribe in 2003 that acknowledged the railroad received an easement, never obtained fee title to the right-of-way land, and the title remains in trust for the Oneida Tribe." The Memorandum also indicated, in relevant part, that*

*"[t]he Oneida Tribe originally sought, and still seeks, confirmation that the land the Oneida Chiefs and the United States Congress approved for a railroad easement and right-of-way in 1870 and 1871, respectively, remains titled to the United States of America for the beneficial use of the Tribe."*

**Answer:** In response to paragraph 11, admit that plaintiff has provided accurate quotations from a memorandum dated May 13, 2009, from Attorney Carl J. Artman to Maria Wiseman, but deny that the quoted excerpts are all the "relevant" excerpts.

12. *On August 23, 2013, the Village, through its legal counsel, submitted FOIA Requests to the Office of the Solicitor, Bureau of Indian Affairs to obtain documents relevant to the Tribe's claim the Parcels were held in trust. The Village requested the following related to the Memorandum:*

*Carl J. Artman, Godfrey & Kahn, s.c., prepared a Memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor, dated May 13, 2009, regarding Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation. I am requesting a copy of any documents which were prepared in response to the May 13, 2009 Memorandum, including any correspondence or memorandum addressed to Carl J. Artman. I am also requesting a copy of any documents which reference the May 13, 2009 Memorandum.*

**Answer:** In response to paragraph 12, admit that on August 23, 2013, Attorney Jenna Clevers submitted a FOIA request to the Office of the Solicitor, and that the request included the language contained in the indented paragraph. However, defendants deny that the request identified the Village of Hobart as the requesting party.

13. *On or about September 17, 2013, the Office of the Solicitor sent correspondence in response to the FOIA Request, indicating, in relevant part, that "[b]ecause the Office of the*

*Solicitor will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Solicitor FOIA office is taking a 10- workday extension under 43 C.P.R. §2.19. For the same reason, we are placing your request under the "Complex" processing track. See 43 C.P.R. §2.15."*

**Answer:** In response to paragraph 13, admit that on or about September 17, 2013, the Office of the Solicitor sent correspondence in response to the FOIA Request that included the language quoted in this paragraph.

14. *On or about September 27, 2013, the Office of the Special Trustee for American Indians sent correspondence in response to the FOIA Request ("FOIA Response") indicating it was withholding all of the responsive documents, which consisted of 94 pages. The correspondence indicated, in relevant part, as follows:*

*I am writing today to respond to your request on behalf of the Office of the Solicitor. In response to your letter, the Department has searched its records and located 94 pages (sic) documents responsive to your request. However, the documents have been withheld in full on the basis of FOIA Exemption 5, which protects internal Federal government documents that are both pre-decisional and deliberative, or are work-product or attorney-client privileged.*

**Answer:** In response to paragraph 14, admit that on or about September 27, 2013, the Office of the Solicitor sent correspondence (inadvertently using letterhead for the Office of the Special Trustee for American Indians) in response to the FOIA Request indicating that it was withholding all of the responsive documents, consisting of 94 pages, on the basis of FOIA Exemption 5.

15. *The Office of the Special Trustee for American Indians did not include a privilege log or otherwise provide any description of the responsive documents.*

**Answer:** In response to paragraph 15, admit that the Office of the Solicitor did not include a privilege log or other description of the responsive documents, except that the number of pages was provided along with a statement as to the privileged nature of the documents.

16. *The Village timely filed a FOIA Appeal with respect to the above FOIA Response with the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS 6556-MIB, Washington, D.C. 20240 on October 22, 2013.*

**Answer:** In response to paragraph 16, admit that the Village of Hobart filed a timely FOIA Appeal with the FOIA Appeals Officer, United States Department of the Interior, but deny that the Village was the proper appellant or that the Village had standing to appeal.

17. *The time for responding to the Appeal expired with no response. Receiving neither a request for an extension nor any other response from the FOIA Appeals Officer, the Village, through its attorney, communicated with that Officer on December 3, 2013 by telephone and follow-up e-mail, and again on December 23, 2013, by telephone and follow-up e-mail, seeking the status of the Appeal.*

**Answer:** In response to paragraph 17, admit.

18. *The Village's counsel was told the Appeals Office was backlogged.*

**Answer:** In response to paragraph 18, admit.

19. *To date, the Village has not received a request for an extension to respond to the Appeal nor a ruling on the Appeal.*

**Answer:** In response to paragraph 19, admit.

20. *Plaintiff repeats and realleges paragraphs 1 through 19.*

**Answer:** In response to paragraph 20, state that no response is necessary.

21. *Defendants' failure to make promptly available the records sought by Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations.*

**Answer:** In response to paragraph 21, deny.

22. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 22, deny.

23. *Plaintiff repeats and realleges paragraphs 1 through 22.*

**Answer:** In response to paragraph 23, state that no response is necessary.

24. *Defendants' failure to respond to Plaintiff's Administrative Appeal even after follow-up communications by the Village's attorney, violates 5 U.S.C. § 552(a)(6)(A)(ii), and the corresponding agency regulations, requiring a response within 20 days.*

**Answer:** In response to paragraph 24, deny.

25. *As a result of the Defendants' failure to respond to the Administrative Appeal, the Plaintiff is deemed to have exhausted all administrative remedies.*

**Answer:** In response to paragraph 25, deny that plaintiff has exhausted its administrative remedies because plaintiff was not identified in the August 23, 2014, FOIA Request as the requesting party.

26. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 26, deny.

27. *Plaintiff repeats and realleges paragraphs 1 through 26.*

**Answer:** In response to paragraph 27, state that no response is necessary.

28. *Defendants' failure to grant Plaintiff's requests for information and the Defendants' actions in ignoring the Administrative Appeal, are arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq.*

**Answer:** In response to paragraph 28, deny.

29. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 29, deny.

**Defendants deny each and every allegation not previously admitted or qualified. Defendants further deny that plaintiff is entitled to any of the relief requested.**

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted because the defendants have not improperly withheld agency records.
2. The August 23, 2013 FOIA Request implicates records that are protected from disclosure by one or more statutory FOIA exemptions; therefore, disclosure is not required.
3. Plaintiff lacks standing to bring this lawsuit because the individual who made the August 23, 2013 FOIA Request did not indicate she was doing so on behalf of the plaintiff.
4. Plaintiff has failed to properly exhaust its administrative remedies.
5. Plaintiff has named two improper parties, DOI Office of the Solicitor, Division of Indian Affairs; and DOI Office of the Special Trustee for American Indians. These entities are components of DOI, a federal agency, but are not themselves federal agencies subject to suit under FOIA. *See* 5 U.S.C. §§ 551(1) and 552(f).

WHEREFORE, defendants demand judgment as follows:

1. Dismissing plaintiff's complaint on its merits and with prejudice; and
2. Awarding such other relief as the Court deems just and equitable.

Dated at Milwaukee, Wisconsin this 2<sup>nd</sup> day of May, 2014.

Respectfully submitted,

JAMES L. SANTELLE  
United States Attorney

By: /s/ Chris R. Larsen

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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VILLAGE OF HOBART,

Plaintiff,

v.

Case No. 14-cv-201

UNITED STATES DEPARTMENT  
OF THE INTERIOR,

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF SOLICITOR,  
DIVISION OF INDIAN AFFAIRS, and

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF THE SPECIAL TRUSTEE  
FOR AMERICAN INDIANS,

Defendants.

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**DECLARATION OF REBECCA ROSS**

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I, REBECCA ROSS, declare as follows:

1. I am an Attorney-Advisor in the Branch of Environment & Lands of the Division of Indian Affairs (“DIA”) in the Office of the Solicitor (“SOL”) at the United States Department of the Interior (“Interior” or “Department”). I have held this position since November 2011. I have been licensed to practice law in Arizona since November 2010.

2. In my capacity as an Attorney-Advisor in DIA, my responsibilities include advising Bureaus and Offices within the Department on land issues relating to Indian Tribes. My

primary clients are the Bureau of Indian Affairs (“BIA”) and the Assistant Secretary – Indian Affairs.

3. As part of my official duties, I was assigned to prepare a legal memorandum evaluating whether the lands comprising an abandoned railroad right-of-way within the reservation of the Oneida Tribe of Indians of Wisconsin (“Tribe”) are held in trust by the United States for the benefit of the Tribe. I have worked on this matter from November 2011 to the present date.

4. The statements I make in this declaration are based on my review of the official files and records of the Department, my personal knowledge, and information acquired by me through the performance of my official duties.

BACKGROUND: Trust Status of Right-of-Way and 2009 Memorandum

5. On August 13, 2001, the Tribe submitted a request to the Great Lakes, Wisconsin office of the Bureau of Indian Affairs (“BIA”), asking that the Department confirm that the land comprising an abandoned railroad right-away running across the Tribe’s reservation is held in trust by the United States.

6. On October 12, 2001, the BIA referred the matter to the Twin Cities Field Office of the Office of the Solicitor for evaluation. The Tribe has renewed its request for a determination on multiple occasions by sending letters to various offices within the Department. The May 13, 2009, memorandum (“Memo”) referenced in Plaintiff’s FOIA request is one of these letters. Upon submission, the Memo was added to the record of materials the Solicitor’s Office continues to review as part of its ongoing effort to evaluate the Tribe’s request.

7. Since 2001, several Solicitor's Office attorneys have worked on the matter, including attorneys in both the Twin Cities Field Office and in Washington, D.C. While Solicitor's Office attorneys have prepared various draft legal opinions over the years, the Solicitor's Office has never finalized its legal position on the matter and no final legal opinion has ever been issued to our client offices.

8. The matter is still pending in the Solicitor's Office, as it was pending when the Tribe submitted its Memo to the Department.

#### PLAINTIFF'S FOIA REQUEST

9. On September 8, 2013, Lance Purvis, the SOL FOIA Officer, sent a copy of a FOIA Request dated August 23, 2013, ("FOIA Request") to Maria Wiseman and Karen Lindquist. Karen Linquist is an attorney in DIA, and Maria Wiseman was an attorney in DIA until October 2012. The FOIA request was submitted by Attorney Jenna Clevers but did not specifically identify the Village of Hobart as the requesting party.

10. The FOIA Request sought certain documents in SOL's possession related to the "Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation." Specifically, the request sought documents prepared in response to a Memo sent by Carl Artman, counsel for the Tribe discussing the Right-of-Way. Although the FOIA Request focused only on the Memo from the Tribe's counsel, the matter has been under consideration by the Department for much longer.

11. I received a copy of the FOIA Request via email on September 9, 2013. In response to the FOIA Request, I and other DIA attorneys searched our files for responsive

documents. As part of our official duties, we provided Mr. Purvis with documents we determined were responsive to the FOIA Request.

12. In addition, after plaintiff commenced the present lawsuit, I was asked to review a set of documents for responsiveness to the Plaintiff's FOIA Request and for and the applicability of potential FOIA exemptions and privileges. I determined that all the responsive documents, except one, should be withheld under the attorney work product, attorney client, and/or deliberative process privileges, as explained below.

JUSTIFICATION FOR WITHHOLDING RESPONSIVE DOCUMENTS UNDER  
EXEMPTION 5 OF THE FOIA

13. Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. 552(b)(5). This has been interpreted by the Supreme Court to exempt those documents "that are normally privileged in the civil discovery context." *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). This includes the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

**Attorney Work Product Privilege**

14. As indicated on the Vaughn Index, SOL withheld approximately 32 documents comprised of approximately 150 pages, because they are protected by the attorney work-product privilege. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in anticipation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947); Fed. R. Civ. P. 26(b)(3). The protection also extends to factual materials. *United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984).

15. Each of the documents withheld are “inter-agency or intra-agency memoranda” as described by Exemption 5. This exemption has long been held to encompass communications with hired experts and consultants. *See Soucie v. David*, 448 F.2d 1067, 1078 n. 44 (D.C. Cir. 1977); *Hoover v. U.S. Department of the Interior*, 611 F.2d 1132, 1138 (5th Cir. 1980).

16. The materials withheld as work product consist of attorney communications within the federal government, and the materials have not been released outside of the federal government. These records are protected from disclosure by the attorney work-product privilege because they were created in anticipation of litigation. The United States has been sued, on several occasions, in connection with competing claims of ownership of the lands comprising an abandoned railroad right-of-way. While there is currently no active lawsuit against the United States in this matter, we are aware that at least one entity (Village of Hobart) has asserted a claim in the property and has asserted the Tribe is trespassing on its land. The Tribe’s request asks that the Department confirm the trust status of the property comprising the abandoned railroad right-of-way, and we anticipate that our decision will trigger litigation against the United States by any party asserting a claim in the property at issue.

#### **Attorney-Client Privilege**

17. As indicated on the Vaughn Index, SOL withheld approximately 36 documents comprised of approximately 146 pages, because they are protected by the attorney-client privilege.

18. As discussed above, the Tribe initially contacted BIA seeking confirmation of the trust status of the lands comprising an abandoned railroad right-of-way in 2001. The BIA then sent the request to the Solicitor’s Office to in order to obtain legal advice. The BIA and the

Assistant Secretary – Indian Affairs requested legal advice from the Solicitor’s Office on the issue because neither the BIA nor the Assistant Secretary can provide the Tribe confirmation of the trust status of the property absent such legal advice. The legal status and ownership of the lands comprising the abandoned railroad right-of-way is seen by the Department as a legal question that must be answered by the Solicitor’s Office. Since the 2001 referral, the issue has been residing in the Solicitor’s Office, and the Tribe has submitted letters to various offices within the Department, including the Office of the Assistant Secretary – Indian Affairs and the Solicitor’s Office, renewing and supporting its request for such confirmation.

19. The documents at issue in this FOIA request were generated as part of the Solicitor’s Office ongoing work to provide the BIA and the Assistant Secretary a final legal opinion on the matter. The documents reflect discussion about what the client advice should be on the matter.

20. Some documents also reflect requests for advice from subject matter experts at the United States Department of Justice, with whom Solicitor’s Office has an attorney-client relationship.

21. Although the legal drafts contain some factual material, the factual material cannot easily be separated from the legal analysis for several reasons. First, the legal drafts that have been prepared take into account facts from many sources. While the Tribe has submitted materials to the Department, the Solicitor’s Office has also used facts provided by the client over the course of several years. In addition, the Solicitor’s Office has conducted its own research and examination of the relevant facts, to determine their veracity and reliability.

22. Second, the documents contain Solicitor's Office internal deliberations regarding the relevancy of specific facts to our legal analysis. These facts must be withheld because release of the factual discussions would reveal the legal analysis and questions that Solicitor's Office attorneys are working through and grappling with. Certain facts are pertinent to certain legal questions and issues, and the release of factual information would also reveal the legal questions under consideration by Solicitor's Office attorneys. Therefore, even the publicly available facts within the exempt documents must be withheld in order to preserve the attorney-client privilege.

23. For these and the above-mentioned reasons, the documents should be withheld in their entirety under the attorney-client privilege.

#### **Deliberative Process Privilege**

24. The documents responsive to Plaintiff's FOIA Request include email correspondence and draft memoranda. They reflect the historical and legal research conducted by Solicitor's Office attorneys so far, discuss outstanding factual and legal issues left to resolve, and seek the assistance of other federal attorneys in grappling with the legal complexities of the matter.

25. Solicitor's Office attorneys need to have the ability to have candid discussions with supervising attorneys and other Federal law attorneys who are subject matter experts in the relevant areas of law. Moreover, the legal analysis that one Solicitor's Office attorney drafts may be inconsistent with the analysis drafted by a different Solicitor's Office attorney, and these disparate views have to be considered by supervisory attorneys as part of the process of the Solicitor's Office reaching a final position on the matter. These disparate views may also rely on

a different selection of relevant facts, and supervisory attorneys would also need to determine the facts most relevant to a legal analysis prior to issuing a final opinion.

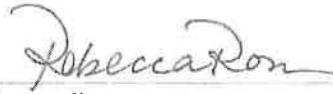
26. This internal discussion is an essential part of the Solicitor's Office process as it allows for a candid discussion of the strengths and weaknesses in different legal positions. Release of these positions would hamper the frank and open discussion of the historical and legal issues under debate.

27. In addition, these internal deliberations and preliminary legal drafts reflect proposed legal analysis and legal positions that have not yet been adopted as the actual position of the Solicitor's Office. The release of any of these proposed positions, which vary in factual and analytical content and conclusion, would confuse the public as it would not reflect the final position of the Solicitor's Office. Therefore, any preliminary draft legal opinion, which has never been finalized for or issued to the client, does not reflect the official position of the Solicitor's Office.

28. I have reviewed the documents withheld pursuant to Exemption 5 to determine if there are reasonably segregable portions of these documents that could be released, in redacted form, to API. In many cases, all of the information contained within a document is exempt from release pursuant to Exemptions 5; thus, there is no reasonably segregable portion of the document that may be released. To the extent that some documents may contain non-privileged information, releasing such information is not possible because the material is inextricably intertwined with the exempted information, and releasing that information would necessarily release privileged material, including material protected by the attorney-client, attorney work product, and deliberative process privileges.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed this 1<sup>st</sup> day of July, 2014.

/s/   
Rebecca Ross,  
Attorney-Advisor  
Branch of Environment & Lands  
Division of Indian Affairs  
Office of the Solicitor  
United States Department of the Interior

HB-1330 Active CTH J

Owners

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HB-786 Active RAILROAD AV

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HB-1426-1 Active CTH J

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HB-742 Active RAILROAD AV

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Former GREEN BAY & WESTERN RAILROAD

Former WISCONSIN CENTRAL LTD; Document Number: J23215-07

2337382

CATHY WILLIQUETTE  
BROWN COUNTY RECORDER  
GREEN BAY, WI

RECORDED ON  
10/18/2007 01:55:05PM

REC FEE: 69.00  
TRANS FEE:  
EXEMPT #  
PAGES: 30

Affidavit of  
EASEMENT CANCELLATION

Document Number

Note: This document is to be recorded in the Tract Index at the office of the Register of Deeds in Outagamie County, Wisconsin and Brown County, Wisconsin. The Tract Index should be updated to reflect the accurate title to this property as follows:

United States of America in Trust for  
the Oneida Tribe of Indians of Wisconsin

AFFIANT, Gerald L. Danforth, Oneida Tribal Chairman, hereby swears or affirms that a certain railroad easement has been cancelled. This Affidavit of Cancellation of Easement has been executed for the purposes of formally recording with Brown and Outagamie Counties, Wisconsin, the cancellation of a tribally granted and federally approved railroad easement over restricted treaty land on the Oneida Indian Reservation in Wisconsin.

Pursuant to the 1831 Treaty with the Menominee, 7 Stat., 342, the Menominee Tribe ceded approximately 500,000 acres to the United States, so that land may be set apart as a home to several tribes including the Oneida Tribe. Pursuant to the 1838 Treaty with the Oneida, Article I, 7 Stat., 566, the Oneida Tribe ceded its interest in the lands reserved under the 1831 Treaty with the Menominee, and the United States permanently reserved the present Oneida Indian Reservation for the use and occupancy of the Oneida Tribe.

The tribal grant of easement is entitled "1870 Agreement between Oneida Chiefs and Lake Pepin Railway Co.," Dated May 23, 1870. Said Agreement was ratified by Congress by an Act entitled: "An Act granting the Right of Way to the Green Bay and Lake Pepin Railway Company for its Road across the Oneida Reservation, in the State of Wisconsin," March 3, 1871, 16, Statutes at Large, 588. Neither document contains a legal description of the former railroad easement.

The following documents are attached to this Cancellation of Easement:

1. Agreement and Mutual Release between Fox Valley & Western Ltd. and the Oneida Tribe, fully executed January 22, 2003. (Oneida Nation Register of Deeds Certified Copy attached).
2. Surface Transportation Board, July 23, 2003 Decision and Order, STB Docket No. AB-402 (Sub-No. 8x). (Surface Transportation Board Certified Copy attached).
3. Railroad Survey by Mau & Associates, Project No: O-15306, Drawing No.: L-6939, dated November 10, 2006. Said survey is of the Outagamie County portion of the former railroad easement. (Original attached).
4. Railroad survey by Mau & Associates, Project No: O-15306, Drawing No.: L-7144, dated September 21, 2007. Said survey is of the Brown County portion of the former railroad easement. (Original attached).

THIS INSTRUMENT WAS DRAFTED BY:  
Rebecca M. Webster, Staff Attorney

Recording Area

Name and Return Address  
Oneida Tribe of Indians of Wisconsin  
Land Management Division Director  
P. O. Box 365

HB-1036, HB-1330, HB-1342-1, HB-1364-1,  
HB-1368-1, HB-1372, HB-1380, HB-1389,  
HB-1409-1, HB-1410-1, HB-1414-1, HB-1416,  
HB-1420-1, HB-1422, HB-1425-1, HB-1426-1,  
HB-1428-1, HB-1429-1, HB-742, HB-786  
Parcel Identification Number (PIN)

Note: The Outagamie County portion of the former railroad easement on the Oneida Reservation does not have assigned parcel numbers.

Dated this 12 day of October, 2007.

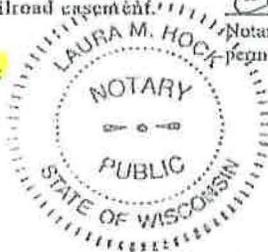
*Gerald L. Danforth*  
\* Gerald L. Danforth, Oneida Tribal Chairman

ACKNOWLEDGMENT

STATE OF WISCONSIN )  
) ss.  
*Outagamie* County )

Personally came before me this 12 day of October, 2007, the above named Gerald L. Danforth to me known to be the person who executed the foregoing instrument and acknowledged the same.

*Laura M. Hock*  
Notary Public, State of Wisconsin. My Commission is permanent. (If not, state expiration date: *March 2008*)



ONEIDA NATION, WI  
REGISTERS OFFICE  
OCT 16 2007  
006122

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**TO:** Maria Wiseman, United States Department of the Interior, Office of the Solicitor  
Karen Lindquist, United States Department of the Interior, Office of the Solicitor

**FROM:** Carl J. Artman

**DATE:** May 13, 2009

**RE:** Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians Of Wisconsin Reservation

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### Introduction

The Oneida Tribe of Indians of Wisconsin ("Oneida Tribe") occupy and live on the Oneida Reservation in northern Wisconsin pursuant to the 1838 Treaty with the Oneida Tribe ("1838 Treaty"). The Oneida Tribe entered into an agreement with the Green Bay and Lake Pepin Railway Company (hereinafter "GB & LP") in 1870. This agreement granted GB & LP a right-of-way through the Oneida Reservation. In 1887 Congress passed the (Dawes) General Allotment Act ("Allotment Act") which allotted portions of the reservation land to individual Oneida Indians. Congress passed the Indian Reorganization Act ("IRA") in 1934 which alternatively sought to protect tribes' reservation lands by repudiating the Allotment Act and attempting to reverse its ramifications. The GB & LP right-of-way runs through Oneida reservation lands and individual parcels. The railroad continued to use the right-of-way until 2000. The Fox Valley & Western Ltd. ("FVW") sought official abandonment approval of the railway and the right-of-way in 2000, and received this grant in 2001. FVW entered into a Mutual Release Agreement ("Mutual Release") with the Oneida Tribe in 2003 that acknowledged the railroad received an easement, never obtained fee title to the right-of-way land, and the title remains in trust for the Oneida Tribe.

The Oneida Tribe does not seek any new designation for the land or development of a new legal standard to achieve a goal. The Oneida Tribe originally sought, and still seeks, confirmation that the land the Oneida Chiefs and the United States Congress approved for a railroad easement and right-of-way in 1870 and 1871, respectively, remains titled to the United States of America for the beneficial use of the Tribe.

### Short Conclusion

The GB & LP right-of-way was established in 1871, well before the Oneida Reservation was partially allotted in the 1890s. The survey descriptions from that era evince that the right-of-way land was not allotted to any individuals pursuant to the General Allotment Act. Title to the right-of-way land remains with the Oneida Tribe, held in trust and for the beneficial use of the Tribe by the United States, since the land was never allotted and always belonged to the Oneida

Tribe pursuant to the 1838 Treaty. The Mutual Release between the railroad and the Oneida Tribe acknowledges that the railroad never obtained fee title to the right-of-way land, and the right-of-way land is held in trust by the United States for the Oneida Tribe's beneficial use.

### Facts

The Oneida Reservation was established pursuant to the 1838 Treaty, which reserved approximately 65,000 acres for the use and occupancy of the Oneida Tribe. In 1866, GB & LP began efforts to construct a railroad from Green Bay through the Oneida Reservation. In 1870, the Oneida Tribe, through its Chiefs, entered into an agreement with GB & LP granting GB & LP the use of the Oneida Tribe's lands in the form of a right-of-way through the Oneida Reservation. This right-of-way consisted of approximately 130 acres.<sup>1</sup> Pursuant to 25 U.S.C. § 177, Congress approved the agreement for the conveyance of an easement from the Oneida Tribe to GB & LP in 1871.<sup>2</sup>

Congress passed the Allotment Act in 1887. The Allotment Act provided "for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."<sup>3</sup> The Allotment Act authorized the President to allot portions of reservation land to individual Indians. The Office of Indian Affairs directed Colonel N.S. Boardman, Deputy United States surveyor, to conduct surveys of parcels, to which more than two hundred Oneida Indians had private claims, by special instructions dated October 25, 1889.<sup>4</sup> The surveys are an accurate depiction of what was conveyed at that time. Boardman counted seventeen private claims in Brown County, WI and Outagamie County, WI which were bisected by the GB & LP railroad and, in each case, he made a notation that the land was "exclusive of the right-of-way of GB & LP Railway." The Boardman surveys were approved on December 11, 1890.<sup>5</sup>

Congress passed the IRA in 1934. The IRA, contrary to the Allotment Act, sought to protect the land base of the tribes. The IRA authorized the Secretary of the Interior to restore tribal ownership to any "surplus" lands acquired from the tribes under the Allotment Act.

On March 2, 2001 the United States Department of Transportation's Surface Transportation Board ("STB") granted to FVW, the successor-in-interest to GB & LP, the right to abandon the railroad on the Oneida Reservation.<sup>6</sup> In 2003, the Oneida Tribe and FVW

<sup>1</sup> Letter from Dana C. Lamb, Special Agent for the allotment of lands in severalty to Indians, to Thomas Jefferson Morgan, Commissioner of Indian Affairs, October 31, 1890.

<sup>2</sup> Act of March 3, 1871, ch. 142, 16 Stat. 588.

<sup>3</sup> Dawes Act, 24 Stat. 388 (1887).

<sup>4</sup> Approval of field notes of the surveys of claims within the Oneida Indian Reservation, Wisconsin, Department of the Interior General Land Office, December 11, 1890, Lewis A. Groff, Commissioner.

<sup>5</sup> *Id.*

<sup>6</sup> Fox Valley & Western Ltd. – Abandonment Exemption – In Brown and Outagamie Counties, WI, STB Docket No. AB-402 (Sub-No. 8X), July 23, 2003, at 1. STB granted an exemption to the FVW to abandon its railroad from 4.78 west of Green Bay, WI to milepost 38.98 in New London, WI. The exemption was made subject to certain conditions, including completion of the 106 process of the National Historic Preservation Act ("NHPA") for lands impacted on the Oneida Reservation. *Id.* FVW achieved the mandates of the imposed NHPA conditions and limitations on the waiver were lifted by STB on July 23, 2003 (effective service date of July 28, 2003). *Id.* at 2.

entered into a Mutual Release. Through the Mutual Release, FVW consummated the abandonment of its right-of-way across the Oneida Reservation. Additionally, FVW acknowledged that it did not obtain title to the property by virtue of the 1870 right-of-way agreement and agreed to compensate the Oneida Tribe for the railroad's use of the land.<sup>7</sup>

### Analysis

A careful study of the initial agreement with GB & LP, historical documents, the Boardman surveys, applicable statutes, and the Mutual Release leads to several conclusions: (1) the right-of-way land was Oneida trust land before the agreement with GB & LP pursuant to the 1838 Treaty; (2) the agreement between the Oneida Tribe and GB & LP did not transfer ownership of the right-of-way land to GB & LP; (3) Congress approved the conveyance of a property interest consisting of nothing more than a right-of-way; (4) the right-of-way land was not conveyed to individual tribal members pursuant to the Allotment Act as confirmed in the N.S. Boardman surveys; (5) the railroad acknowledged in the Mutual Release that it never acquired fee title to the right-of-way land and that the land remained in trust with the United States for the beneficial use of the Tribe; and therefore (6) the right-of-way land always belonged to the Oneida Tribe as land held in trust by the United States, and this status remains in effect today.

#### *A. Initial Agreement Between the Oneida Tribe and GB & LP*

In 1870, the Oneida Tribe and GB & LP entered into an agreement which granted use of the treaty-reserved trust lands to the railway company for the construction of a railroad across the Oneida Reservation. The following is the language of the right-of-way, in its entirety:

Whereas the Green Bay & Lake Pepin Railway Company desire to run their proposed Railway across the Oneida Reservation in the State of Wisconsin:

The undersigned Chiefs of the Oneida Nation of Indians do hereby consent subject to the approval of the proper Indian Agent & of the Indian Commissioner or other proper authorities of the United States, that the said Company may, by such route as its Directors may determine, and subject to the laws of the State of Wisconsin, the same as if the lands were owned by white persons, construct and operate their said Railway across said Reservation appropriating further uses thereof a strip of land one hundred feet wide and extending the whole length of such part of said Railway as will be within the limits of said Reservation.

Provided however, that damages to the property of said Indians, consequent when the introduction of said railway shall be appraised determined and recovered under and by virtue of the laws of the State of Wisconsin, as if the land belonged to White persons.

<sup>7</sup> Agreement and Mutual Release between Oneida Tribe of Indians of Wisconsin and Fox Valley & Western Ltd. (2003)

And provided also, that this consent shall not be construed to include lands for Depots or for other purposes than the road bed and tracks and usual rights of way of such railway.<sup>8</sup>

The Oneida Tribe consented to GB & LP using the Tribe's land. This consent indicates the Oneida Tribe and GB & LP viewed the Oneida Tribe as the owner of the land. There is no grant of fee title or any language of conveyance of title in the agreement. Rather, the agreement speaks in terms of consent to the railroad's use of the land. The Mutual Release confirms further the parties' intent that the Oneida Tribe retained fee title to the right-of-way land.

Congress has consistently placed a general restraint on all forms of conveyance of land by tribal governments.<sup>9</sup> Only the United States has the ability to extinguish original Indian title, an authority that vests the federal government with great power over tribal land.<sup>10</sup> Termination of this title is "exclusively the province of the federal law."<sup>11</sup> Accordingly, Congress approved this agreement for the conveyance of an easement from the Oneida Tribe to GB & LP in 1871. The congressional act reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Green Bay and Lake Pepin Railway Company be, and is hereby authorized to build and maintain its railway across the Oneida Reservation, in the State of Wisconsin and to take sufficient land, not more than a strip of one hundred feet in width, for the purposes of said railway, in accordance with and subject to the conditions of an agreement made by the chief and headmen of the Oneida Tribe of Indians, on the twenty-third day of May, eighteen hundred and seventy, approved by and on file with the Secretary of the Interior.*<sup>12</sup>

#### *B. Mutual Release Agreement*

FVW sought to abandon the railroad and the underlying right-of-way in 2000. The STB granted this right in 2001. Two years later, the Oneida Tribe and FVW executed a Mutual Release. FVW acknowledged in the Mutual Release that the Oneida Tribe granted FVW's predecessor an easement for the purposes of constructing a railway through the reservation.<sup>13</sup> FVW acknowledged that the "United States holds title to such land in trust for the Oneida Tribe's beneficial use and occupancy pursuant to the 1838 Treaty with the Oneida."<sup>14</sup> Through

<sup>8</sup> Agreement between the Chiefs of the Oneida Nation of Indians and the Green Bay and Lake Pepin Railway Company, May 23, 1870.

<sup>9</sup> 25 U.S.C. § 177.

<sup>10</sup> Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 670 (1974).

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* at 2.

<sup>13</sup> *Supra* at 7.

<sup>14</sup> *Id.* FVW relinquished and quit claimed any rights it or its predecessor had in the land or any structures upon it. *Id.* at 2, ¶2. In addition, "FVW agrees to execute any document which may be necessary to evidence or confirm the Oneida Tribe's title to the land underlying the entire right-of-way within the exterior boundaries of the Oneida Indian Reservation." *Id.*

the Mutual Release, FVW agreed to consummate abandonment of the estimated eleven westernmost miles of the railroad while reserving the right-of-way for the estimated one easternmost mile. FVW paid the Oneida Tribe \$93,000 for the railroad's past use of the right-of-way land.<sup>15</sup> The Mutual Release clearly delineates the initial granting of the easement to GB & LP and the reversionary interest in the right-of-way land of the Oneida Tribe.

Under the common law, once a right-of-way is abandoned or ceases to be used, the estate is extinguished and vests in the owner of the servient estate. To show abandonment the owner of the servient estate must prove two elements: (1) a cessation of use and (2) an intent to relinquish or abandon.<sup>16</sup> The United States system of property law cannot conceive of lack of ownership of property, hence an abandoned servitude, since it cannot be unowned, reverts to the owner of the servient estate from which the original grant came.<sup>17</sup> The Mutual Release both confirms abandonment of the right-of-way and the FVW's understanding that the Oneida Tribe retained beneficial title to the land.

The language of the initial agreement between the Oneida Tribe and GB & LP in 1870 and in the Mutual Release between the Oneida Tribe and GB & LP's successor, FMV, in 2003, demonstrates: (1) the Oneida Tribe retained ownership of the right-of-way land and did not transfer ownership of the right-of-way land to GB & LP, and (2) upon abandonment, consummated by FVW subsequent to the grant from Surface Transportation Board on June 30, 2003, the right-of-way land reverted back to the beneficial use of the Oneida Tribe and the United States continues to hold title to the right-of-way land in trust for the Oneida Tribe.

### C. *Property Surveys*

The Office of Indian Affairs hired Colonel N.S. Boardman, Deputy United States Surveyor, to survey the Oneida Reservation after enactment of the Allotment Act. These surveys confirmed the status of title at the time immediately following the Allotment Act conveyances and depict what land was conveyed. Boardman counted seventeen parcels in Brown and Outagamie Counties that were bisected by the GB & LP railroad. In each case, Boardman used language to indicate that the parcel is exclusive of the right-of-way of GB & LP Railway. Boardman did not simply state that the parcels were subject to the right-of-way but also indicated that the particular parcel's total acreage excluded the right-of-way entirely. In addition to the exclusivity language, each survey contains language that the "stake is in the center of railroad track."<sup>18</sup>

The "stake in the center of railroad track" language illustrates Boardman physically surveyed all of the land, including the right-of-way land, and then subjected the land to the railroad's rights.<sup>19</sup> Boardman then excluded the railroad right-of-way land from the legal description of the parcel through the use of the phrases that explicitly state that the acreage of the

<sup>15</sup> *Id.* at 3, ¶¶ 6-7.

<sup>16</sup> Roger Cunningham et al., *The Law of Property* § 8.12, at 465 (1993).

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Department of the Interior, General Land Office. Survey by Colonel N.S. Boardman. (Dec. 11, 1890).

<sup>19</sup> For examples of this language see Survey Claim Nos. 164A, 172, 173, 195, 196, 200, 201, 202, or 203.

survey does not include the railroad right-of-way.<sup>20</sup> He uses language of exclusion in the surveys of properties that border the railroad right-of-way in Brown County. Colonel Boardman, in conjunction with Special Agent Lamb, conducted a survey of the lands to be allotted prior to the allotment so the BIA, Special Agent Lamb, and the Oneida allottees would have an accurate conveyance of land and rights.<sup>21</sup>

The *American Law of Property* describes the construction of survey descriptions and provides that when a grantor uses a public or private right-of-way as a boundary, the courts generally construe the description to extend to the center line thereof, “unless there are express provisions to the contrary.”<sup>22</sup> The courts will respect any express provision showing that no part of the right-of-way was intended to be conveyed; the general rule only applies when there is an undisclosed intention of the parties.<sup>23</sup> As the Eighth Circuit describes in a 1928 survey boundary case which involved a railroad, “The test is whether the deed expressed intention to exclude [the railroad] from the grant.”<sup>24</sup>

The Boardman descriptions clearly express the intent to exclude the railroad right-of-way. In each of the parcels that were bisected by the GB & LP right-of-way, Boardman included in the description language that the parcel is exclusive of the right-of-way of GB & LP.<sup>25</sup> “Allotment of the Oneida Reservation was a difficult and onerous task.”<sup>26</sup> The lands were surveyed prior to the allotment, but the land marks of the previous survey were destroyed by fire and individuals, and it became necessary to resurvey the lands.<sup>27</sup> Boardman’s precision in defining the original boundaries led him to rely on the prior surveys and to place an average of more than 50 stakes per section to demarcate the original boundaries.<sup>28</sup> Boardman exhibited equal precision in his use of express language in his survey field notes to exclude the railroad right-of-way from the conveyances that bordered the railroad.

The presumption that a right-of-way is intended to be conveyed is overcome by “either the use of express terms excluding it, or by such facts and circumstances as show an intention to exclude it.”<sup>29</sup> The surveys and the circumstances surrounding the allotted parcels support both exceptions to the presumption. First, the legal descriptions of the allotted parcels, as depicted on

<sup>20</sup> Boardman uses several phrases to state the explicit exclusion of the railroad right-of-way from the acreage included in the survey of the land. Examples include “This is exclusive of GBW & St. P. Rt-of-way.” in the Survey of the Daniel Webster Claim, No. 173; “This claim contains 3 acres of land exclusive of Right-of-Way of G.B.W. & St. P. R’y.” in the survey of Henry John Claim, No. 164-A; or “This acreage is exclusive of R.R. Rt-of-way.” In the survey of Peter Hill Claim, No. 153.

<sup>21</sup> *Supra* at 5. See also *supra* at 4. See also generally the Fee Patents of the Oneida Allottees, June 13, 1892.

<sup>22</sup> JAMES A. CASNER, 3 AMERICAN LAW OF PROPERTY § 12.112 (1952).

<sup>23</sup> *Id.*

<sup>24</sup> *Roxana Petroleum Corp. v. Sutter*, 28 F.2d 159, 162 (8th Cir. 1928).

<sup>25</sup> *Supra* at 21.

<sup>26</sup> *Supra* at 1, p. 4.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* Boardman’s precision was the source of consternation for Special Agent Lamb because of the time and money expended on this exercise. *Id.* Special Agent Lamb reflected on these issues by concluding: “However, the work is done, and I flatter myself, well done; and although the Indian office has manifested some impatience that the work was not sooner completed, I am satisfied that when my report with the accompanying maps and schedules, are inspected the officer of the government will award me the verdict of ‘well done.’” *Id.*

<sup>29</sup> *Huff v. Hastings Express Co.*, 63 N.E. 105, 108 (Ill. 1902).

the surveys, clearly exclude the railroad right-of-way, as discussed above. Second, the facts surrounding this argument show an intention to exclude the railroad right-of-way from the allottees' parcels. The express language provided in the Boardman survey descriptions along with the circumstances which support exceptions to the presumption provide compelling evidence that the railroad right-of-way is excluded from the allottees' parcels.

### Conclusion

A review of the initial agreement with GB & LP, historical documents, the Boardman surveys, applicable statutes, and the Mutual Release leads to several conclusions: (1) the right-of-way land was Oneida trust land before the agreement with GB & LP pursuant to the 1838 Treaty; (2) the agreement between the Oneida Tribe and GB & LP did not transfer ownership of the right-of-way land to GB & LP; (3) Congress approved the conveyance of a property interest consisting of nothing more than a right-of-way; (4) the right-of-way land was not conveyed to individual tribal members pursuant to the Allotment Act as confirmed in the N.S. Boardman surveys; (5) the railroad acknowledged in the Mutual Release that it never acquired fee title to the right-of-way land and that the land remained in trust with the United States for the beneficial use of the Tribe; and therefore (6) the right-of-way land always belonged to the Oneida Tribe as land held in trust by the United States, and this status remains in effect today.

The Oneida Tribe requests that the aforementioned conclusions, especially the final conclusion, be affirmed by the Department of the Interior. The Tribe specifically requests the Department ensure the land that was subject to railroad right-of-way is included in the Trust Asset and Accounting Management System ("TAAMS") database. In addition, the Tribe seeks a letter from the Department confirming this inclusion in the TAAMS database.

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Exhibits supporting May 13, 2009  
Memorandum from Carl J. Artman  
Re: Status of the Railroad Right-of-Way Land within the  
Oneida Tribe of Indians of Wisconsin Reservation

### Table of Contents

1. Treaty with the Oneida 1838
2. Affidavit of Easement Cancellation
3. Letter from Dana C. Lamb, Special Agent for the allotment of lands in severalty to Indians, to Thomas Jefferson Morgan, Commissioner of Indian Affairs, October 31, 1890
4. Act of March 3, 1871, ch. 142, 16 Stat. 588
5. Approval of field notes of the surveys of claims within the Oneida Indian Reservation, Wisconsin, Department of the Interior General Land Office, December 11, 1990, Lewis A. Groff, Commissioner
6. Surveys of the Oneida Reservation, after enactment of the Allotment Act, Colonel N.S. Boardman, Deputy United States Surveyor
7. U.S. Surface Transportation Board Fox Valley & Western Ltd. Abandonment Exemption decision in Brown and Outagamie Counties, Wisconsin, STB Docket No. AB-402 (Sub-No. 8X), July 23, 3003, at 1
8. Agreement and Mutual Release between Oneida Tribe of Indians of Wisconsin and Fox Valley & Western Ltd. (2003)
9. 1870 Agreement between the Chiefs of the Oneida Nation of Indians and the Green Bay and Lake Pepin Railway Company, May 23, 1870
10. Fee Patents of Oneida Allotments

3861311\_1

**From:** [alockesq@comcast.net](mailto:alockesq@comcast.net)  
**To:** Thomas, Pilar  
**Cc:** [JBittorf@OneidaNation.org](mailto:JBittorf@OneidaNation.org); [BWebster@OneidaNation.org](mailto:BWebster@OneidaNation.org)  
**Subject:** update on Oneida  
**Date:** Thursday, February 11, 2010 10:17:16 AM

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Good morning, Pilar:

Wanted to let you know that the Oneida Business Committee yesterday directed its lawyers, the Oneida Law Office copied above and myself, to file a suit to challenge the Village of Hobart's attempt to impose a tax (they call it a stormwater management fee) on the Tribe's trust property. We were told to file this suit next Friday, February 19.

My guess is that we'll be able to litigate this one issue without bringing in the U.S. (they might raise an indispensability argument but I think we could win that) or raising the reservation boundary issue (there is a way they could drag that into the suit but its unlikely they will...)

But the defendant is the same in the proposed reservation boundary suit that we recently asked the US to litigate for the Tribe - the Village of Hobart. And the stormwater management fee is a part of the Village's overall plan to challenge the Tribe's status, land, and reservation at every turn. So, we thought it'd be helpful to consider this stormwater management fee suit as part of the Tribe's and US's strategy to respond on the reservation boundary issue.

So that we can plan on these issues strategically, it'd be helpful if we could meet with the Solicitor's Office on the litigation request soon after the stormwater management fee suit is filed.

I know you can't do anything about this until you can get back into the office (probably next week at this point), but we'd appreciate it if Marigrace could make the scheduling of this meeting a priority.

Thanks much, Pilar.

Arlinda.

# Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: (920) 869-2214

Oneida, WI 54155



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE  
Because of the help of  
this Oneida Chief in  
cementing a friendship  
between the six nations  
and the colony of  
Pennsylvania, a new  
nation, the United States  
was made possible.

March 10, 2010

Pilar Thomas

Re: Former Railroad Right-of-Way through the Oneida Reservation

Dear Ms. Thomas:

On July 19, 2005, the Oneida Tribe sent its initial package of information to Terrence Virden, Regional Director of the BIA Midwest Regional Office. In this package, the Tribe provided information concerning title to the land previously subject to a railroad right-of-way (RR ROW) through the Oneida Reservation. Over the years, the Tribe corresponded in writing, on conference calls, and in person with the BIA and DOI, discussing title to this land.

Most recently, on February 3<sup>rd</sup>, we met to discuss the next steps as follows:

1. Agree on the documents to be deemed as unusable.
2. Consensus on the documents to use moving forward.
3. Discuss Congress' intent with the RR ROW.

Step 1 – Agree on the documents to be deemed as unusable.

With respect to the first step, the main document the Oneida Tribe believes is unusable is the 2003 Oberly Report due to the number of errors discovered in its contents as the result of further research. In addition, since the Tribe and the DOI have acquired copies of the historic documents referenced in the Oberly reports, the best evidence is to rely on the historic documents.

Step 2 – Consensus on the documents to use moving forward.

With respect to the second step, the three main sources of information the Tribe believes to be instrumental in determining the status of title to the former RR ROW are as follows:

1. Boardman Surveys
2. Lamb and Kelsey Allotment Book
3. Correspondence from Agent Lamb reporting on the Allotment of the Reservation (attached)

Step 3 – Discuss Congress’ intent with the RR ROW.

Before the Tribe and the DOI can discuss the intent of the former RR ROW, the Tribe believes we first need to agree on the contents of the documents we will use going forward.

In comparing the Tribe’s findings and the DOI’s findings concerning the Boardman Surveys and the Lamb and Kelsey allotment Book, the Tribe agrees with the DOI’s findings. However, the Tribe’s findings and the DOI’s findings concerning the Lamb and Kelsey Allotment Book are inconsistent. The differences are laid out in the attached chart.

The first main differences is the DOI chart lists nine (9) allottees twice, possibly indicating these allottees received more than one allotment. While all allottees received only one allotment, some allotments consisted of more than one parcel. Most often, the parcels were immediately adjacent to each other. In three (3) cases along the former RR ROW, the parcels in an allotment were not adjacent to each other – Jacob Smith (441), Peter Hill (1100) and Annie Robinson (1466). These three allottees remain listed twice in the attached chart because their parcels were treated differently. The Lamb and Kelsey Allotment Book states “less R.R.” on the first line of Jacob Smith’s property description, but not on the second line describing the easternmost parcel. Boardman surveyed both of Peter Hill’s parcels and excluded the former RR ROW from each survey. Annie Robinson’s easternmost parcel does not have a corresponding Boardman Survey. The remaining six (6) allottees are listed only once.

The second main difference between the Tribe’s findings and the DOI’s findings concern the notations in the Lamb and Kelsey Allotment Book. Eight (8) times, the DOI chart states the Lamb and Kelsey Book had “NO NOTATION” addressing the RR ROW. The corrected notations are found in the attached chart. Photographs of the pages from the Lamb and Kelsey Allotment Book demonstrating the Tribe’s findings are also enclosed.

One minor difference between the Tribe’s findings and the DOI’s findings is the inclusion of Thomas Hill’s allotment. The Tribe removed Thomas Hill (1107) from the enclosed chart because his allotment only shared a corner with the former RR ROW.

With respect to the enclosed correspondence from Agent Lamb reporting on the Allotment of the Reservation, it has come to my attention that this may be the first time the DOI has received such a copy. The Tribe will allow the DOI an opportunity to review its contents before discussing its impact of the status of the land at issue.

We look forward to bringing this issue to a close.

Sincerely,

Brandon Stevens

cc: Oneida Business Committee  
Nathan King, Legislative Affairs Director

Rebecca Webster, Senior Staff Attorney

**From:** [ARLINDA LOCKLEAR](#)  
**To:** [Thomas, Pilar](#)  
**Cc:** [Moran, David](#); [Craig Alexander](#); [James Bittorf](#); [Becky Webster](#)  
**Subject:** supplemental materials, Oneida reservation boundary litigation request  
**Date:** Friday, April 02, 2010 11:18:55 AM  
**Attachments:** [BJA Amended Notice of Decision - Former Boyea Property 031710.pdf](#)  
[Hobart Gambling Ordinance.pdf](#)  
[Notice of Decision-63011.PDF](#)  
[Ownership Map - March 2010 NOD .pdf](#)  
[SAMPLE Notice of Issuance of Tax Certificate for Tax Roll of 2007.pdf](#)

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Good morning, Pilar:

At our meeting of March 30, you requested copies of two documents: first, the revised notice of decision on trust acquisition for the Oneida Tribe of Wisconsin of an 80 acre parcel located in the Village of Hobart and on the Oneida Reservation; second, an ordinance by the Village of Hobart purporting to regulate gaming, including that done by the Tribe on the reservation. Those documents are attached for your information.

We've also attached three additional documents, for your information: first, the Notice of Decision on the one acre residential property located in the Village of Hobart; second, an ownership map of the Oneida Reservation, showing the location of tribal fee and trust lands; and third, a Sample Notice that the Tribe has received regarding the collection of the stormwater fee on its trust land.

Just a few observations as follow up on our meeting:

1. We have reviewed the Village's various submissions and remain uncertain that a Village suit on the trust acquisition will present the reservation boundary issue directly.
2. The Village cannot challenge the trust acquisition as an off-reservation acquisition since even they admit that the Village is located within what was once the Oneida Reservation. And the Part 151 regulations use the same standard for acquisitions that are on reservation or within a former reservation.
3. Without a clear resolution of the reservation boundary issue, there will remain on-going disputes between the Village and the Tribe. These include:
  - violations of the per se rule against state taxation of tribes located within Indian country, such as the Village's attempt to impose & collect personal property taxes against the Tribe on the reservation. See *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995); *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973);
  - violations of the Tribe's authority to manage relations with its own members, including the issuance of building permits, well permits, etc., on both individual trust and fee land. See *Gobin v. Snohomish County*, 304 F.3d 909 (9th Circ. 2002);
  - infringement of long exercised tribal self-governance to protect the health and welfare of the reservation, such as regulation of stormwater management, on both fee and trust tribal lands, under the balancing test. See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

For these reasons, the Tribe desires a definitive determination of the reservation boundary issue, one that may not be possible in the expected suit by the Village of Hobart on the notice trust acquisition. We will soon know since the Village must file any such suit by April 16. We will consult with the Tribe's Business Committee on the alternative ways that the issue might be presented that we discussed at the meeting. Once we get guidance from the Business Committee, we will formally supplement the litigation request.

Arlinda.



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

**Oneida Tribe of Indians of Wisconsin  
BUSINESS COMMITTEE**



**UGWA DEMOLUM YATEHE**  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

**P.O. Box 365 • Oneida, WI 54155  
Telephone: 920-869-4364 • Fax: 920-869-4040**

December 2, 2010

Honorable Larry Echo Hawk  
Assistant Secretary – Indian Affairs  
MS-4141-MIB  
1849 C Street N. W.  
Washington, DC 20240

Ms. Hilary Tompkins  
Office of the Solicitor General  
U.S. Department of the Interior Solicitor  
1849 C Street N.W.  
Washington, DC 20240

Re: Former Railroad Right-of-Way through the Oneida Reservation

Dear Assistant Echo Hawk and Attorney Tompkins:

Please find below a historical summary of the former railroad right-of-way that ran through the Oneida Reservation as well as a chart summarizing the combined findings of the Oneida Tribe and the Department of the Interior as they relate to the Lamb and Kelsey Allotment Book and the Boardman Surveys. Considering the Tribe has been corresponding with and providing documentation to the BIA/DOI over the past 5 years, I anticipate that you have access to all the additional documents referenced within this letter. I hope you find this information useful and am optimistic that it will assist the DOI in determining that the former railroad right-of-way was not allotted to tribal members and, in fact, remains treaty reserved trust land.

Establishment of the Reservation

The Oneida Reservation was established pursuant to the 1838 Treaty with the Oneida (hereinafter "Treaty"). The Treaty stated, in part, "... there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual, and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay." In the years immediately following ratification of

the Treaty, approximately 64,500 acres located north and west of Green Bay, Wisconsin, were set aside for the use and occupancy of the Oneida Tribe.

#### Establishment of the Right-of-Way

In 1870, the Oneida Chiefs and Green Bay and Lake Pepin Railway Company (hereinafter "GB & LP") entered into an agreement which granted use of treaty-reserved trust lands to the railway company for the construction of a railroad across the Oneida Reservation (hereinafter "Right-of-Way Agreement,"). The Right-of-Way Agreement allowed the railroad to construct and operate the railroad in accordance with state laws. In 1871, the United States Congress approved the use of the reservation land for a railroad right-of-way "in accordance with and subject to the conditions of" the Right-of-Way Agreement.

#### Allotment of the Oneida Reservation

Congress passed the (Dawes) General Allotment Act (hereinafter "Allotment Act") in 1887. The Allotment Act provided "for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes." The Allotment Act further provided, "the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or re-surveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon." The Allotment Act was silent on how land subject to railroad rights-of-way should be treated.

The Oneida Reservation was allotted by the 1890s pursuant to the Allotment Act. The original land surveys conducted pursuant to the Allotment Act typically excluded the right-of-way land. Indian Agents Dana Lamb and Charles Kelsey were among the surveyors responsible for surveying the Oneida Reservation. Neither Agent Lamb nor Agent Kelsey received explicit instructions on how the land subject to the railroad right-of-way should be treated. Their original allotment book shows the Agents excluded the right-of-way land from some of the allotments, and failed to mention the right-of-way land with respect to others. Some notations have the "less R.R." crossed out. It is not clear who crossed out these references, or at what point in time these references had been crossed out. Of the 56 allotments that were adjacent to the former railroad right-of-way, the Lamb and Kelsey book included a notation of "less R.R." on 34 of the allotments. 61% of the descriptions of the allotments described in the book specifically excluded the railroad right-of-way from the allotment.

The federal government also hired an additional Indian Agent, N.S. Boardman, to re-survey the portions of the Oneida Reservation adjacent to Duck Creek and instructed Agent Boardman to work with Agents Lamb and Kelsey. Agent Boardman did not receive explicit instructions on how the land subject to the railroad right-of-way should be treated. Boardman surveyed 20 allotments that were adjacent to the former railroad right-of-way. In all 20 surveys Boardman completed, he excluded the right-of-way land from the surveyed parcels. 100% of the allotments Boardman surveyed specifically excluded the railroad right-of-way from the allotment. Of the 56 total allotments that were adjacent to the former railroad right-of-way a total of 48 of the allotments were described as "less R.R." in the Lamb and Kelsey Allotment book and/or possessed a corresponding survey excluding the railroad right-of-way from the description. 86%

of the descriptions of the allotments specifically excluded the railroad right-of-way from the allotment. A break down of these findings from the Lamb and Kelsey Book and the Boardman surveys is enclosed with this letter.

On October 31, 1890, Agent Dana Lamb submitted a final report to the Commissioner of Indian Affairs regarding the allotment of the land on the Oneida Reservation. Agent Lamb's report provided a chart depicting how he carried out the allotment of the Oneida Reservation. He first described the total number of acres on the reservation as compared with previous computations of the acreage. He then went on to list out the total number of acres on the reservation that were allotted and separately listed out those acres not allotted for schools, churches and the railroad right-of-way. Adding up the difference in acreage of claims by section with the acres allotted and the acreage not allotted, he concluded there was an excess of less than 10 acres compared to the acreage of the reservation. The chart contained in Agent Lamb's report reads as follows:

The whole number of acres as reported to be contained in the reservation was,	65539.38
Errors in computation, increasing acreage	<u>189.80</u>
Total	65729.18
Acreage allotted	65263.02
Reserved for schools and churches	256.66
Railroad right of way	<u>130.00</u>
Difference in acreage of claims & by sections	69.81
Excess	<u>9.69</u>

Agent Lamb's report goes on to meticulously describe those parcels and their corresponding acreage excluded from allotment for churches, schools and the railroad right-of-way. When mentioning the acreage of the railroad right-of-way in the narrative portion describing these parcels, Agent Lamb's report states: "The right of way of the Green Bay & Minnesota Railway, contains as near as possible to compute, 130 acres."

#### Trust Patents

The Trust patents the United States issued to the allottees do not contain a metes and bounds legal description; rather, they contain simple reference to the "lots" and "Indian claims" as well as reference to the Section, Township and Range of the property. While on its face, the description of the land allotted to the tribal members as found on the trust patents may not appear to specifically include or exclude the land subject to the railroad right-of-way, the trust patent's simple reference to "lots" and "Indian claims" cannot be read in isolation. The sources for the description of the "lot" or "Indian claim" number are vital to decipher exactly what property the trust patent conveyed to the allottee. The sources for the "lot" or "Indian claim" number are the Lamb and Kelsey Allotment Book and the Boardman Surveys. Recall that 86% of the allotments contained descriptions that specifically excluded the railroad right-of-way from the description of the allotment in the Lamb and Kelsey Allotment Book and the Boardman Surveys. Similarly, when the deeds in the chain of title adjacent to the former railroad right-of-way do begin to contain a metes and bounds legal description, all deeds in the chain of title as well as all current deeds (except one ambiguously described parcel owned by the Tribe in fee status) specifically exclude the railroad right-of-way from the legal descriptions.

Copies of the Lamb and Kelsey Book, the Boardman Surveys, the trust patents and the report from Agent Lamb reporting on the Allotment of the Reservation are all available at the National Archives. Both the Tribe and the Department of the Interior have access to these documents. To date, the Tribe has not received correspondence from the Department of the Interior that these documents are unreliable or that the Tribe's interpretation of them is incorrect.

The Trust patents, read in conjunction with the Lamb and Kelsey Allotment Book, the Boardman Surveys and Agent Lamb's Report to the Commissioner of Indian Affairs, demonstrate that the railroad right-of-way was not included in the allotments to tribal members issued pursuant to the General Allotment Act. Considering the right-of-way land was not included in the allotments, and no separate allotments were made for the land, the former right-of-way land remains tribal trust land.

#### Railroad Abandonment – Agreement and Mutual Release

Fox Valley & Western Ltd. (hereinafter "FVW"), a successor to GB & LP, continued to actively use the railway into the 1990s. In 2000, FVW notified the Tribe it was petitioning the Federal Surface Transportation Board for authority to abandon the railroad right-of-way. In 2003, the Oneida Tribe entered into an Agreement and Mutual Release with FVW (hereinafter "Agreement and Mutual Release"). Pursuant to the Agreement and Mutual Release, FVW acknowledged the Oneida Tribe granted FVW's predecessor a right-of-way through the reservation for construction and maintenance of a railroad. FVW also acknowledged that the "United States holds title to such land in trust for the Oneida Tribe's beneficial use and occupancy pursuant to the 1838 Treaty with the Oneida." Through the Agreement and Mutual Release, FVW agreed to consummate abandonment of the estimated eleven (11) westernmost miles of the railroad while preserving the right-of-way for the estimated one (1) easternmost mile. FVW paid the Oneida Tribe \$93,000 for the railway's past use of the right-of-way land.

#### Hobart v. Tribe, Wisconsin Central, Ltd., Amy L. Kocha and LaVerne Bocheck-Robbins.

In 2006, Hobart filed action in the circuit court for Brown County seeking a declaration of its "interests" in the former railroad right-of-way. Hobart contended that it had an interest in the land because if the court determined that the land is owned in fee by the Tribe, Hobart would possess the right to tax, condemn, and zone the land. The circuit court dismissed Hobart's lawsuit on the grounds that Hobart did not possess an interest in the land. Hobart filed an appeal of the circuit court's decision. In 2007, the Wisconsin Court of Appeals affirmed the circuit court's decision dismissing Hobart's lawsuit. Two landowners adjacent to the former railroad right-of-way joined the lawsuit as defendants, but did not file any responsive pleadings. Footnote 2 of the appellate decision states: "Two individuals, Amy Kocha and LaVerne Bocheck-Robbins, later appeared in the action. Kocha and Bocheck-Robbins have interests in land adjacent to the right-of-way. They did not take any position on the Village's motion to dismiss." Brown County Circuit Court Case No. 06-CV-480, *aff'd*, 303 Wis.2d 761, 736 N.W.2d 896 (Wis. App. 2007).

#### BIA Approved Easement Over Former Railroad Right-of-Way

In 2006, the Tribe granted an easement over the former railroad right-of-way to allow utilities to be delivered to a home. As justification for the requirement to have the BIA record this

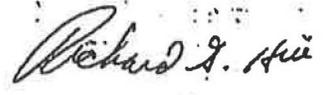
easement over the trust land, the Tribe included a copy of the 2003 Agreement and Mutual Release between the Tribe and the Railroad. The BIA Land Titles & Records Office recorded this easement with the Agreement as an attachment to the easement on April 19, 2006, at the Great Plains Regional Office. The BIA does not record easements over fee land; rather the BIA only records easements over trust land.

Affidavit of Easement Cancellation

In 2007, the Tribe executed an Affidavit of Easement Cancellation outlining the history of the railroad right-of-way, its subsequent abandonment, and the status of the land previously subject to the right-of-way. Later that same year, Brown County and Outagamie County recorded the Tribe's Affidavit of Easement Cancellation and updated both County records to reflect land title as "United States of America in Trust for the Oneida Tribe of Indians of Wisconsin."

The local governments, the railroad company, and the BIA all recognized the land previously subject to the former railroad right-of-way is tribal trust property. Reading the historical record along with the modern treatment of this land, it is apparent that the Indian allottees did not receive title to the former railroad right-of-way and that the land previously subject to the right-of-way remains treaty reserved trust land. The Tribe anticipates receiving a Title Status Report for this property.

Sincerely,



Richard G. Hill, Chairman  
Oneida Tribe of Indians of Wisconsin

cc: Oneida Business Committee  
Bill Gollnick, Chief of Staff  
Rebecca M. Webster, Senior Staff Attorney

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RECEIVED  
JUN 14 2011  
496573



Turner, Jennifer <jennifer.turner@sol.doi.gov>

**fyi, likely further Oneida litigation involving Hobart**

1 message

ARLINDA LOCKLEAR <alocklearesq@verizon.net>

Thu, Apr 3, 2014 at 1:35 PM

Reply-To: ARLINDA LOCKLEAR <alocklearesq@verizon.net>

To: "Jennifer.Turner@sol.doi.gov" <Jennifer.Turner@sol.doi.gov>, Craig Alexander <craig.alexander@usdoj.gov>

If you'll recall, the Oneida Tribe claims that an abandoned rr right of way across its reservation has reverted to the status of treaty trust land.

The Tribe has announced plans to build a nature path on the right of way.

That announcement prompted the attached letter from Rick Heidel, President of the Hobart Board of Trustees.

It is certain that this issue, too, will end up in court - only question being who sues whom.

Also likely that Hobart will attempt to involve the US, given the recent FOIA requests at Interior.

The Oneida Business Committee will be meeting on this (& other Hobart matters) on April 18. I expect to receive instructions from the Tribe then.

I will keep you posted...

Arlinda

 [Railroad Abandonment\\_RH\\_March142014.pdf](#)  
247K



Turner, Jennifer <jennifer.turner@sol.doi.gov>

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## Re: Oneida, WI, railroad right of way claim

1 message

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ARLINDA LOCKLEAR <alocklearesq@verizon.net>  
Reply-To: ARLINDA LOCKLEAR <alocklearesq@verizon.net>  
To: "Turner, Jennifer" <jennifer.turner@sol.doi.gov>

Tue, Apr 15, 2014 at 1:20 PM

Thanks, Jennifer. We did review the Brandt case - it helps indirectly by confirming the change in policy regarding title to rights of way that the Tribe relied upon in its material to the US. But it involved a right of way after the Tribe's and under the revised federal approach.

At this point, I doubt the Tribe will be making a litigation request to the US, mostly because of uncertainty about where the US is at on the issue.

But we are concerned because the Village of Hobart has FOIA'd all material relating to the right of way and is likely, we think, to try to drag the US into any litigation.

Arlinda

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From: "Turner, Jennifer" <jennifer.turner@sol.doi.gov>  
To: ARLINDA LOCKLEAR <alocklearesq@verizon.net>  
Sent: Tuesday, April 15, 2014 9:58 AM  
Subject: Re: Oneida, WI, railroad right of way claim

Thanks for the update Arlinda. As you know, Patrice Kunesh, who was somewhat familiar with this issue, has left, and Venus McGhee Prince is Deputy Solicitor. We haven't briefed her on this issue but I'll give her a headsup. As far as I know there is no US position on this issue yet. Just wondering, have you reviewed the recent Supreme Court decision in Brandt Revocable Trust? I haven't reviewed it, so I have no idea if it's relevant, but I heard that it involved an abandoned ROW.

Do you expect that the Tribe will be submitting a request for litigation assistance from the US?

thanks!

Jennifer Turner  
Assistant Solicitor, Branch of Environment and Lands  
Office of the Solicitor, Department of the Interior  
phone (202) 208-6260  
fax (202) 208-4115  
jennifer.turner@sol.doi.gov

On Tue, Apr 15, 2014 at 9:48 AM, ARLINDA LOCKLEAR <alocklearesq@verizon.net>

wrote:

Good morning, Jennifer:

The Oneida Business Committee recently retained me to assist them on this claim. The Tribe expects to be in litigation with the Village of Hobart soon on this issue, either as plaintiff or defendant.

The Business Committee has scheduled a strategy meeting the issue for this Friday. I'll be going up to Green Bay to participate.

One of the issues on the table for consideration by the Business Committee is the position of the United States on this issue.

As you'll recall, a few years ago the Tribe had submitted a request to the Solicitor's Office to confirm the trust status of the right of way, then agreed to back burner the request.

I wondered whether there is any update on the US position on the issue that I could report to the Business Committee.

Thank you, Jennifer.

Arlinda

on your end? thanks.

Jennifer Turner  
Assistant Solicitor, Branch of Environment and Lands  
Office of the Solicitor, Department of the Interior  
phone (202) 208-6260  
fax (202) 208-4115  
jennifer.turner@sol.doi.gov

On Wed, May 7, 2014 at 9:40 AM, ARLINDA LOCKLEAR <alocklearesq@verizon.net> wrote:

Good morning, Jennifer:  
Your nemesis bugging you again! Have your folks gotten back to you about a meeting on the Oneida railroad right of way?  
Arlinda

UNITED STATES

NO. 18629

TO

P A T E N T

LUCIUS HILL ET AL.

444521.  
42303-U. I. O.  
1100

THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, Greeting: WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen, Heirs of Peter Hill, an Indian, for the CLAIM ONE HUNDRED FIFTY-THREE IN TOWNSHIPS TWENTY THREE AND TWENTY-FOUR NORTH OF RANGE NINETEEN EAST OF THE FOURTH PRINCIPAL MERIDIAN, WISCONSIN, CONTAINING FORTY-NINE ACRES, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SECRETARY-GENERAL:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen and to their heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen, and to their heirs and assigns forever, in accordance with the terms of said order to wit: to Lucius Hill, and undivided one-seventh interest; to Martin Hill, an undivided one-seventh interest; to James Hill, an undivided one-seventh interest; to George W. Hill an undivided one-seventh interest; to Electa Kelly, an undivided one-seventh interest; to Lucinda Metoxen, an undivided one-seventh interest; and to Eliza Metoxen an undivided one-seventh interest.

IN TESTIMONY WHEREOF, I Woodrow Wilson President of the United States of America have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. GIVEN under my hand, at the City of Washington, the TWENTY-FIFTH day of AUGUST in the year of our Lord one thousand nine hundred and FOURTEEN and of the Independence of the United States the one hundred and THIRTY-SEVENTH.

(Seal) By the President's Woodrow Wilson  
By M. K. Gulick Assistant Secretary,  
John O'Connell  
Acting Recorder of the General Land Office  
Recorded: Patent Number 427100

Recorded Sept 11th A.M. 1914,  
At 8:10 A. M.

REGISTER

ALBERT LADE ADMINISTRATOR, OF  
CITY OF GREEN BAY.

NO. 18695

STATE OF WISCONSIN : IN COUNTY COURT : FOR BROWN COUNTY :

IN THE MATTER OF THE ESTATE  
OF FERDINAND LADE, DECEASED

ADMINISTRATOR'S DEED.

TO ALL TO WHOM THESE PRESENTS SHALL COME: Albert Lade of the Town of Little Suamico in the County of Douane and State of Wisconsin, an administrator of the estate of Ferdinand Lade, deceased, late of the City of Green Bay, sends Greeting:

WHEREAS, by an order made by the County Court of Brown County on the 7th day of July A. D. 1914, Albert Lade the said administrator, in his capacity as administrator, aforesaid, was

# The United States of America,

130.

To all to whom these presents shall come, Greeting:

WHEREAS, There has been deposited in the General Land Office of the United States an Order of the Secretary of the Interior directing that a fee simple patent issue to JANE REID, an Oneida Indian, for the Claim one hundred fifty-four in Townships twenty-three and twenty-four north and the Lot five of Section thirty-three in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-five acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Jane Reid, and to her heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Jane Reid, and to her heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.) GIVEN under my hand, at the City of Washington, the twenty-first day of May, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

By the President: *Theodore Roosevelt*  
By *William H. Hunt*, Assistant Secretary.

*Harford*  
Recorder of the General Land Office.

4-401

153 D 210

United States

No. 5555 ✓

to

QUIT

Hyson Johns

33125  
59551-20. 1.0.  
1130

THE UNITED STATES OF AMERICA

IN ALL THOSE PARTS WHERE SHALL COME, BEARING:

WHEREAS, An Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant Hyson Johns, heir of Henry Johns, an Indian of the Oneida Reservation, for the Claims one hundred sixty four and one hundred sixty four A in Township twenty four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing twenty six acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA in consideration of the presents HAS GIVEN AND GRANTED and by these presents BORN GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the land above described; TO HAVE AND TO HOLD the same together with all the rights, privileges immunities, and appurtenances, of whatsoever nature, thereunto belonging unto the said claimant and to the heirs and assigns of the said claimant forever. The land covered by this patent is not liable for any debt contracted prior to this date, as provided by Section 5 of the Act of February 5, 1857 (34 Stat., 303, 304) and the amendatory Acts of May 8, 1906, (34 Stat. 182) and June 21, 1906 (34 Stat. 325, 327).

IN TESTIMONY WHEREOF Theodore Wilson, President of the United States of America, have caused these letters to be a Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand in the District of Columbia the eighth day of November, in the year of our Lord one thousand nine hundred and twenty and of the Independence of the United States the one hundred and forty fifth.

RECORDED: Patent Number 78089

By the President:

(U.S. Gen. Land Office Seal)

Theodore Wilson

Recorded April 16th, 1921

By L. P. La Roy, Secretary.

At 10:45 o'clock A.M.

L. R. C. Leman

*Frank A. Smith*

Register.

Recorder of the General Land Office.

Walter Meszynski

No. 5657 ✓

to

QUIT CLAIM DEED

Joseph Meszynski et ux

KNOW ALL MEN BY THESE PRESENTS, That Walter Meszynski, single party of the first part, in consideration of the sum of Four hundred twenty (\$420.00) Dollars to him duly paid, does hereby remise, release, sell convey and quitclaim unto Joseph Meszynski and Helen Meszynski his wife, with right of survivorship, parties of the second part, and to their heirs and assigns, forever, all the right, title, interest, claim and demand, which said party of the first part has in and to the following described real estate, situated in the County of Brown, in the State of Wisconsin, to-wit:

The East fractional half (E 1/2) of the North west fractional quarter (NW 1/4) of Section number three (3) in Township number twenty five (25) North of Range number nineteen (19) East, containing eighty two & 69/100 acres (82-69/100) more or less according to government survey, together with all the improvements thereon.

(50¢ revenue stamps canceled)

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, to the only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever.

4-401-tyr.

# The United States of America,

1100

To all to whom these presents shall come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States an order of the Secretary of the Interior, directing that a fee simple patent issue to Peter Hill, an Oneida Indian, for the Claims one hundred and thirty seven and one hundred and seventy one in Townships twenty three and twenty four North, of Range nineteen East of the Fourth Principal Meridian in Wisconsin, containing forty six acres

NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, In consideration of the premises, have given and granted, and by these presents do give and grant unto the said Peter Hill, and to his heirs, the lands above described: TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Peter Hill, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.)

GIVEN under my hand, at the City of Washington, the fifth day of August, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty second.

By the President: Theodore Roosevelt

By F. M. McKean, Secretary.

Fred Dennett  
Acting Recorder of the General Land Office.

4-325

83738-17 I.O. **The United States of America,**

489

**To all to whom these presents shall come, Greeting:**

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to James Skenandoah, Wilson Skenandoah, Nelson Skenandoah, Demas Skenandoah, Alexander George, Julius Adams, Chauncey Adams, James Adams, Dennison Adams, and Electa A. Roberts, heirs of Jacob Skenendooh, an Indian, for the Lot twenty-one of Section thirty-three and the Claim one hundred seventy-two in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing eighty-eight acres; according to the Official Plat of the Survey of the said land, returned to the General Land Office by the Surveyor General:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said heirs, and to their heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said heirs and to their heirs and assigns, forever, in accordance with the terms of said order, to wit: to James Skenandoah, an undivided seven-fortieths interest, to Wilson Skenandoah, an undivided seven-fortieths interest, to Nelson Skenandoah, an undivided seven-fortieths interest, to Demas Skenandoah, an undivided seven-fortieths interest, to Alexander George, an undivided one-eighth interest, to Julius Adams, an undivided seven-two-hundredths interest, to Chauncey Adams, an undivided seven-two-hundredths interest, to James Adams, an undivided seven-two-hundredths interest, to Dennison Adams, an undivided seven-two-hundredths interest, and to Electa A. Roberts, an undivided seven-two-hundredths interest

IN TESTIMONY WHEREOF, I, **Woodrow Wilson,**

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the **NINETEENTH**

• (SEAL)

day of **NOVEMBER** In the year of our Lord one thousand  
nine hundred and **EIGHTEEN** and of the Independence of the

United States the one hundred and **FORTY-THIRD.**

By the President:

By

*Woodrow Wilson*  
*M. P. LeRoy* Secretary,  
*John O'Connell*  
Acting Recorder of the General Land Office.

RECORD OF PATENTS; Patent Number **654017**

4-4333

# The United States of America,

997.

To all to whom these presents shall come, Greeting:

WHEREAS, There has been deposited in the GENERAL LAND OFFICE of the United States an Order of the Secretary of the Interior directing that a fee simple patent issue to **ANTHONY DOXTATER,** an Oneida Indian, for that portion of Claim one hundred seventy-four in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian lying north and west of the right of way of the Green Bay & Western Railway, Wisconsin, containing fifty-one and seventy-seven hundredths acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said **Anthony Doxtater** and to **his** heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said **Anthony Doxtater** and to **his** heirs and assigns, forever.

IN TESTIMONY WHEREOF, I, **William H. Taft**, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.) GIVEN under my hand, at the City of Washington, the ~~TWENTY-FOURTH~~ day of JANUARY, in the year of our Lord one thousand nine hundred and ~~TEN~~, and of the Independence of the United States the one hundred and ~~THIRTY-FOURTH~~

By the President: *Wm. H. Taft*  
By *M. W. Young*, Secretary.  
*A. A. Simpson*  
Recorder of the General Land Office.

361786.  
60038-13. I.O.

4-1060-R.

466.

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant **William House, Heir of Jane House, a Oneida Indian, for the Lot twelve of Section one in Township twenty-three north and Claim one hundred seventy-seven in Township twenty-four north all in Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing eighty-eight and seventy-hundredths acres:**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the promises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

IN TESTIMONY WHEREOF, I, **Woodrow Wilson**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **SEVENTH**

(SEAL)

day of **OCTOBER** In the year of our Lord one thousand

nine hundred and **THIRTEEN** and of the Independence of the

United States the one hundred and **THIRTY-EIGHTH.**

By the President: *Woodrow Wilson*  
By *M. P. LeRoy* Secretary,

*L. L. Lamar*  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **358656**

U-2176

658547.  
104466-16. I.O.

4-1060-R.

# The United States of America,

1071.

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant **Amos Powless, Alias Amos Baird, an Oneida Indian,** for the **Claim one hundred ninety-two in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing fifty-six acres,**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

IN TESTIMONY WHEREOF, I, **Woodrow Wilson**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **SIXTH**

(SEAL)

day of **DECEMBER** In the year of our Lord one thousand  
nine hundred and **SIXTEEN** and of the Independence of the  
United States the one hundred and **FORTY-FIRST,**

By the President:

*Woodrow Wilson*

By

*M. A. Le Roy*

Secretary,

*L. L. Lamar*

Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **557425**

4-2156

400558.  
1209-14. I.O.  
532.  
Sale.

4-1000-B.

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant **William Heisdorf, for the Claim one hundred ninety-five in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-three acres:**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, therunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

IN TESTIMONY WHEREOF, I, **Woodrow Wilson**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **TWENTY-SEVENTH**

(SEAL)

day of **FEBRUARY** in the year of our Lord one thousand nine hundred and **FOURTEEN** and of the Independence of the United States the one hundred and **THIRTY-EIGHTH.**

By the President:

*Woodrow Wilson*

By

*M. O. Ke Roy* Secretary,

*L. D. Lamar*  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **388536**

6-8106

800884

4-1080-B.

24391-18 I.O. **The United States of America,**

552

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant **Abram Baird, heir of Levi Baird, an Oneida Indian, for the Lot fifteen of Section twenty-seven and the Claim one hundred ninety-six in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-four acres,**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

IN TESTIMONY WHEREOF, I, **Woodrow Wilson,**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **NINETEENTH**

(SEAL)

day of **NOVEMBER** in the year of our Lord one thousand

nine hundred and **EIGHTEEN** and of the Independence of the

United States the one hundred and **FORTY-THIRD.**

By the President:

*Woodrow Wilson*

By

*M. O. LeRoy*

Secretary,

*John O'Connell*  
Acting Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number ... **654013**

931285  
50651-20. I.O.  
1466

4-1040-R.

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to Maria R. Decker, Anna M. Robinson, Lucy A. Robinson, and James R. Robinson, the heirs of Annie Robinson, an Indian of the Oneida Reservation, for the Claim one hundred ninety-eight and the Lot seven of Section twenty-six in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-five acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said heirs and to their heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said heirs and to their heirs and assigns forever, in accordance with the terms of said order, to wit: To Maria R. Decker, an undivided one-fourth interest; to Anna M. Robinson, an undivided one-fourth interest; to Lucy A. Robinson, an undivided one-fourth interest; and to James R. Robinson, an undivided one-fourth interest. Subject to the courtesy of James Robinson. The land covered by this patent is not liable for any debt contracted prior to this date, as provided by Section 5 of the Act of February 8, 1887 (24 Stat., 388,389), and the amendatory Acts of May 8, 1906 (34 Stat., 182), and June 21, 1906 (34 Stat., 325,327).

IN TESTIMONY WHEREOF, I, Woodrow Wilson,

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the EIGHTH

(SEAL)

day of NOVEMBER In the year of our Lord one thousand nine hundred and TWENTY and of the Independence of the United States the one hundred and FORTY-FIFTH.

By the President:

By

*Woodrow Wilson*  
*W. P. Le Roy* Secretary.  
*S. P. Samler*

Recorder of the General Land Office.

RECORD OF PATENTS, Patent Number

780630

U-2104

797803

4-1040-R.

24391-18 I.O.

# The United States of America,

448

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to Margaret Skenandoah, and Emanuel Skenandoah, heirs of Wilson Skenandoah, an Indian, for the Lot nine of Section twenty-two and the Claim one hundred ninety-nine in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-four acres; according to the Official Plat of the Survey of the said land, returned to the General Land Office by the Surveyor General:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said heirs, and to their heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said heirs, and to their heirs and assigns, forever, in accordance with the terms of said order, to wit: to Margaret Skenandoah, an undivided one-half interest, and to Emanuel Skenandoah, an undivided one-half interest.

IN TESTIMONY WHEREOF, I, Woodrow Wilson,

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FIFTEENTH

(SEAL)

day of NOVEMBER In the year of our Lord one thousand nine hundred and EIGHTEEN and of the Independence of the United States the one hundred and FORTY-THIRD.

By the President:

*Woodrow Wilson*

By

*M. P. LeRoy*

Secretary,

*John O'Connell*  
Acting Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number 653621

6-2152

931285  
50651-20. I.O.  
1482

4-1071-R

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant Phoebe A. Denny, an Indian of the Oneida Reservation, for the Claim two hundred of Section thirty-four and the Lot nine of Section twenty-six in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing forty-five acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever. The land covered by this patent is not liable for any debt contracted prior to this date, as provided by Section 5 of the Act of February 8, 1887 (24 Stat., 388, 389), and the amendatory Acts of May 8, 1906 (34 Stat., 182) and June 21, 1906 (34 Stat., 325, 327).

IN TESTIMONY WHEREOF, I, **Woodrow Wilson,**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the **EIGHTH**

(SEAL)

day of **NOVEMBER** In the year of our Lord one thousand nine hundred and **TWENTY** and of the Independence of the United States the one hundred and **FORTY-FIFTH.**

By the President:

*Woodrow Wilson*

By

*W. P. LeRoy* Secretary.

*L. J. Samard*  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **780595**

# The United States of America,

472

To all to whom these presents shall come, Greeting:

WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to the claimant **Isaac Stevens, an Oneida Indian, for the Claim two hundred one in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing twenty-nine acres:**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

IN TESTIMONY WHEREOF, I, **Woodrow Wilson**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **TWENTY-EIGHTH**

(SEAL)

day of **OCTOBER** in the year of our Lord one thousand

nine hundred and **EIGHTEEN** and of the Independence of the

United States the one hundred and **FORTY-THIRD.**

By the President: *Woodrow Wilson*

By *W. P. Le Roy* Secretary,

*S. P. C. Samson*  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **651698**

4-401-tyr.

# The United States of America,

453

To all to whom these presents shall come. Greeting:

Whereas, There has been deposited in the General Land Office of the United States an order of the Secretary of the Interior, directing that a fee simple patent issue to Nicholas Peters, an Oneida Indian, for the Claim two hundred and three, in Township twenty four, and the Lot seventeen of Section twenty four in Township twenty four North, of Range nineteen East and the Lot "A" of Section twenty, in Township twenty four North, of Range twenty East of the Fourth Principal Meridian in Wisconsin, containing ninety acres

NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, In consideration of the premises, have given and granted, and by these presents do give and grant unto the said Nicholas Peters, and to his heirs, the lands above described: TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Nicholas Peters, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.) GIVEN under my hand, at the City of Washington, the fifth day of August, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty second.

By the President: Theodore Roosevelt

By F. M. McKean, Secretary.

Fred Dennett  
Acting Recorder of the General Land Office.

6-934

4-401-tyr.

181.

# The United States of America,

To all to whom these presents shall come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States an order of the Secretary of the Interior directing that a fee simple patent issue to Adam King an Oneida Indian for the claim one hundred and thirty-three of Section four in Township twenty-three north, and the Lot eleven or the northeast quarter of the southeast quarter of Section twenty-four in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian in Wisconsin containing forty-five acres

NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, in consideration of the premises, have given and granted, and by these presents do give and grant unto the said Adam King, and to his heirs, the lands above described: TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Adam King, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.)

GIVEN under my hand, at the City of Washington, the twenty-eighth day of June, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first

By the President: Theodore Roosevelt

By F. M. McKean, Secretary.

H. W. Sanford  
Recorder of the General Land Office.

8-108

# The United States of America,

To all to whom these presents shall come, Greeting:

179.

WHEREAS, There has been deposited in the General Land Office of the United States an Order of the Secretary of the Interior, directing that a fee simple patent issue to MARGARET NELSON, formerly Margaret Woodman, an Oneida Indian, for the Lot fourteen of Section twenty-four in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing twenty-six acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA, In consideration of the premises, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said Margaret Nelson and to her heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Margaret Nelson and to her heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.)

GIVEN under my hand, at the City of Washington, the \_\_\_\_\_ tenth \_\_\_\_\_ day of \_\_\_\_\_ January \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_ eight \_\_\_\_\_, and of the Independence of the United States the one hundred and \_\_\_\_\_ thirty-second.

By the President: *Theodore Roosevelt*

By *M. W. Young*, Secretary.

*H. S. Sampson*  
Recorder of the General Land Office.

# The United States of America,

To all to whom these presents shall come, Greeting:

454.

WHEREAS, There has been deposited in the General Land Office of the United States an Order of the Secretary of the Interior directing that a fee simple patent issue to THE HEIRS OF KATE PETERS ANTONE, an Oneida Indian, for the Lot eighteen of Section twenty-four and the Lot three of Section twenty-five in Township twenty-four north of Range nineteen east of the Fourth Principal Meridian, Wisconsin, containing twenty-five acres:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said Heirs of Kate Peters Antone, and to their heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Heirs of Kate Peters Antone, and to their heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL.)

GIVEN under my hand, at the City of Washington, the thirteenth day of April, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

By the President:

*Theodore Roosevelt*

By

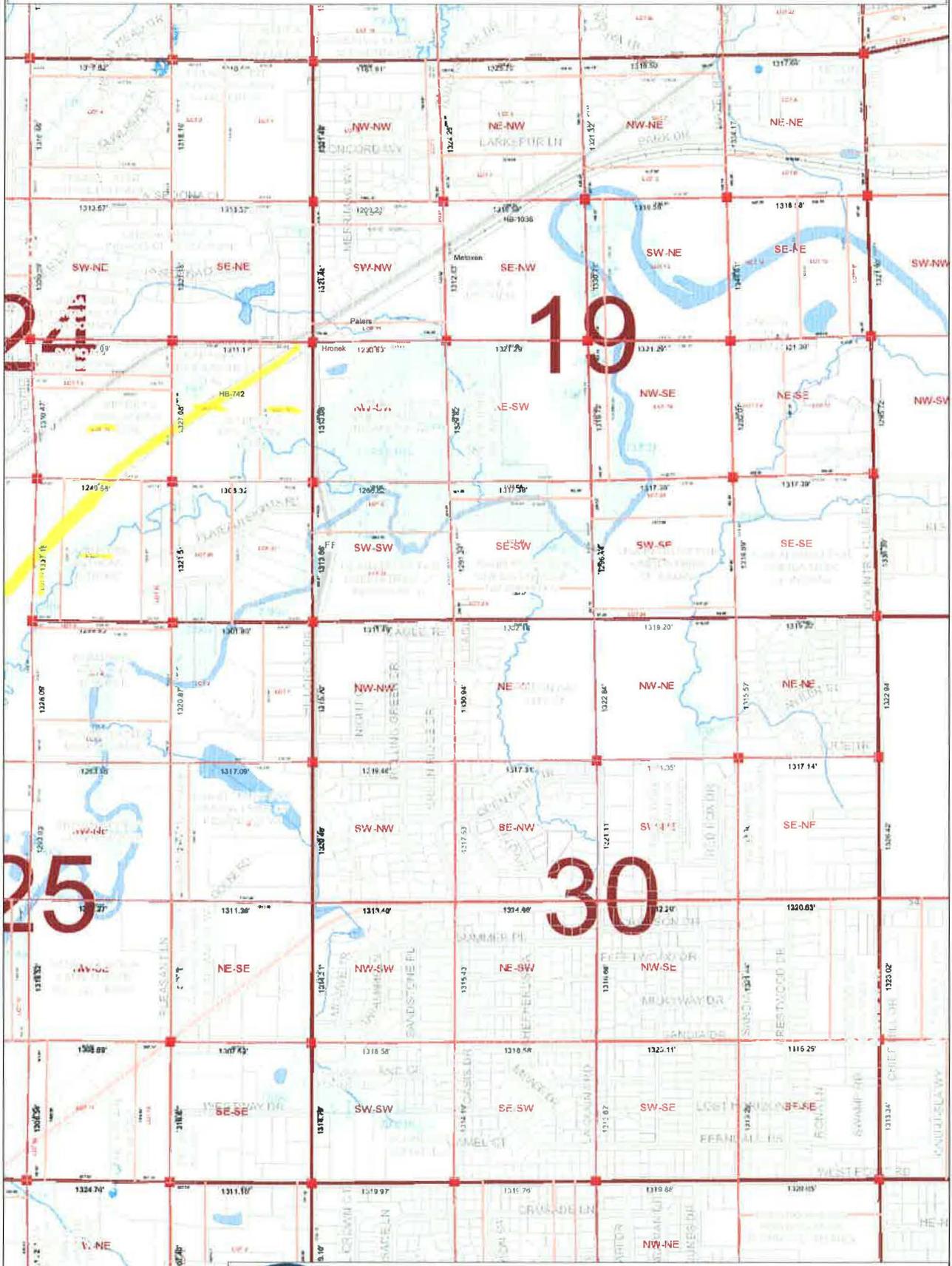
*M. W. Young*

Secretary.

*J. W. Simpson*

Recorder of the General Land Office.

<Title>

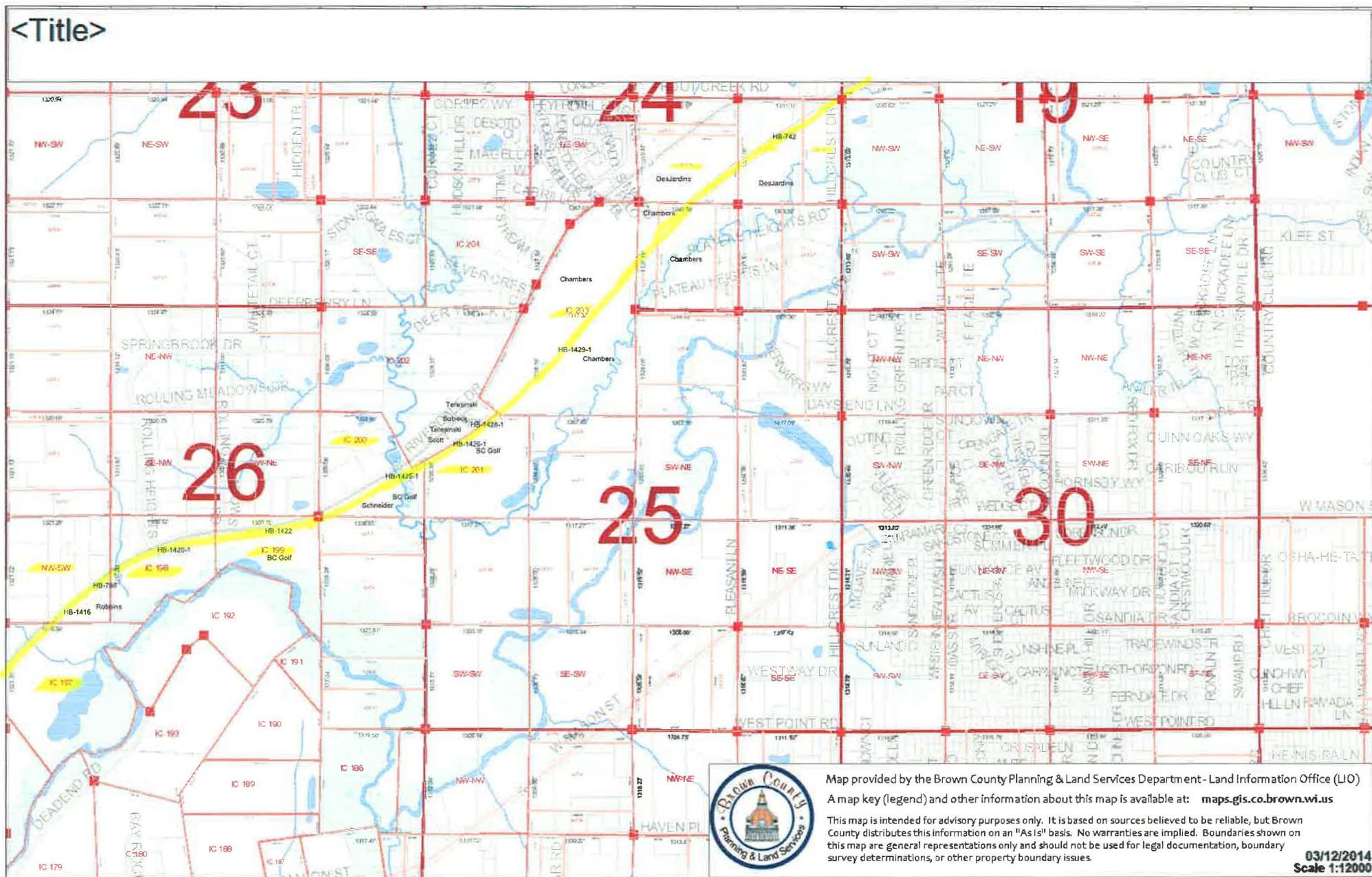


Map provided by the Brown County Planning & Land Services Department - Land Information Office (LIO)

A map key (legend) and other information about this map is available at: [maps.gis.co.brown.wi.us](http://maps.gis.co.brown.wi.us)

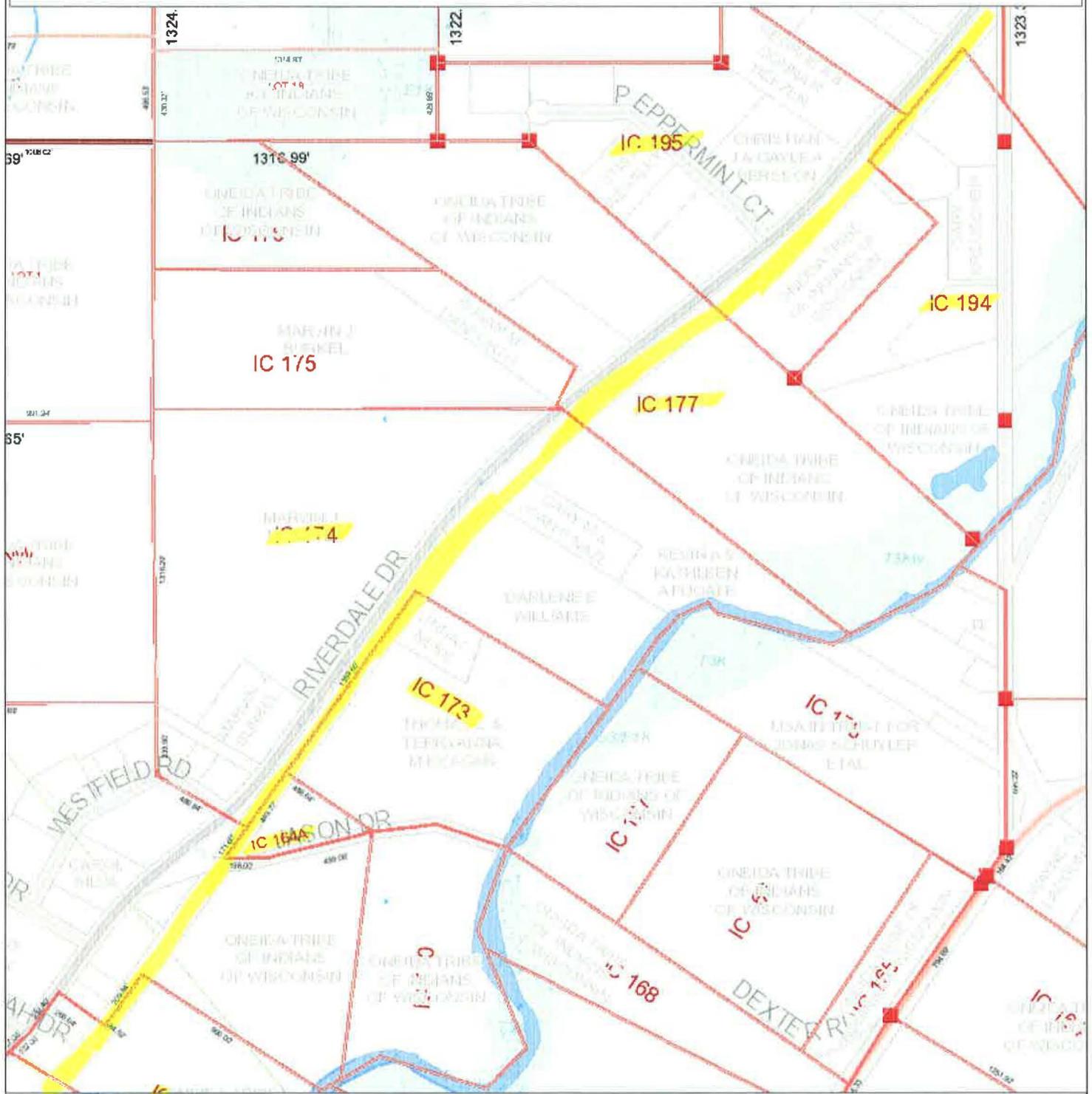
This map is intended for advisory purposes only. It is based on sources believed to be reliable, but Brown County distributes this information on an "As Is" basis. No warranties are implied. Boundaries shown on this map are general representations only and should not be used for legal documentation, boundary surveys, or for determining ownership.

<Title>





<Title>



Map provided by the Brown County Planning & Land Services Department - Land Information Office (LIO)

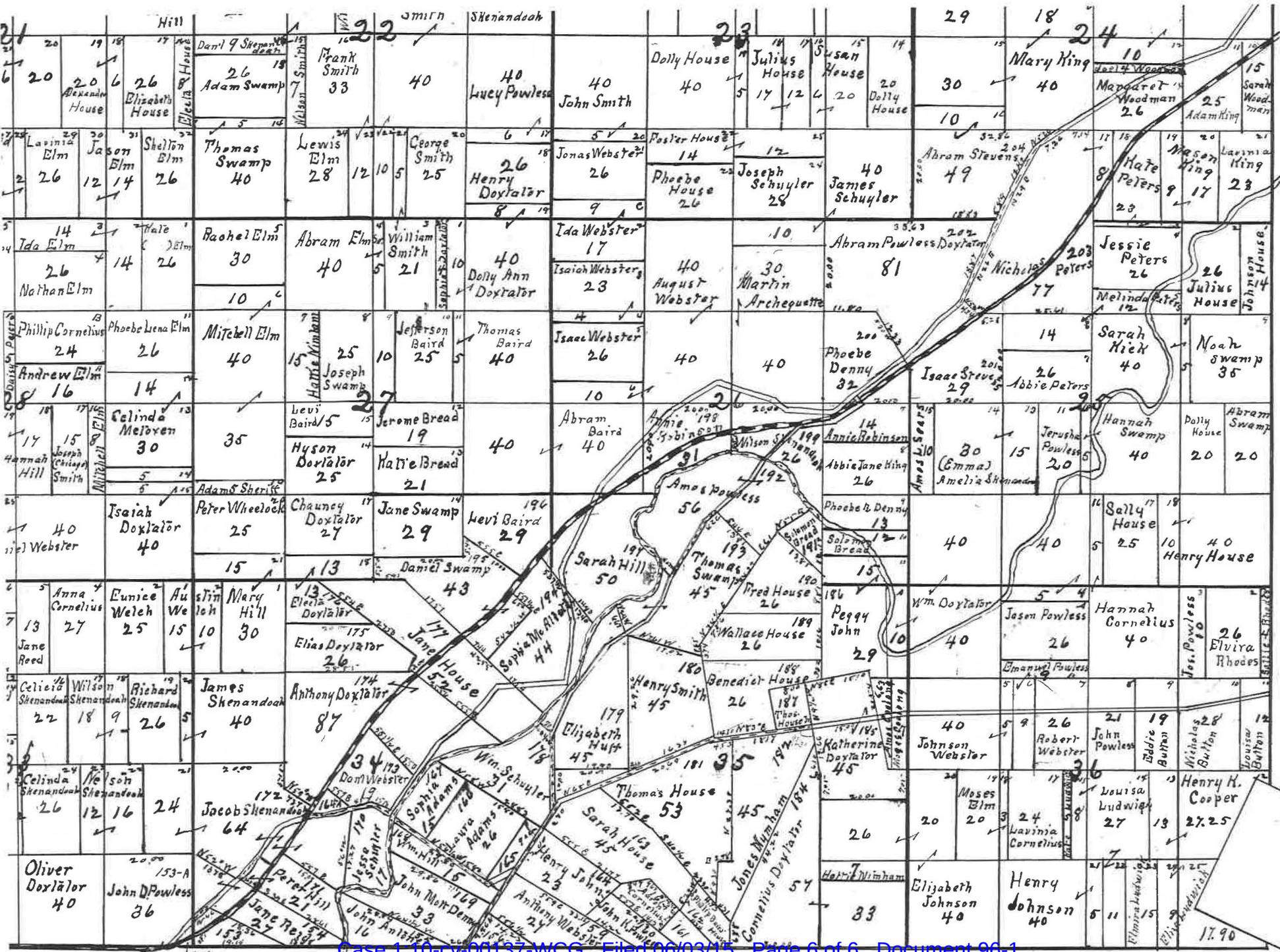
A map key (legend) and other information about this map is available at: [maps.gis.co.brown.wi.us](http://maps.gis.co.brown.wi.us)

This map is intended for advisory purposes only. It is based on sources believed to be reliable, but Brown County distributes this information on an "As Is" basis. No warranties are implied. Boundaries shown on this map are general representations only and should not be used for legal documentation, boundary survey determinations, or other property boundary issues.

03/12/2014  
Scale 1:7200



T2  
R





thence  
S 40° W, along center of highway  
4.83 Set stake on line to Sec line, thence  
South on Sec. line  
5.88 to Sec line, place of beginning.  
This claim contained 47 acres of land.  
Since run with a variation of 3° 30' E.  
Lot corner stake marked L.C.  
Bearing line marked L.C. and P.T.  
This acreage is exclusive of R.R.  
Rt-of-way of Boardman  
U. S. Deputy Surveyor

455

Durb  
mmR.

Department of the Interior,  
General Land Office,  
Washington, D. C., December 11, 1890.

The foregoing field notes of the surveys of claims within the Oneida Indian Reservation, Wisconsin, embracing Nos. 1 to 35 inclusive, Nos. 37 to 182 inclusive; Nos. 184 to 204 inclusive; Nos. 102 A., 122 A., 153 A., 161 A., and 164 A., and claim designated as "A" executed by N. Boardman, U. S. Surveyor, under special instructions, dated October 25, 1889, having been critically examined, the necessary corrections and explanations made, the said field notes and the surveys they describe, are hereby approved.

*Leam A. Guaff*  
Commissioner.

UNITED STATES

NO. 18629

TO

P A T E N T

LUCIUS HILL ET AL

444521.  
42303-4. I. O.  
1190

THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, Greeting: WHEREAS, an Order of the Secretary of the Interior has been deposited in the General Land Office, directing that a fee simple patent issue to Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen, Heirs of Peter Hill, an Indian, for the CLAIM ONE HUNDRED FIFTY-THREE IN TOWNSHIP TWENTY THREE AND TWENTY-FOUR NORTH OF RANGE NINETEEN EAST OF THE FOURTH PRINCIPAL MERIDIAN, WISCONSIN, CONTAINING FORTY-NINE ACRES, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR-GENERAL:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen and to their heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, therunto belonging, unto the said Lucius Hill, Martin Hill, James Hill, George W. Hill, Electa Kelly, Lucinda Metoxen and Eliza Metoxen, and to their heirs and assigns forever, in accordance with the terms of said order to wit: to Lucius Hill, and undivided one-seventh interest; to Martin Hill, an undivided one-seventh interest; to James Hill, an undivided one-seventh interest- to George W. Hill an undivided one-seventh interest; to Electa Kelly, an undivided one-seventh interest; to Lucinda Metoxen, an undivided one-seventh interest; and to Eliza Metoxen an undivided one-seventh interest.

IN TESTIMONY WHEREOF, I Woodrow Wilson President of the United States of America have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. GIVEN under my hand, at the City of Washington, the TWENTY-FIFTH day of AUGUST in the year of our Lord one thousand nine hundred and FOURTEEN and of the Independence of the United States the one hundred and THIRTY-SEVENTH.

(Seal) By the President Woodrow Wilson  
By M. K. Gulick Assistant Secretary,  
John O'Connell  
Acting Recorder of the General Land Office  
Recorded Patent Number 427100

Recorded Sept 11th A.M. 1914,  
At 8:10 A. M.

REGISTER

ALBERT LADE ADMINISTRATOR OF THE ESTATE OF FERDINAND LADE, DECEASED, IN THE MATTER OF THE ESTATE OF FERDINAND LADE, DECEASED, CITY OF GREEN BAY.

NO. 18695

STATE OF WISCONSIN : IN COUNTY COURT : FOR BROWN COUNTY :

IN THE MATTER OF THE ESTATE OF FERDINAND LADE, DECEASED

ADMINISTRATOR'S DEED.

TO ALL TO WHOM THESE PRESENTS SHALL COME: Albert Lade of the Town of Little Suamico in the County of Waushara and State of Wisconsin, as administrator of the estate of Ferdinand Lade, deceased, late of the City of Green Bay, sends Greeting;

WHEREAS, by an order made by the County Court of Brown County on the 7th day of July A. D. 1914, Albert Lade the said administrator, in his capacity as administrator, aforesaid, was



March 6, 2013

VIA E-MAIL AND U.S. MAIL:

Mr. Kerry M. Blaney  
Brown County Treasurer  
P.O. Box 23600  
Green Bay, WI 54305

Dear Mr. Blaney:

I represent the Village of Hobart relating to a litigation with the Oneida Tribe of Indians of Wisconsin and the United States of America. The litigation relates to stormwater charges placed on various trust parcels. I am enclosing, for your review, a copy of Judge Griesbach's Decision dated September 5, 2012. The Decision states that:

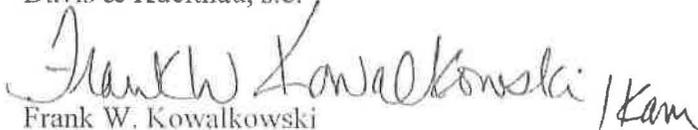
IT IS HEREBY ORDERED AND ADJUDGED that the Oneida Tribe of Indians of Wisconsin's trust land is immune from the Village of Hobart, Wisconsin's Storm Water Management Utility Ordinance and that the Village lacks authority to impose charges under the Ordinance on the Tribe's land directly or indirectly.

IT IS FURTHER ORDERED that the Village of Hobart, Wisconsin is enjoined from attempting to impose and collect "charges" under the ordinance or from foreclosing on the Tribe's lands.

Please note that the Village is currently appealing the above-referenced Decision. We are hoping to get a decision from the Court of Appeals by the end of this year. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

Davis & Kuelthau, s.c.

  
Frank W. Kowalkowski

FWK:kam

Encl.

cc: Village of Hobart (w/out Encl.)

Phone 920.435.9378 Direct 920.431.2221 Fax 920.431.2261  
318 S. Washington Street, Suite 300, Green Bay, WI 54301  
fkowalkowski@tkattorneys.com

BROOKFIELD GREEN BAY MADISON MILWAUKEE OSHKOSH SIEBOYGAN

Doc #  
1887-146

NINETEENTH ANNUAL REPORT

OF THE

BOARD OF INDIAN COMMISSIONERS.

1887.



WASHINGTON:  
GOVERNMENT PRINTING OFFICE,  
1888.

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REPORT  
OF THE  
BOARD OF INDIAN COMMISSIONERS.

WASHINGTON, D. C., *January 28, 1882.*

SIR: We have the honor to submit the nineteenth annual report of the Board of Indian Commissioners, in pursuance of the act of May 17, 1882.

No change of the membership of the board has been made during the year.

We have given careful attention, as required by law, to the inspection of goods purchased for the Indian service, as well as to the inspection of agencies and other branches of the service, so far as could be done with the means at our disposal.

The reception of bids and the award of contracts for supplies, instead of being done entirely in New York City, as has been the custom for many years with but one exception, was divided between Saint Louis and New York. The bids for subsistence, transportation, and stock cattle were opened in the former city, and those for all other goods in the latter.

In Saint Louis the meeting was held for this purpose on the 12th of April, in the Commercial Exchange, when 184 proposals for subsistence and transportation and 9 for stock cattle were opened and read in public, and awards were made in all cases, except for a portion of the transportation where the rates were deemed too high, and it was decided to reject the bids and readvertise.

In New York City, on the 3d day of May, 284 proposals for Indian goods were opened and publicly read, as usual. After careful inspection of the samples presented, awards were made for such as seemed best suited for the service. On the 17th of the same month bids were received and opened for the transportation of supplies to some of the Northwestern agencies. The rates were much lower than those previously offered and rejected at Saint Louis, and awards were made.

We have no evidence that anything was gained by the experiment of dividing this business and transferring a part of it to the West. Possibly a few more bids for beef were received than would have been received in New York, but all the contractors with whom we conversed informed us that they would have made the same offers in the one city as in the other. The expense of transacting the business in two places was much greater, and the gain, if any, did not, in our opinion, compensate for the increased outlay of time and money.

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WIS. HISTORICAL SOC.



## INSPECTION OF AGENCIES AND SCHOOLS.

During the year Commissioner Gates has made a careful examination of the Indian school at Carlisle, Pa., in all its departments of instruction and industrial training. Commissioner Smiley has inspected the school at Lawrence, Kans. Commissioner Waldby has visited the agencies of southern Dakota and those of Nebraska, and inspected the methods of administering the agency business, the condition of the Indian schools, the efficiency of agents, teachers, and other Government employes, and the progress of the Indians in farming. He also made special inquiry as to the employment and progress of students returned from Eastern and other industrial schools. Commissioner Walker has made a tour of inspection through northern Dakota, giving attention to all matters of interest in that region, especially to education. Reports in detail of the last two of these visits and inspections will be found in the appendix. We invite special attention to some suggestions and recommendations in the report of Mr. Waldby. One relates to the condition and needs of the Indian students returned from Eastern and other schools. While but few of them go back to the old-time ways, and it is apparent that the great majority do exert a civilizing and beneficial influence, there are some, as might be expected, who have not the moral courage and stamina to withstand the derision and opprobrium which meet them on their return.

Their great need is proper employment. It is becoming more and more difficult as their number increases to find for all these young men and women such suitable positions as they have been educated to fill. The trades are already overdone, and opportunities for positions as teachers and missionaries are restricted to few applicants. It is recommended therefore that a much larger per cent. of the boys be trained to cultivate the soil and to become practical farmers; that they be taught the use of tools, the methods of making ordinary repairs, and of doing all work incidental to the farm. The girls should be instructed in cleanliness, cooking, laundry work, mending, and plain sewing. In both sexes inculcate good habits and morals, and impress upon them the necessity of labor, and the value and blessings of farm ownership and a home of their own. There would not then be found such lack of employment and disposition on the part of the returned Indian students to labor as is now said to exist. Employment at farming could readily be obtained, and would soon afford ample provision for their wants. But to attain this desirable result, it is manifest that some help is needed at the start. The young men and women who go from the comforts of the boarding-school need a more decent abode than the filthy tepees of their parents, and to begin the cultivation of a farm they must have tools to work with. To a limited extent these requisites can be furnished by the Indian Bureau out of the regular appropriations. But to supplement this Government aid there is room for all the friends of the Indian to lend a helping hand. A beginning has already been made, which deserves honorable mention. The ladies of the Connecticut and Washington branches of the Women's National Indian Association have taken up this work, and have settled two couples of Hampton students in homes on the Omaha Reservation by lending them money to build houses and break their ground for farming. How the new plan works is re-

lated by Rev. H. B. Frissell, who recently visited that reservation, from whose report we make the following extracts:

I will speak especially of these two returned Hampton students. As already mentioned, the lands of the Omaha Reserve have been taken up in accordance with the provisions of the land-in-severalty bill, and a portion has been sold to the whites.

These returned Hampton students had each 160 acres of their own. Before arriving at the reserve I had heard, through a grain buyer on the train, something of their farms. He said that they had as good wheat as there was in Nebraska.

As soon as possible I drove out to their homes, which lie along the Logan Creek. I found one of the young men with his carpenter's bench on the shady side of one of the most comfortable houses that I had seen in the neighborhood. He told me with pride that he himself had built the house with the assistance of his neighbor, the other ex-student of Hampton. For the first year after their return, the two couples had been obliged to go back to the mud lodges of their parents. In the case of Phillip Stabler this meant a return to surroundings thoroughly bad, for he came from a non-progressive family. So he was obliged to live in the midst of the heathen dances, and feasts, and general barbarism that characterize the non-progressive part of the tribe. The help afforded by the Connecticut ladies enabled him, the second year, to put up on his own land a house that cost some \$400, and hire 20 acres of land, broken, with which to commence his farming operations. Once having this start, he got on very well. He had owned, previously, two Indian ponies, which were not strong enough to break up the soil. These he traded for a strong American horse, and by leasing the 40 acres which had been allotted to his little boy, he bought still another horse, so that the second year he was able to care for his own land, and to break up 30 acres more. He showed me with pride the 500 cotton-wood trees that he had set out about his house, the flower-garden which he had started from seeds sent him by Eastern friends, and the plot where various kinds of vegetables were planted.

We went together to see the turf barn which he had built with his own hands, where he now had 8 horses and 4 colts, some pigs and a cow. He showed me his chicken yard, where, he told me, he had raised 90 chickens this year. He showed me how he had learned to stack his hay and straw. He told me how he had just gotten the job of putting up a neighbor's house, for which he was to receive \$2.50 a day.

I went to the adjoining farm of another Hampton graduate, Noah La Fleshe, and I found much of the same condition of things that I have described in the first. The young man was away from home. His neat looking wife told me that he had gone, with his team to break land for another Indian, and was to receive \$5 for the two acres he could break in a single day with his good, strong horses. His wife invited me into the house, which her husband had built with the same help from the Washington ladies. She showed me how he wainscoted the rooms, so as to make the house warmer and improve its appearance. She showed me the pretty table, chairs, sofa, and shelves for books, which he had made. I went into the neat kitchen, where everything was in apple-pie order, where preparations were being made for the husband's return, which already showed that this Indian's wife understood the art of cooking. I went into the bedroom, where the bed, with its white spread, showed the careful housekeeper, and the results of training at Hampton. The neat pattern of the paper upon the walls of the rooms, the brown shades that hung at the windows, the pretty tidy which the wife had made for the sofa, the pictures upon the walls, the books upon the shelves, the well-thumbed Bible lying upon the table, all bore witness to the happy results which Eastern schools and the Ladies' Indian Association had made possible.

These young people were receiving nothing from the Government in the way of clothes, food, or cattle. Only \$7 a piece in money, which was the payment for land in Indian territory sold by the wife to the Government. They were earning their bread by the sweat of their brow."

The success of this experiment is full of inspiration to new effort. These two Christian homes furnish an object lesson to the whole Omaha tribe. Great credit is due to the ladies of Washington and Connecticut for the work they have done. Two other cottages have been built by the Woman's National Indian Association, one on the Omaha and one on the Pine Ridge Reservation.

If every branch of the association would go and do likewise, help the educated young men and women to build such homes on all the reservations, what an influence for good they would exert.

In close connection with this, another suggestion of Mr. Waldby is worthy of attention. Observing that as a rule better and more intelli-

gent farming is being done by the reservation Indians, whose lands border on or lie near to those owned and under cultivation by the white farmers, he suggests that the land-in-severalty bill might be advantageously supplemented by a provision for the settlement among the Indians of a limited number of white farmers upon each reservation, after Indian allotments are first made or provided for. The Indians, while not good planners, are adept imitators. If, therefore, a few white farmers of good character and thrifty habits could be introduced, the Indians might profit from their methods, and by observation of their skill in farming and of their mode of living might learn better than in any other way both how to work and how to make home more cleanly and comfortable. They would also find some profitable employment with the whites; the children of both races would mingle together in school and the process of civilization and education would go on much more rapidly than is possible on the exclusive reservation plan. Of course, during the transition period, careful safeguards must be provided to protect the Indian farmer both from himself and from the possible capidity which the love of gain inspires in the thrifty Anglo-Saxon. To induce families of the right stamp to settle among the Indians, and instruct and encourage them by example, provision would be requisite for the acquisition of a permanent title to the lands cultivated by white farmers on conditions similar to those specified in the general homestead laws.

#### MEETINGS AND CONFERENCES.

Besides the meetings before reported in Saint Louis and New York, for the purpose of assisting in the purchase of Indian supplies, we have held two conferences with friends of Indian civilization, one at Mohonk Lake and the other in this city. The Mohonk Conference was attended by more than 100 persons invited by Commissioner Smiley as his guests, besides many others drawn thither by their interest in the objects of the meeting. The conference continued three days, and the discussions took a wide range, but the prominent topics considered were—

*First.* How to secure the best results from the severalty law, and what further legislation is needed for that end.

*Second.* The best method of education in Indian schools, whether in the English language exclusively or in part by the use of the Indian vernacular.

#### THE LAND-IN-SEVERALTY BILL.

This bill, which became a law on the 8th of February, 1887, is a great step in advance in our Indian policy, and the day when it was approved by the President may be called the Indian emancipation day. The measure gives to the Indian the possibility to become a man instead of remaining a "ward of the Government." It affords to him the opportunity to make for himself and his family a home, and to live among his equals a manly and independent life. It offers to him the protection of law and all the rights and privileges and immunities of citizenship.

It is plainly the ultimate purpose of the bill to abrogate the Indian tribal organization, to abolish the reservation system, and to place the Indians on an equal footing with other citizens of the country.

We do not look for the immediate accomplishment of all this. The law is only the seed, whose germination and growth will be a slow process, and we must wait patiently for its mature fruit. There are difficulties and perplexing questions to be settled and conflicting interests

to be adjusted. Some of these are found in the character and habits of the Indians themselves, while many are ready and have been waiting long for this beneficent measure; some non-progressive Indians are still opposed to it, and will throw obstacles in the way of its execution. They see their power and importance as tribal chiefs slipping away, and they have enough human nature to cling tenaciously to their prerogatives.

Some whole tribes are unprepared for the execution of the law or to profit by it if it were by force applied to them. Hence we are pleased to notice that the Executive has begun the work of allotments under the provisions of the new act upon some of the smaller reservations where the Indians are somewhat advanced in education and habits of industry. Twenty-seven reservations have been selected—one in Arizona, Papago and Pima (Salt River); two in Michigan, L'Anse and Vieux de Sert; four in Wisconsin, Lac Court d'Oreilles, Bad River, Red Cliff, and Lac du Flambeau; one in Minnesota, Fond du Lac; four in Dakota, Lake Traverse (Sisseton), Devil's Lake, Ponca, and Yankton; one in Idaho, Nez Percé; one in Montana, Crow; eight in the Indian Territory, Absentee, Shawnee, Pottawatomie, Quapaw, Moiloc, Ottawa, Shawnee, Seneca, and Wyandotte; one in Nebraska, Winnebago; three in Oregon, Siletz, Grande Ronde, and Warm Springs, and one in Washington Territory, Muckleshoot. Surveys have been begun or contracted for on most of these, and six special agents of well-known ability and experience have been appointed to superintend the work. It will require at least a year to complete the allotments now ordered, and after that the work will be continued elsewhere as fast as the condition of the Indians will justify. We believe that opposition will gradually die out, even among the most ignorant and barbarous tribes, and that in a few years all will learn the value of a secure title to the lands which they occupy, and the advantages of a more civilized manner of life.

It is manifest that the time has not come to relax the efforts of teachers and missionaries. It is rather the time to redouble such efforts, not only to instruct and persuade the more ignorant to accept the benefits now offered, but also to guide and lead the better class, so that their new legal condition may become to them a blessing and not a curse. Law alone is impotent to change character. It cannot make the ignorant wise nor the lazy industrious. It cannot lift the Indian across the great gulf which separates heathen barbarism from Christian civilization. Hence upon the churches and philanthropical associations rests now greater responsibility than ever before in the history of the Indian problem. And what we have seen and heard in our conferences leads us to hope that Christian people are ready to respond to the demands of the hour. They see the necessity of sending out as missionaries and teachers men and women of sound practical common sense, as well as of earnest Christian character; men and women who will win the confidence of the Indians and mold their character by the power of an upright, godly life among them; men and women who will not think any details of practical business or household economy beneath their notice. The Indian in the transition state, through which he is now passing, is in special need of daily help in all the small matters of life; he needs the personal presence of one who can, not only tell him how, but show him how to work like the late Father Wilber, or Mr. William Duncan, of Metlakatla, by taking hold of the plow, or running the machine, or mending the broken tool with his own hands.

\*Allotments to the Sissetons, about 380, have been completed by Special Agent Lightner.

And what the teacher and the missionary ought to be in character, so ought to be every agent and physician and clerk and farmer and laborer employed in the Indian service. Every one should be pledged to total abstinence from intoxicating liquors, from profanity, and every evil habit. With a service pure and earnest and faithful, we believe that the severalty act will be the best boon ever granted by our Government to the Indian race.

## NEW LEGISLATION.

Possibly some slight modifications of the severalty act may be found advisable after further experience in its execution. It may become necessary to grant larger tracts of land to some tribes, the Navajoes for example, who inhabit a sterile region, and must roam over a large country to find pasturage for their flocks and herds. Beyond this, and the suggestion we have already made as to the settlement of carefully selected farmers among the Indians, we now think of but two matters upon which additional legislation is needed. One relates to courts of justice. The Indians being made citizens, and subject to the laws of the States and Territories where they reside, it is essential to their protection that the courts be made accessible to them. Those now held are in many instances far away from the reservations and out of reach, for the Indians can not pay the cost of appealing to them for justice. Temporary relief might be found in legalizing the existing "courts of Indian offenses," as Commissioner Atkins suggests. But the time will come when the Indians will not be an isolated people; when, after they have received their allotments and homesteads, the surplus lands will be occupied by others, who would not be subject to the decisions of Indian courts. It seems, therefore, wiser to extend the existing judiciary system, and to establish courts within the reach of all. Unless provision of some kind is made for the punishment of crime, and for the trial of civil suits, we shall have the same deplorable conditions as have long existed in the Indian Territory.

The other matter needing the attention of Congress relates to the costs of conducting courts, and of public improvements in the Indian country. The lands allotted to the Indians are exempt from taxation a period of twenty-five years. The Indian has all the rights and privileges of citizenship, but is exempt, in large measure, from the burdens of citizenship.

The country where he lives will be organized into counties and towns. Courts must be established, public buildings erected, roads opened, and bridges built. It can hardly be expected that the white citizens of these counties and towns will pay willingly the whole expense of these public services and improvements. It is not just to require it; nor is it just to require the States and Territories to assume this burden. Hence, so long as Indian lands are exempted from taxation by the laws of the United States, provision should be made by the United States for re-imbursing to the States and Territories the amount which they will lose by such exemption. With these simple additions, we believe that the severalty act can be carried out with most beneficial results to the Indians and to our entire country.

In view of the new condition of Indian affairs brought about by this act, some earnest friends of the Indians have proposed radical changes in the entire service. One plan, elaborated by Professor Thayer, of the Cambridge Law School, is to abolish the Indian Bureau and transfer

all its work and duties to the Judiciary Department, which shall be authorized to appoint commissioners to take charge of surveys and allotment of lands; trustees under bonds to hold and disburse annuity funds and appropriations; superintendents of schools and assistants to manage the educational work; to establish courts wherever needed, and to appoint judges of such courts, and justices of the peace to take cognizance of minor offenses. The scheme has not been perfected in the form of a bill for Congressional action; therefore, approval or condemnation of it would at present be premature. But we fail to see how the service would be simplified or improved by its mere transference from one department to another. It would still require the same number of agents to conduct it, though they might have new names, and all of every name and grade would still be appointed by fallible men.

Another proposition, which has been approved by the President, and the Secretary of the Interior, is the appointment of a new commission of Army officers and civilians who shall have large powers and take charge of all business relating to lands and education. In so far as the allotment of lands is concerned, this proposal is practically adopted in the severalty act, which provides for the appointment by the President of special agents for that purpose. Six such special agents have been appointed and are in the field. Some of them we know, and all we believe, to be well fitted for the work. In relation to their appointment, the following resolutions were unanimously adopted by the Mohonk conference:

*Resolved*, That the thanks of this conference be tendered to President Cleveland for the promptness with which he has entered upon the duty of carrying out the provisions of the Dawes land-in-severalty bill, and for the care which has been shown in the character of the special agents already appointed.

*Resolved*, That we extend to the President and to the Department of the Interior our hearty co-operation in further efforts to secure the most fitting man for this important and peculiar service, in the faithful performance of which the future of the Indians so largely depends.

In our judgment we have enough machinery for the management of the Indian work, provided it is well manned. The best machine will work only ruin in the hands of a poor engineer, while even an imperfect machine under the control of a skillful hand may turn out good work.

## PROGRESS AND EDUCATION.

But little has occurred during the year to interfere with the industrial pursuits and progress of the partially civilized Indians. The raid of a small band of Apaches has been stopped by their capture and imprisonment. On the other hand, a settlement of peaceable Apaches in the San Pedro Valley has been broken up by lawless whites. These Indians, under the leadership of Eskiniziu, their chief, had taken up lands in the valley, built comfortable homes, irrigated and fenced their farms, and, by their own industry, accumulated property. But soon white settlers began to encroach upon them, and, by threats of violence and arrests upon false charges, have succeeded in driving them from their good homes. They have left behind them all their possessions, which have fallen into the hands of their grasping persecutors. We trust that steps will be taken to restore to them their property and their lands.

The Northern Utes have been sadly disturbed by an unprovoked and shameful attack upon Colorow's camp by cowboys and Colorado militia, which resulted in a loss to the Indians of one man and three children killed, of their entire camp property, clothing, and provisions stored for winter use, and of their large herds of horses, cattle, sheep, and goats

stolen by the merciless robbers. The story of the outrage is clearly told in the reports of General Crook and Commissioner Atkins, and the record will stand a dark blot upon the history of the State of Colorado. It is impossible to right such a wrong, but surely remuneration for the loss of property sustained by the Indians should be given at once.

It has been difficult to understand the reasons for the recent outbreak of the Crows of Montana, a tribe whose boast has been that they had never killed a white man. The best explanation we have seen is made by an officer of the Army who was present with his command and assisted in quelling the outbreak. Writing on the 19th of November, after the short, decisive action which put an end to the trouble, this officer says:

The resistance of some of the older men of the tribe to any change in modes of life, the restlessness of many of the young men not yet ready to settle down to civilized ways, the desire to make reprisals on the Piogans, who have stolen their horses, and the superstitious fear of Chese-to-pah (sword-bearer) in his assumed character of medicine man, and perhaps a dislike for their agent and his ways, were the causes of the outbreak. There will never be another. The wounding of Chese-to-pah, within ten minutes after the firing began, shook his pretensions to invulnerability, and all who knew of it withdrew from the fight, and his death less than half an hour later ended all resistance and the war.

These disturbances, though serious and attended by some loss of life, have not had any wide effect.

The great body of the Indians have continued peaceable and have made commendable progress towards self-support. They have more land under cultivation than heretofore, twenty-three thousand acres of new land having been broken the last year. They have more and better dwellings, twelve hundred new houses having been erected by themselves. They have more agricultural tools and machines, some of them purchased with the proceeds of their farm products. Their stock has increased in number and improved in quality, and is better protected and cared for. For illustration of these general statements we refer to the report of Commissioner Waldby: Of the Crow Creek Indians, he says:

As farmers they appear happy and contented, comparing in most respects favorably with the whites. \* \* \* The lands are good and the Indians are proud of their farms, horses, and cattle. \* \* \* They understand that they must eventually become self-supporting. Estimates for flour have been reduced from 130,000 pounds last year to 50,000 pounds this year.

Of the Santees, Mr. Waldby says:

They are mostly farmers living on their own lands obtained under allotments and patents, and are reasonably successful. The lands are good, well adapted to crop-raising, and the results this year an improvement on those of former years. \* \* \* I drove from 20 to 25 miles among these Santee Sioux farmers and the evidences of civilization, the large number of acres under cultivation, the growing crops, comfortable homes and industry of these Indians gave me a pleasant surprise. \* \* \* Fifteen years ago, only, these Indians were in village or camp near the Agency, supported wholly by Government rations and supplies. Now rations are furnished only to the aged and infirm. What a change! When we consider, furthermore, that formerly the presence of these Indians was a constant menace to the white settlers, and that while some of the older of these farmers were on the war-path and engaged in the Minnesota massacre of 1862, they are now employed in the peaceable pursuits of agriculture, happy and contented, and in very large measure adopting the social and business habits of their white brethren.

Similar contrasts and proofs of progress may be found on many other reservations. To the impatient reformer the advance seems slow, but when we compare the present condition with that of fifteen or ten years ago we can see how real and great has been the change.

In the following table we present some facts collated from the reports of 1877 and 1887, showing the progress made during a period of ten years. The five civilized tribes are not included:

	1877.	1887.
Indians who wear citizen's dress	60, 188	91, 097
Houses occupied	9, 600	17, 046
Built last year	1, 103	1, 674
Schools	150	227
Scholars	0, 010	14, 533
Average attendance	3, 508	10, 529
Money expended for education by Government	\$200, 337	\$1, 150, 025
Money expended by religious societies	\$70, 114	\$04, 014
Indians who can read	0, 307	19, 816
Church buildings	106	159
Land cultivated by Indians	110, 660	237, 205
Wheat raised	211, 878 bushels	724, 058
Corn raised	850, 862 do.	884, 572
Oats and barley	183, 247 do.	512, 137
Vegetables	312, 976 do.	624, 010
Tons of hay	31, 973	101, 828
Horses and mules owned	177, 901	359, 354
Cattle owned	49, 883	111, 487
Swine owned	26, 359	40, 471
Sheep owned	687, 444	1, 117, 444

These are some of the good results of the peace policy. We wish they were greater, especially in the line of

EDUCATION.

For, until an entire generation shall have some mental and industrial training, we can not hope to see the whole Indian race redeemed from barbarism and transformed into a self-supporting, thriving people.

To accomplish this, much more liberal appropriations must be made for education. The treaties of 1868, negotiated by the Peace Commission, promised liberal things; but the fulfillment has been meagre. The excuse has been that the Indians would not send their children to school, and therefore it was useless to build the school-houses and supply the teachers promised. That excuse is not valid now. Parents are anxious for the education of their children. The schools are everywhere overcrowded. During the last year the 227 schools supported wholly or in part by the Government furnished accommodation for 13,766 pupils and had an enrollment of 14,333. It is manifest that the capacity of existing schools must be increased, and facilities for the education of all children of school age should be furnished without delay.

ENGLISH VS. VERNAOULAR.

On the question of teaching the English language exclusively in Indian schools, this board is already on record substantially indorsing the recent orders of the Indian Bureau, which have been subjected to much discussion and criticism. Ten years ago, in our report for 1877, we said:

Another measure essential to any good results is a common school English education. We would emphasize the importance of teaching Indian youth to speak and read the English language. If they are ever to be enfranchised as American citizens they must have some knowledge of the common language of the country. We recommend, therefore, that funds appropriated for education shall not be expended for the support of schools in which Indian languages are the exclusive medium of instruction.

Again, in 1881, alluding to the order of Commissioner Price, we said:

The policy adopted of teaching only English in the Government schools is eminently wise. To live in friendly relations with his neighbors, and to transact the ordinary business of life, to become a useful American citizen, the Indian must know the common language of the country. Many keen-witted Indians see this. Said an old chief in Oregon: "My father left me 1,400 ponies; if he had sold the ponies and sent me to school to learn white man's talk I should be better off now." We have visited reservations where schools have been in operation sixty years, and yet we were obliged to address the people through an interpreter.

"We can not afford," it has been said, "to raise any more Indians in this country." And yet, accepting the old fiction that Indians are foreigners, we have already raised two generations of Indians by unwise theories of education, and have kept them in isolation, shut up from intercourse with civilized communities about them by the strongest and highest possible wall of partition. A better system is now in use, and we trust the time is not far distant when English books and the English language will be exclusively taught in Indian schools.

We see no reason to revoke or to modify these words. The new life upon which the Indian is now entering makes an English education more important to him than ever before. The recent orders may seem somewhat sweeping and arbitrary, especially in their application to those schools which are supported by mission boards or by Indians without expense to the Government; but they have been greatly misunderstood. They have been interpreted to forbid the preaching of the Gospel and all religious exercises in the vernacular. Some of the officers of the Department appear to have given them this construction. It is reported that United States Inspector Bannister, in October last, directed the Rev. Thomas L. Riggs, missionary in Dakota, to close the mission day-schools on the Cheyenne River, with the further injunction that even if no school is kept daily religious services (in Dakota) will not be allowed. Some other instances of this kind are reported. We do not believe that such extreme action was intended or is justified by the orders of the Indian Office. We are sure there is no wish to restrict in any way religious liberty or to interfere with religious exercises.

The orders as we read them refer to schools attended by children, and they forbid the teaching of such children to read and write the Indian languages; they forbid the teaching of grammar, geography, arithmetic, and other branches of common school education in the vernacular, and of course the use of school books printed in the vernacular. They require that English shall be the language of conversation in the schools, but it would be an extreme construction to say that the teacher must never explain the meaning of an English word by the use of the vernacular if he is able to use it. With regard to the few small mission schools on reservations which have no Government support, we are inclined to think that the orders might be wisely modified or suspended until those who support such schools can make arrangements to employ English teachers.\* The school facilities being now sufficient for only about one-third of the Indian children of school age, every effort for their education should be welcomed. A little teaching even in the vernacular is better than no instruction. At the same time we would urge the mission boards to conform as soon as possible to the wishes of the Indian Commissioner. All admit that the English language must be brought to the front at the earliest possible moment. All admit the wisdom of requiring its exclusive use in the Government schools. If an English education is best for the 14,000 pupils enrolled in Government schools, why is it not best for the 400 pupils enrolled in the mission schools?

\* The orders have been modified by Commissioner Atkins.

## INDIANS IN CALIFORNIA.

In our report of last year we called attention, as we had done often before, to the sad condition of the Mission Indians in southern California, and of the Round Valley Indians in northern California. We urged the passage of bills then pending for their relief. Both were passed in the Senate, but Congress adjourned without action upon them in the House of Representatives. We also urged action by the Executive to clear the reservations of those Indians of intruders and to protect them from the encroachments of squatters and cattle men. Orders to this effect were issued very soon after the adjournment of Congress. In the case of the Mission Indians these orders have been to some extent carried out, and the people still retain possession of their ancestral homes. But suits for ejectment against some of them are now pending in the courts, and but for the help of the Indian Rights Association and the Boston Association they would have very little prospect of success in the defense of their rights.\* Legislation is still needed in their behalf.

In the Round Valley case the order for the removal of trespassers has not been successful, and they still hold and use almost the entire reservation. Refusing to obey the orders of the Interior Department, a military force was detailed by General Howard to eject them; but the officer in command was met by the sheriff of the county with a writ of injunction issued by the county court, and telegraphed to General Howard for instructions. General Howard telegraphed to the War Department and was ordered to withdraw his troops and wait for a settlement of the case in the courts. The Department of Justice then instructed the United States district attorney for California to take charge of the case, and by him it was transferred to the United States district court, where it is now pending. The attorney seems to have but very little hope of securing justice to the Indians through the courts of California. Thus a people, peaceable and unoffending, able and willing to support themselves, are dispossessed of their rightful property and driven to starvation or to dependence on the Government while the intruding thieves hold their ill-gotten wealth, and entrenched behind the decrees of the courts bid defiance to Executive orders and to the Army of the United States. Once in California the order of vigilantes inflicted summary punishment upon thieves and robbers. But there are no vigilantes to avenge the wrongs of Indians. The story of the injustice and wrongs endured by the Round Valley Indians is as dark as any chapter in the century of dishonor. It is all on record in the Indian Office, and we know that no effort has been spared by that office to give relief and to secure the permanent rights of these Indians. The responsibility now rests upon the United States Congress. The remedy for all these evils and troubles is the passage of the bill which was before the last Congress. The same bill, with slight modifications, has been prepared by the Commissioner of Indian Affairs for the action of the present Congress. It ought to receive early attention and to become a law without delay.†

\* The Soboba case has been decided in favor of the Indians.

† Since the above was written the following emphatic message has been sent to both houses of Congress by the President:

To the Senate and House of Representatives:

I transmit herewith a communication, of the 23d ultimo, from the Secretary of the Interior, submitting a draught of a bill "to provide for the reduction of the Round Valley Indian Reservation, in the State of California, and for other purposes," with documents thereto relating to the same. The documents thus submitted exhibit ex-

14 REPORT OF THE BOARD OF INDIAN COMMISSIONERS.

RECOMMENDATIONS.

Our recommendations therefore are—

- (1) The early passage of the Round Valley and Mission Indian bills.
- (2) The establishment of courts at points accessible to all Indians.
- (3) Provision for the expenses of courts and public improvements, so long as Indian lands are exempt from taxation.
- (4) Provision for assisting graduates of training schools and other deserving Indians in building homes.
- (5) The application of civil-service principles to all appointments in the Indian service.

Respectfully submitted.

CLINTON B. FISK,  
*Chairman.*

E. WHITTLESEY,  
*Secretary.*

ALBERT K. SMILEY.

MERRILL E. GATES.

WM. MCMICHAEL.

JOHN CHARLTON.

WM. H. WALDRY.

WM. H. MORGAN.

JAMES LIDGERWOOD.

WM. D. WALKER.

The SECRETARY OF THE INTERIOR.

occupancy, and disclose a disregard of Indian rights so long continued that the Government can not further temporize without positive dishonor. Efforts to dislodge trespassers upon these lands have in some cases been resisted upon the ground that certain moneys due from the Government for improvements have not been paid. So far as this claim is well founded the sum necessary to extinguish the same should be at once appropriated and paid. In other cases the position of these intruders is one of simple and bare-faced wrong-doing, plainly questioning the inclination of the Government to protect its dependent Indian wards and its ability to maintain itself in the guaranty of such protection.

These intruders should forthwith feel the weight of the Government's power. I earnestly commend the situation and the wrongs of the Indians occupying the reservation named to the early attention of the Congress, and ask for the bill herewith transmitted careful and prompt attention.

GROVER CLEVELAND.

EXECUTIVE MANSION, January 5, 1888.

APPENDIX.

A.

REPORT OF THE PURCHASING COMMITTEE.

WASHINGTON, D. C., January 13, 1888.

SIR: The purchasing committee of the Board of Indian Commissioners respectfully submit their annual report for the year 1887, as follows:

In compliance with the advertisements from the Indian Bureau at Washington sealed proposals for subsistence and transportation for the Indian service were opened and publicly read on the 12th day of April, 1887, at the Chamber of Commerce Building in Saint Louis, Mo., in the presence of Hon. J. D. C. Atkins, Commissioner of Indian Affairs, Mr. J. J. S. Hassler, representing the Secretary of the Interior, and the following members of the Board of Indian Commissioners, viz: E. Whittlesey, William H. Waldby, and William H. Morgan. There were one hundred and eighty-four bids received for subsistence and transportation.

Contracts were awarded for nett beef amounting to 836,800 pounds at an average of \$7.00½ per 100 pounds, which was 65½ cents per 100 pounds less than last year. Contracts were awarded for gross beef amounting to 34,878,000 pounds at an average of \$2.80 per 100 pounds, or 24 cents per 100 pounds less than last year; making a total saving upon these articles of nearly \$90,000 upon the prices of last year. All other articles of subsistence were purchased at about the same rates as last year except coffee, which was much higher, being about \$30,000 above last year. On April 15, 1887, there were nine bids for stock cattle opened and contracts awarded. The bids for transportation to North western agencies were from 50 to 100 per cent. over last year's rates, some of the contractors stating that on account of the interstate-commerce law they had been unable to make special rates with the railroad companies. It was deemed advisable to reject such bids and readvertise. This was done. Bids were subsequently received and opened, and lower rates obtained.

In compliance with advertisements from the Indian Bureau, Washington, D. C., sealed proposals for annuity goods and supplies for the Indian service, other than those called for as above stated at Saint Louis, were also opened and publicly read on May 3, 1887, at the United States Government warehouse, Nos. 65 and 67 Wooster street, New York City, in the presence of Commissioner Atkins, Mr. Hassler, representing the Secretary of the Interior, and the following members of the Board of Indian Commissioners, viz: General Clinton B. Fisk, Albert K. Smiley, E. Whittlesey, Merrill E. Gates, John Charlton, James Lidgerwood, William D. Walker, and William McMichael.

A number of bidders and others were present at the openings of bids at both Saint Louis and New York. The public advertisement for supplies and the public opening and reading of bids induce competition and enable bidders to attend and compare their own bids with others. Bidders are invited to be present at these openings, and the officers of the Government and the members of the Indian Board who attend are glad to receive at the time any suggestions from bidders or others which will promote the efficiency of the service. In order to see that the goods furnished are equal to the standards called for, and contracted for, the Commissioner appoints special inspectors to assist in their inspection. For the year 1887 these inspectors were as follows, in New York, viz: E. R. Livermore for flour, T. I. Paine for groceries, James T. Paulkner for caps and hats, William Elliott for medical supplies, Charles A. Schofield for harness and leather, George G. Nason for boots and shoes, Andrew T. Anderson for clothing, John R. Gillman for shelf hardware, E. L. Cooper for agricultural implements and hardware, Samuel McCauley for notions, William H. Hood for dry goods, and Frederick A. Judson for school books. Mr. E. L. Cooper was also appointed inspector of miscellaneous supplies. In Saint Louis Mr. J. J. S. Hassler was appointed inspector for groceries, and

SIXTIETH ANNUAL REPORT

OF THE

COMMISSIONER OF INDIAN AFFAIRS

TO THE

SECRETARY OF THE INTERIOR.

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1891.

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WASHINGTON:  
GOVERNMENT PRINTING OFFICE,  
1891.

## REPORT OF PHYSICIAN, YANAMA AGENCY.

YANAMA AGENCY, WIS., August 19, 1897.

Sir: I have the honor to submit this, my third annual report relative to the sanitary condition of the Indians belonging to and located on this reservation.

During the year 1280 Indians received treatment, of this number 69 were male and 880 were female. I heard of 62 deaths, 12 male and 21 female. Several of these deaths occurred off the reservation and were not reported until the 15th of July, calculation (taken the Indians from all the adjacent country) must have and take of the deaths and births in their several localities. The births are more difficult to obtain than the deaths. I heard of 23 births, 10 male and 13 female.

During the past spring a very serious epidemic of "dysentery" prevailed. The disease was more malignant than it was the preceding year, a great number were also affected. Reference to my monthly report for March shows 600 people down with the disease. This condition of things with its resultant complications of pulmonary troubles accounts for the increased death rate.

From personal knowledge and reliable information, I have obtained as to the causes of death as follows: 20 diphtheria, 12 consumption, 11 dysentery, 18 pneumonia, 12 inflammation of brain, 2 inflammation of stomach, 1 accidental, 5 drowned, 1 convulsions, 2 infant mortality, 1 and remittent fever, 1.

My services were more in demand the year just past than in the previous year, showing increased conditions in the "feverish" district, as the sanitary physician is called here.

I outlined instructions in hygiene, anatomy, etc., both in the school and at the Methodist church on opportunity afforded. The health of the school children has been phenomenal throughout the year. A number of the children had the "dysentery" during the epidemic. The disease was much more tractable in the school than in the reservation.

This leads me to mention in the matter of a hospital in the office of the Indian Department. What is needed is a building that would answer the purpose of a home for the old and indigent Indians, with hospital privileges confined. There is a lady (Mrs. Dr. Miller) of Massachusetts at present laboring in missionary among this people who would aid us in the enterprise if inaugurated. Agent Lynch is also interested in the enterprise.

The girls' dormitory built during the year is a commodious substantial building. The drainage and sanitation of the several buildings of the fort is good. The drainage of the last year were a long time coming. I find these superior in quality to the methods of the previous year.

Very respectfully,

ALBERT WILSON, M. D.

The COMMISSIONER OF INDIAN AFFAIRS.

## REPORTS OF AGENTS IN WISCONSIN.

## REPORT OF GREEN BAY AGENCY.

GREEN BAY AGENCY,  
Keweenaw, Wis., August 28, 1897.

Sir: I have the honor to present this my second annual report, showing condition of affairs at this agency.

The agency office is at Keshenn, on the east bank of the Wolf River, within the Menomonee Reservation, 8 miles from Shawano, the nearest railway station. The Menomonee Reservation consists of ten townships of land, but one section in each township has been claimed as "school lands," and the title held in dispute for a number of years, a source of continual trouble and annoyance, as I endeavored to show in my last annual report.

**Stockbridge.**—By treaty 12th of May, 1854, twelve townships of land were conveyed to the Menomonee by the United States Government. By treaty of 11th February, 1855, two of these twelve townships were purchased from the Menomonee by the Government to form a reservation for the Stockbridge and Munsee Indians, and a few years later (1865) the larger portion of said two townships was authorized to be sold for the benefit of Stockbridge Indians who might decide to become citizens under provisions of that act. Eighteen sections have been retained as a reservation for the remnant of the tribe, numbering now 130 upon the rolls, with perhaps as many more on the land designated "intruders." Under act of 1871 much of this reservation was allotted in severalty in 1871, but the allottees have not yet been placed in possession of their allotments.

One school is maintained by the Stockbridge Indians at an expense of \$500 per year, taken from their annuity money. Their schoolhouse is in very bad condition, and a new one ought to be erected immediately. The Stockbridge speak the English language in all intercourse so fully that many can not understand their native tongue. They support themselves by cultivating their small farms and in labor for outside parties, their timber interests having been exhausted.

The Menomonee have a valuable tribal property in a fair quality of farming lands and a belt of good timber extending across the reservation, which is expected to furnish business in lumbering for many years to come. The logging of last winter was managed under the act of June 12, 1890, which provides that 20,000,000 feet may be logged and sold each year. During last winter, from causes unnecessary here to explain, a surplus was unintentionally cut; all was sold, realizing the sum of \$232,262.76. Labor and other expenses incurred in banking said timber amounted to the sum of \$77,174.00, leaving a net sum of \$155,088.76. By the terms of the law,

one-fifth of net proceeds is to go into the Treasury to be used for the benefit of the Menomonee Indians at any time in such manner as shall receive the approval of the Secretary of the Interior, the four-fifths to form a fund on which the Government is to pay 5 per cent. annually.

A good sawmill and a roller-process flouring mill, for which power is furnished by the Wolf River, are found very useful for the Menomonees.

A new hospital building for the Menomonees has also been undertaken, and will be completed before the beginning of winter. Sundry other improvements in the enlargement and repair of buildings, construction of bridges, etc., are in progress at the present time.

The Bureau of Catholic Indian Missions has also erected a new building, newly complete, for use as a contract school, larger than that destroyed by fire last January.

The Oneida Reservation, situated between the counties of Brown and Outagamie, about 45 or 50 miles in a southeasterly direction from this office, contains a little less than three townships, 45,540 acres, allotted in severalty by Special Agent Lamb, which allotment was completed a little more than a year ago. The Oneidas have a fair quality of farming land, with some well-cultivated farms and a few good buildings; but there is a general negligence in the rate of fences and also in supplying manures and fertilizers to the land, without which crops must become poorer and fall.

There are six day schools maintained upon this reservation at Government expense; two teachers are white; the other four are Oneida graduates of Indian schools elsewhere.

The Episcopal Mission church is a large and substantial stone structure, with good parsonage buildings of wood adjacent thereto.

The Methodist Episcopal Mission has now partly completed a new church edifice of fine proportions and larger extent than the old one. Each of these missions has an allotment of land from the Government.

Only five new dwelling houses are reported as having been erected by Oneidas during the past year, and only a small acreage of new land has been broken, 50 or 75 acres. They support themselves by farming, by picking up and selling dead wood for fuel and for making charcoal. Many of them leave the reservation a part of the year to earn wages by the month or with their teams.

The population, as returned for 30th June, is:

Males.....	540
Females.....	808
Total.....	<u>1,348</u>
Children of school age:	
Males.....	249
Females.....	230
Total.....	<u>479</u>

Only about 10 per cent of those over 20 years old are able to read, while 80 per cent of those under 20 are reported to have learned sufficient English to accomplish that result.

Farming.—Upon the Menomonee Reservation quite a number of fields once cultivated have been abandoned, the occupants going elsewhere in the hope of doing better. As reported, 2,610 acres are under cultivation this season, 130 of which is new land. Within the Stockbridge Reservation 500 acres are reported as under cultivation and 4,000 acres are reported for the Oneida Reservation. Upon each of these reservations about the same classes of crops are grown, viz, oats, wheat, corn, potatoes, beans, and other vegetables, as shown in accompanying papers.

Of the leading products grown the estimated harvest will be:

	Oneida.	Stockbridge.	Menomonee.
OATS.....bushels.....	32,000	2,200	12,000
CORN.....".....	5,000	1,100	8,000
POTATOES.....".....	6,000	400	12,400
WHEAT.....".....	4,000	100	1,200
BEANS.....".....	1,200	100	4,500
HAY.....".....	500	25	200
RYE.....bushels.....			200

The Oneida Reservation suffered more from dry weather than did the Menomonee, but all have suffered.

Of stock, the three tribes are in possession of the numbers stated below:

	Menomonee zevs.	Oncidas.	Stock- bridges.
Horses	561	409	10
Mules	4	.....	2
Cattle	589	739	63
Swine	316	539	45
Powls	3,752	5,000	650
Sheep	.....	40	.....

**Schools.**—A Government boarding school, located about half a mile east of this office, provides for about 100 pupils. A new building 40 by 72 feet, with basement and two stories above, is in process of erection. When completed, about 50 pupils more can be received.

The contract school, located one-fourth mile east of this office, heretofore under control of the Catholic Bureau of Indian Missions, usually provides for 140 pupils. A new building is nearing completion in place of a smaller one burned last January, by which the management of said school can make much more comfortable provision for its pupils.

One day school upon the Stockbridge Reservation and six day schools upon the Oneida Reservation are accomplishing good results in their respective fields, but all labor under the heavy disadvantage of irregular attendance of pupils.

The number of children of school age upon each of these reservations is reported as follows: Menomonee, 305; Stockbridge, 37; Oneida, 479. The exact number of children from these reservations who are pupils in the different training or contract schools has not been reported to this office, but these tribes have a goodly representation in several of the large training schools abroad.

**Indian court.**—For the court of Indian offences the same judges have been continued, namely, Cluckey, Ne-o-pet, and Ne-ah-fah-wah-puny. This court renders good service in settling many vexatious questions arising among members of the tribe and in suppressing the use of liquor on the reservation. During the fiscal year the sum of \$179 was collected from fines adjudged by this court—some fines uncollected—and from this money there has been paid for additional police service during fog payments the sum of \$112.50. During the year 42 cases have been tried by this court.

In the United States district court there have been prosecuted for violation of laws relating to the sale of liquor upon the several reservations in this agency 39 cases, 19 of which resulted in convictions and 1 case is still pending. County authorities are very unwilling to take action for punishment of crimes where Indians are sufferers; therefore many go unpunished.

**Indian police.**—A captain with 9 privates constitutes the present police force at this agency; 6 of these are in service on the Oneida Reservation and 3 of them upon the Menomonee Reservation. One more is to be added when needed. The policemen have been found faithful and efficient in all emergencies so far, and the liquor nuisance could not be controlled without the rigor of an energetic police.

The mass of the Indians in this jurisdiction are well disposed and desire to advance in material interests pertaining to civilization, but some indolence pervades; the Indian character, and hereditary tendencies are not easily overcome. Many of them will leave any kind of work, without regard to its importance, when the whim strikes them to take a vacation. Persistent application in some line of work is one of the needed requirements.

The most serious foe to industry and obstacle to improvement is the use of liquor, which but few Indians appear able to resist when the commodity is within reach, and the frequency of the depraved whites who supply the debasing liquids is correspondingly great.

Very respectfully yours,

CHAR. S. KELSEY,  
United States Indian Agent.

The Commissioner of Indian Affairs,

REPORT OF LA POINTE AGENCY.

LA POINTE AGENCY,  
Ashland, Wis., September 19, 1884.

Sir: I have the honor to submit herewith my third annual report. In the La Pointe Agency are seven reservations, four in Wisconsin and three in Minnesota. Those in Wisconsin are the Lac Court d'Orcelles, Bad River, Lac du

## Indian population of the United States enumerated at Federal agencies as of June 30, 1929—Continued

State and agency	Total	Male	Female
Oklahoma—Continued.			
Osage Agency <sup>11</sup>	3,253	1,675	1,578
Pawnee Agency	2,786	1,402	1,384
Quapaw Agency <sup>12</sup>	1,950	972	978
Shawnee Agency <sup>13</sup>	3,944	1,985	1,959
Oregon	4,521	2,206	2,315
Klamath Agency	1,276	604	672
Salem School			
Fourth Section Allottees <sup>14</sup>	350	184	166
Grande Ronde Subagency	334	175	159
Siletz Subagency	449	220	229
Umatilla Agency	1,108	523	585
Warm Springs Agency	1,004	491	513
South Dakota	23,618	12,018	11,600
Cheyenne River Agency	3,083	1,569	1,514
Crow Creek Agency	1,335	709	706
Flandreau School, Sioux <sup>15</sup>	320	172	148
Pine Ridge Agency	7,911	4,023	3,888
Rosebud Agency	6,039	3,102	2,937
Sisseton Agency	2,582	1,361	1,221
Yankton Agency <sup>16</sup>	2,046	1,022	1,020
Texas <sup>17</sup>	260	(18)	(17)
Utah	1,553	805	748
Paiute Agency	391	188	203
Uintah and Ouray Agency	1,162	617	545
Washington	12,891	6,356	6,535
Colville Agency	3,685	1,818	1,867
Kallapel Reservation, Coeur d'Alene Agency	85	45	40
Neah Bay Agency	654	335	319
Taholan Agency <sup>18</sup>	2,077	1,032	1,045
Tulallip Agency	5,425	1,743	3,682
Yakima Agency	2,955	1,303	1,652

<sup>11</sup> There are 3,115 restricted members. The census of the unrestricted members is inaccurate. Approximately 35 per cent of the tribe resides outside of Osage County in 21 States. The large increase in population for 1929 as compared with 1928 is the result of a special survey of absentees. The 1929 figure includes births previously unreported.

<sup>12</sup> Approximately 65 per cent reside off the reservations in 24 States. No census of the Miamis and Peorias under Quapaw jurisdiction is available. They are scattered over the United States and maintain no tribal relations. Restrictions on their land and property were removed in 1915. At that time they numbered 393. This figure is not included in that for the jurisdiction.

<sup>13</sup> Approximately 45 per cent live off the reservations. The increase of 1,664 in the census is due to the fact that the 1928 figure included only 725 Potawatomi; the number living on or near the reservation. The whereabouts of the others was unknown. The 1929 Potawatomi census shows 2,301, including those off the reservation in all sections of the United States.

<sup>14</sup> The Fourth Section Allottees were allotted under the fourth section of the general allotment act of Feb. 8, 1887, on the public domain in 5 counties in southern Oregon. Their census is inaccurate.

<sup>15</sup> There is no reservation. Approximately 55 per cent reside away from the old agency and are scattered throughout the United States.

<sup>16</sup> Approximately 30 per cent live off the reservations and are scattered throughout the United States. This percentage includes the Ponca and Santee Subagencies in Nebraska.

<sup>17</sup> Approximately 250 Alabama and Coushatta Indians live on a small reservation in Polk County, Tex., given them by the State, and to which has been added a small tract purchased by the United States in 1929. They are not Federal wards and have no treaty with the Government. However, there is an annual appropriation for educational purposes.

<sup>18</sup> Approximately 60 per cent reside off the reservations; the majority in Washington. A decrease of 688 in the 1929 census as compared with that for 1928 is due to the fact that in 1928 the unrestricted Cowitz and Chinook Indians were estimated at 1,376; in 1929, at 688. They are widely scattered throughout southwestern Washington and northern Oregon and have little contact with the Indian Service. No census of them is available.

REPORT OF COMMISSIONER OF INDIAN AFFAIRS

27

Indian population of the United States enumerated at Federal agencies as of June 30, 1929—Continued

State and agency	Total	Male	Female
Wisconsin.....	11,530	5,761	5,769
Hayward School, Lac Courte Oreille Reservation <sup>35</sup> .....	1,417	696	721
Keshena Agency <sup>36</sup> .....	3,550	2,781	2,769
Lac du Flambeau Agency <sup>37</sup> .....	3,192	1,607	1,585
Tomah School, Grand Rapids Subagency <sup>38</sup> .....	1,371	677	694
Wyoming: Shoshone Agency.....	1,979	1,017	962

<sup>35</sup> Approximately 35 per cent live off the reservation in Wisconsin and Minnesota.  
<sup>36</sup> Approximately 55 per cent live off the reservations and are scattered throughout the United States. The last census of the Stockbridges and Munsees in 1910 showed a population of 599. They have received fee patents to their land. The Onondas have severed their relationships with the agency with the exception of annuity payments. Their population is 3,012. The Menominees reside mostly on the reservation and number 1,959.  
<sup>37</sup> The last census of the Rice Lake Chippewas under Lac du Flambeau was made in 1910 and showed a population of 170. They have little contact with the agency.  
<sup>38</sup> The majority are living on restricted homesteads in Wisconsin and on land purchased with trust funds in Wisconsin, Minnesota, and Iowa. Approximately 40 per cent reside on private property in Wisconsin.

INDIAN POPULATION OF STATES IN WHICH THERE ARE NO FEDERAL AGENCIES AS OF 1920<sup>1</sup>

State	Total	Male	Female	State	Total	Male	Female
Total.....	7,923	4,205	3,718	Massachusetts.....	655	262	293
Alabama.....	495	211	194	Missouri.....	171	87	84
Arkansas.....	166	81	45	New Hampshire.....	28	13	15
Connecticut.....	159	79	80	New Jersey.....	100	56	44
Delaware.....	2	2	0	Ohio.....	131	64	67
District of Columbia.....	37	20	17	Pennsylvania.....	337	190	147
Georgia.....	125	68	57	Rhode Island.....	110	59	51
Illinois.....	104	108	86	South Carolina.....	304	145	159
Indiana.....	125	73	52	Tennessee.....	66	33	33
Kentucky.....	57	27	30	Texas.....	2,109	1,181	928
Louisiana.....	1,066	550	516	Vermont.....	24	15	9
Maine.....	839	430	419	Virginia.....	524	423	401
Maryland.....	32	18	14	West Virginia.....	7	4	3

<sup>1</sup> Fourteenth Census of the United States taken in the year, 1920.

<http://www.archive.org/stream/usindianaffairs29usdorich#page/n33/mode/2up>

Page 27 of a 1929 of the Annual Report of the Commissioner of Indian Affairs:

Zoom: 25% Annual report of the Commissioner of Indian Aff...

Page:

1-24-1933

From Mrs. Seymour



SOME OBSERVATIONS ON THE RESULTS OF THE ALLOTMENT SYSTEM AMONG THE ONEIDAS OF WISCONSIN.

In choosing the Oneidas as the first to be allotted, the allotment system has been given perhaps the fairest trial that can be instanced, for several reasons.

In the first place, the Oneidas were as nearly ready for allotment as any people can be ready to step from tutelage into independence. They had not been pauperized by raffles or valuable annuities. They were accustomed to self-support. They were already in general a group of farmers and workers.

In the second place, the entire reservation was allotted, so that no surplus lands were left to create a ~~tribal fund with its consequent pull away from individual-~~ ization.

In the third place, the size of the allotments and the character of the surroundings was such that no leasing problem arose.

We thus have a real trial of the allotment system; it was applied to Indians who could justly be supposed to benefit by it; it was actually put into complete operation; it was not perverted by the evils of leasing.

To study the entire fifteen hundred members of the tribe would have meant more than one year of labor, so it was thought best to select a certain number who might prove typical of the whole. Forty names were taken from the

LEAD BY L. D. H.

allotment roll and every effort made to ascertain the facts concerning the allottees themselves and the land which was assigned to them. As this report is merely preliminary, there will be no attempt at drawing conclusions. The facts given will be interpreted sufficiently to make them intelligible. Conclusions must await the study of other tribes under other conditions, and comparisons of the different groups.

#### I. Method of Allotment

The allotment of the Oneidas took place under the terms of the original allotment act of February 8, 1887. According to its provisions married women were not allotted, but the head of a family received a double portion. Single portions were given to each single person over eighteen and each orphan under eighteen. Half portions were allotted to minor children. The size contemplated in the act for these portions was quarter, one-eight, and one-sixteenth sections; but the Oneida reserve was not sufficiently large for this. Each head of a family received ninety acres; single allotments were forty-five acres; while the share of a minor was as a rule twenty-six acres. This disposed of the entire land holdings of the tribe with the exception of some acres reserved for school purposes.

Not many tribes were allotted under the original act. Two or three years later it was modified so that a quarter

section was allotted to each individual, male or female, minor or adult. This change was an extremely serious modification of the original idea, which thought of the Indians as family groups who would draw their living from a family farmstead.

II. Time of Allotment

The Oneida Indians were listed for allotment and the roll closed May 21, 1889. Allotting followed during the next three years, and the trust patents bear the date of June 13, 1892. The Twenty-five year trust period was thus due to expire June 13, 1917.

III. Age at Allotment

Of the forty allottees studied, the ages at allotment were as follows:

	Male	Female	Total
Under two years	4	8	12
Ten to twenty-one years	10	3	13
Twenty-one to thirty	5	1	6
Thirty-one to forty	2		2
Forty-one to fifty	4		4
Over fifty	3		3
	<u>28</u>	<u>12</u>	<u>40</u>

It will be seen that the method of allotment resulted in the giving of land to but one female over twenty-one years, the others being married. Among the males half were under twenty-one years and half were above the age.

In studying the Oneida groups at this time there seemed something like a shortage on the age group around thirty years. This may partly be accounted for by the fact that the Oneidas sent a large contingent of soldiers to the

civil war, reported as a hundred and thirty-five of their young men. Many of these never returned to the reservation. Not only were there many losses by death, but there were others who simply took up life elsewhere after the war was over. In this way there were fewer new families and fewer births during the sixties, with a resultant loss in the age group twenty-five to thirty years after.

Throughout the period since their removal from New York to Wisconsin, however, the Oneidas had been steadily increasing in numbers. That increase has gone on steadily to the present time. There is not and never has been a dying or vanishing tribe, so far as tribal numbers are concerned. Slightly over fifteen hundred were enrolled for allotment; the 1932 roll lists 3123.

#### IV. Mortality of Allottees.

Of the forty allottees considered, there are now fourteen living, forty-three years after enrollment. The trust period was extended by Presidential proclamation for one year, to June, 1918; and at that date patents in fee were issued to all, with thirty-five exceptions. Of our forty members of the tribe, just half died before this date. Between June, 1918 and the present time six more have died.

The death of half the allottees before the expiration of the trust period raises the question of the purpose of the trust period. It is assumed to be a time of instruction

and development in the requirements of citizenship, in industry and self-support. For twenty of the forty, however, the period of preparation marked all the life that remained, and prepared for precisely nothing.

Nor was it only the elder members of the tribe who died thus in advance of 1918. Of the twenty who did not survive the period of education there were

Under twenty-one years of age	11
From twenty-one to forty	4
Over forty	5

In these forty cases the total number of allottees under twenty-one years of age was twenty-five. Of these twenty-five eleven failed to live through the trust period.

V. Use of the Land.

In considering the use made of these forty allotments the greatest possible liberality has been shown. If an allottee lived on and made use of even a portion of his allotment he was considered to have "farmed" it.

It must be remembered that the Onsidas were already making their living from their land, before allotment. The number who were already using their land would be, therefore, larger in proportion to the total than in most other tribes

Allotments already being farmed in 1889	10
Allotments farmed later by allottee	7
Allotments of which no use was made	<u>23</u>
	40

This would seem to indicate that the purpose of training was more than fifty per cent a failure. It is

necessary, however, to analyze the reasons why these twenty-three allotments were useful only as a piece of property to be sold. The reasons for the failure to use them were:

Death of allottee	6
Occupation of allottee elsewhere	7
Incapacity of allottee	1
Female allottees who married other allottees	<u>9</u>
	23

It is thus seen that in seven out of the twenty-three cases the purpose of civilization was already, for one reason or another, carried out. The allottees were self-sustaining away from the reservation. No beneficial purpose would be served by calling them back from a useful life in an occupation which they had mastered, to take up the cultivation of the soil.

Seven other cases of death and incapacity defeated any purpose allotment may have had.

In the case of the nine girls and young women who received allotments which were never farmed by them, it is odd to speculate what idea could lie behind giving each of them twenty-six acres, in any case. It was surely not expected that they would grow up to farm the lands on their own account. Their obvious destiny was fulfilled; they married other allottees, and either lived upon their husbands' lands or went with their spouses to homes elsewhere.

Of all the twenty-three unused allotments, therefore, the reason for failure to use is one which would be reasonable in any case. None of the reasons bear any relation to

- 7 -

Indian life and character, but are such reasons as apply to all races.

#### VI. Disposition of Land.

Of these forty allotments, there remains in the hands of an original allottee a portion of one allotment. Half of another is held for an heir who is still a minor and unable to sell; his sister, who has attained her majority, has disposed of her half. The rest of the land has all been sold.

Prior to 1910, when an Indian allottee died, his heirs might be determined by the county. After the act of June 25, 1910, they were determined by the Secretary of the Interior. Some of the sales of land of deceased allottees were made under the first arrangement, some later. In the early years a fee patent for the land was frequently issued "to the heirs of John Doe." This was evidently accepted as negotiable and carried a title acceptable to the buyer. At least no record appears of any dispute arising after such a sale.

After the Burke Act of May, 1906, it was permitted to issue patents in fee for land to Indians who were adjudged competent to manage their own affairs. This was done at their request. Many of the Oneidas requested fee patents and received them under this act. The details of the sale are as follows:

Sold for the benefit of heirs	17
Sold under provisions of Burke Act	17
Sold after expiration of trust period in 1918	5
Unsold (widow living on it)	<u>1</u> (part)
	40

VIII. Living Allottees.

Of the fourteen allottees still living, the youngest is forty-four years of age and the oldest seventy-seven. Not one of these is living on his own allotment, though some have done so in the past. Their present location follows:

Living on own land	0
Living on husband's land	1
Living on reservation (town of Oneida)	2
Living near (Green Bay, Wis.)	1
Employed in Indian Service	5
Living away from reservation (either self-supporting or living with children)	4
In a State Institution	<u>1</u>
	14

This brief summary seems to indicate that the Oneidas have passed through the allotment cycle and have for the most part taken their places in the world along with other people. There are some stories of failure and some of success; the later, however, predominate. In a more complete study I design to take up each case and ascertain as far as possible what benefit was derived from the use of the land, or possibly from its sale. It may prove impossible to learn whether allotment, or schools, or white contact, or development previous to all this, was the means of bringing about

the present status of the Oneidas. At least I shall try to learn as much as possible about the contributing factors, with the hope that some useful information may be brought out.

Mrs Seymour

NEW OFFICE USE ONLY  
- May 1 1934 -

Mr. Callier

Dept of Interior,  
Indian Affairs,  
Washington, D.C.

Dear Sir - Since the return of the representatives of the Onondaga tribe of Indians of Tennessee there seems to be derived from your statement that the Onondaga Indians are to receive back the lands owned by them on the present site of the old Onondaga reservation, Mr. Wm. Skene & others have repeatedly told these Indians not to pay taxes & that the government is going to return all their old lands - I do not believe this to be the truth, and I think it is an injustice to the Onondaga Indians for these so called representatives to make such a statement. I repeat, since these poor Indians hope on something that is entirely impossible & will never come to pass, Mr. Skene goes amongst these Indians holding parties & collecting money for his expenses that seems entirely -

There has never been any good conclusion given these Indians, no doubt the conclusion has been reached that they are not under direct control of the government are therefore helplessly left to drift just themselves - I cannot see any help for them under the present bill in Congress as they are one of the big nations of New York which said bill includes, unless an amendment has been attached - I hope Mr. Callier that you will see my point and that you will see that these Indians must not be treated further - I will fight for them any time that it must be done. I am a truthful man and I think if they knew the facts they would cooperate with the government any good cause that might be to the mutual benefit to all -

Yours truly  
Walker B. Watkins  
Route 2 Box 62

can understand just what the status of the present site of the Onida Reservation is, knowing that you have the interest of all Indians at heart, could you convey to these Indians just exactly if they can recover their lands here at Onida or not -

There is a small paper here that reaches most of the Onidas called the Old Cure Journal Democrat, who I know would be very glad to publish any facts regarding the Onidas - if you would be so kind to furnish me with these facts, or the above paper, it would be a blessing to this forlorn community & a great help to the Onida Indians and stop this idle talk - I do not believe that the true condition of the Onidas have ever been conveyed to man. . . I

good to the Indians whatever, when in these times of depression their needs & desires should be used for other purposes - I do not believe that Mr Skandore understands the communications he receives from Washington or if he does, he misquotes them on interpretation as he fully believes or leads these Indians to believe that the present reservation will be returned to them and at the present time, <sup>the</sup> believes it to be a fact -

I am a white man married to an Indian girl and fully believe that the Onidas should have been ably treated, not by the Govt but through partly their own folly and the greed of white land sharks, I have been attempting to fight and help them the best I can, but I fully believe that they should not be told things that falsely raise their hopes - I think they should be told in a straight forward manner the real truth in plain words so that all

5413

UNITED STATES  
DEPARTMENT OF THE INTERIOR

INTERIOR DEPT.  
RECEIVED  
FEB 26 1934  
OFFICE OF  
THE SECRETARY.

OFFICE OF THE COMMISSIONER OF INDIAN AFFAIRS

Commr J C

WASHINGTON, D. C.

February 24, 1934

MEMORANDUM FOR SECRETARY IOKES

The attached became mislaid and has just reached me. The answer to it is that the Oneidas were allotted, and through fee patenting and other allotment procedures they lost all of their land. And they are living practically unprotected and not in any real way under Federal jurisdiction. They are one of the groups that ought to be brought into new land as an organized community.

*John Collier*  
Commissioner

Attached:  
Letter of January 31, 1934  
from Walker B. Watkins,  
West De Pere, Wis.

10580  
JAN 3 - 1934

↑  
2/3

**SPECIAL**  
From the Secretary

To: Commissioner Collier

What is the answer to this.



# Oneida Nation of Wisconsin Division of Land Management

P.O. Box 365 • Oneida, Wisconsin 54155

• Office Locations •

**Administration**  
470 Airport Drive  
Oneida, WI 54155  
(920) 869-1690  
(920) 869-1689 Fax  
(800) 684-1697 Toll Free

**Loan Department**  
2555 S. Packerland Drive  
Green Bay, WI 54313  
(920) 490-2090  
(920) 497-5854 Fax  
(800) 258-2214 Toll Free

**Register of Deeds**  
703 Packerland Drive  
Green Bay, WI 54303  
(920) 490-2440  
(920) 490-2444 Fax  
(800) 684-1697 Toll Free

August 13, 2001

Mr. Robert Jaeger, Superintendent  
Great Lakes Agency  
Bureau of Indian Affairs  
PO Box 273  
Ashland, Wisconsin 54806-0273

Certified # 7000 1670 0006 04191806

RE: Request for Title Opinion on Fox Valley Western (FVW) Railroad Right-of-way

Dear Superintendent Jaeger:

The Land Management staff attorney, as well as other tribal departments, have been working on the abandonment of the railroad right-of-way through the Oneida Reservation. On March 1, 2001 the Surface Transportation Board issued an order (Attachment 1) which requires that FVW work with the Oneida Cultural Heritage Department to clear up concerns expressed about artifacts and cultural sites along the tracks. We are also in the middle of a 180 day period when FVW may negotiate with a local government or group for trail use/rail banking under the federal Rails-To-Trails Act. The Wisconsin DNR has requested to negotiate, but recent communication with FVW indicates they may ask for an extension on this 180 day period. The Oneida Nation indicated to the Surface Transportation Board that they did not want to negotiate for an interim trails use agreement, but supported the abandonment, and wanted the right-of-way to return to the owners.

The question of who owns the right-of-way has been a frequent question throughout this whole process. This question of ownership was presented to the Great Lakes Agency Superintendent in 1972, and was probably considered premature at that time (Attachment 2). Since the railroad abandonment issue is well upon us now, I am requesting that your office provide us with a Field Solicitor's opinion as to whether the right-of-way continues to be held by the United States, with Indian Title held by the Oneida Tribe. The following information has led our office to believe that a patent has never been issued for the railroad right-of-way.

1. In 1870 the Oneida chiefs signed an agreement to allow the railroad to run through the Oneida Reservation. In 1871 Congress authorized the same thing "in accordance with and subject to the conditions of an agreement made by the chiefs and headmen of the Oneida Tribe of Indians." Attorney Lokensgard, a member of the Oneida Law Office at the time, wrote an opinion on these documents dated March 17, 1998, and determined that they were probably easements that were granted to the railroad and did not include the fee title to the land. Attachment 3. At the time these right-of-way easements were approved, the land would have been held in "fee" by the

**"Caretakers of the Land"**

United States, with Indian title of possession and use held by the Oneida tribal government.

2. The impending allotment of the Oneida Reservation was the impetus for a survey of the entire reservation. The legal descriptions for each allotment were not changed until after fee patents were issued, and allottees could transfer all or part of their property. The fee patents from the U.S. government did not have the metes and bounds legal description on it, but used a general notation such as "Claim 177" as shown on the copy made of the patent, attachment 4. Our title searchers have hand copied many of the patents which they have found at the county Register of Deeds in the form being sent to you. In order to get a metes and bounds description of Claim 177, for example, we have to go to the survey notes, which for Claim 177 is attachment 5. In the metes and bounds description it says "This claim contained 52 acres of land exclusive of the Right-of-Way of the G.B., W. & St P. Ry."

3. The words "exclusive of" seems to separate the right-of-way from the allotment, so one conclusion is that it was not passed with the patent. Land Management staff attorney checked with the Brown County Surveyor who works extensively with the Oneida Reservation allotment field notes, about his interpretation of this wording. He took a further step and measured the entire boundary of allotments he was working on where the railroad right-of-way went through them. His response was that it appeared the railroad right-of-way was deducted from the final acreage of the allotment. The Brown County Surveyor further commented that the terminology in the description would indicate the right-of-way was excluded.. The Land Management Attorney has checked the survey notes of all the Indian Claims of the Oneida Reservation and found that each Indian Claim contains this exclusionary language of the railroad right-of-way, whenever it runs through the allotment.

Here is a summary of tribal concerns, as they relate to the title. If the railroad right-of-way land through the Oneida Reservation was never patented to anyone, does the title remain with the United States and the Oneida Tribe? If the title is still with the United States and the Oneida Tribe, how is later federal law regarding railroad right-of-ways interpreted to apply to this situation? In particular, does the Rails-to-Trails Act apply at all.

We look forward to hearing from you on this matter.

Sincerely,



Christine M. Doxtator, Land Management Director

enclosures

cc: Rory Dilweg, Chief Counsel  
Bill Gollnick, General Manager  
Gerald Danforth, Tribal Chairman  
Loretta R. Webster, Land Management Attorney

**Oneida Tribe of Indians of Wisconsin**  
**BUSINESS COMMITTEE**



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

P.O. Box 365 • Oneida, WI 54155  
Telephone: 920-869-4364 • Fax: 920-869-4040

July 19, 2005

Terrence Virden, Regional Director  
BIA - Midwest Regional Office  
One Federal Drive, Room 550  
Minneapolis, MN 55111-4007

Return Receipt Requested -  
7003 1010 0005 4916 6380

Dear Mr. Terrence Virden,

The Oneida Tribe of Indians of Wisconsin (hereinafter "Oneida Tribe") submits this letter to inform the Bureau of Indian Affairs (hereinafter "BIA") of the existence of treaty-reserved trust land on the Oneida Reservation. This treaty-reserved trust land was subject to a railroad right-of-way. It is one hundred (100) feet wide and approximately twelve (12) miles long, and runs from the western boundary of the Oneida Reservation to the northeastern boundary (hereinafter "right-of-way land").

Introduction

The Oneida Reservation was established pursuant to the 1838 Treaty with the Oneida (hereinafter "Treaty") which reserved approximately 64,000 acres for the use and occupancy of the Oneida Tribe. In 1870, the Oneida Tribe and the Green Bay and Lake Pepin Railway Company (hereinafter "GB & LP") entered into an agreement granting GB & LP a right-of-way through the Oneida Reservation. In 1871, Congress approved the agreement between the Oneida Tribe and GB & LP. The right-of-way land was not allotted pursuant to the General Allotment Act, and pursuant to the Treaty, title to the right-of-way land remains with the Oneida Tribe. This letter outlines the history of the right-

of-way and serves to inform the BIA that the westernmost eleven miles of the right-of-way land no longer is subject to the railroad right-of-way. The BIA may want to consider updating its records to reflect the extinguishment of this right-of-way.

The Tribe hired Professor James W. Oberly to research these historical events and the tax rolls for the lands adjacent to the right-of-way land. Professor Oberly is a historian from the University of Wisconsin-Eau Claire History Department. He has extensive experience concerning Oneida history and congressional land policy, and has published numerous articles dealing with these topics. Professor Oberly produced two reports for the Oneida Tribe. In July, 2002, Professor Oberly delivered his first report entitled "Report on the History of Green Bay & Lake Pepin Railway Company's Right of Way Across the Oneida Indian Reservation, 1866-1876" (hereinafter "Oberly Report I," attached hereto as Attachment I). In January, 2003, Professor Oberly delivered his second report entitled "The Green Bay & Western Railroad's Right-of-way Across the Oneida Indian Reservation; Part Two: the Allotment Era and After, 1887-2002" (hereinafter "Oberly Report II," attached hereto as Attachment II). Professor Oberly's research confirmed that GB & LP and its successors held an easement over the right-of-way land and did not obtain a fee simple interest in the right-of-way land.

The Tribe also hired First American Corporation, Evans Title Division, to research the chain of title for the lands adjacent to the right-of-way land. First American Corporation is a commercial title insurance company with offices located in Green Bay, Wisconsin. In February, 2005, First American Corporation produced title reports for all parcels adjacent to the right-of-way land which are not owned by the Oneida Tribe (hereinafter "First American Title Reports," attached hereto as Attachment III). Included in the title reports are the original patent, the first recorded deed that contains a legal description, and a copy of the last recorded deed for each parcel. First American Corporation's findings demonstrate that the right-of-way land does not belong to the adjacent landowners and remains tribal trust land.

In 2003, the Oneida Tribe and Fox Valley & Western Ltd. (hereinafter "FVW"), a successor to GB

& LP, executed an Agreement and Mutual Release whereby FVW acknowledged that its interest in the right-of-way land was in the nature of an easement. FVW also compensated the Oneida Tribe for its past use of the right-of-way land.

### History

The Oneida Reservation was established pursuant to the Treaty which stated, in part, "... there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual; and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay." (Treaty With the Oneida, 7 Stat. 566, February 3, 1838, attached hereto as Attachment IV). In the years immediately following ratification of the Treaty, approximately 64,000 acres located north and west of Green Bay, Wisconsin, were set aside for the use and occupancy of the Oneida Tribe.

In 1866, GB & LP began efforts to construct a railway from Green Bay through the Oneida Reservation and westward. (Oberly Report I, p.11, Attachment I). In 1869, GB & LP sought permission to construct the railway through the Oneida Reservation. Also in 1869, Indian Agent J.A. Manley wrote to Commissioner of Indian Affairs Ely S. Parker "in behalf" of GB & LP to offer support for the railroad construction in securing a right-of-way. Agent Manley's letter also informed Commissioner Parker that GB & LP already started construction of the railroad and entered the Oneida Reservation to survey the land. (Oberly Report I, pp. 14-15, Attachment I). In 1870, GB & LP lobbied Congress to pass legislation granting the company a right-of-way. Later that year, the Oneida Chiefs and GB & LP entered into an agreement which granted use of treaty-reserved trust lands to the railway company for the construction of a railroad across the Oneida Reservation (hereinafter "Right-of-Way Agreement," attached hereto as Attachment V). The following is the language of the Right-of-Way Agreement, in its entirety:

Whereas the Green Bay & Lake Pepin Railway Company desire to run their proposed Railway across the Oneida Reservation in the State of Wisconsin:

The undersigned the Chiefs of the Oneida Nation of Indians do hereby consent subject to the approval of the proper Indian Agent & of the Indian Commissioner or

other proper authorities of the United States, that the said Company may, by such route as its Directors may determine, and subject to the laws of the State of Wisconsin, the same as if the lands were owned by white persons, construct and operate their said Railway across said Reservation appropriating further uses thereof a strip of land one hundred feet wide and extending the whole length of such part of said Railway as will be within the limits of said Reservation.

Provided however, that damages to the property of said Indians, consequent when the introduction of said railway shall be appraised determined and recovered under and by virtue of the laws of the State of Wisconsin, as if the land belonged to White persons.

And provided also, that this consent shall not be construed to include lands for Depots or for other purposes than the road bed and tracks and usual rights of way of such railway.

The phrase "as if the lands were owned by white persons" demonstrates the Oneida Tribe retained ownership of the right-of-way land and did not transfer ownership of the right-of-way land to the railway company. Likewise, the grant of "further uses" of the right-of-way land demonstrates that the Oneida Tribe did not grant a fee simple interest to the railway company, only the right to use the land for railway purposes. After the Right-of-Way Agreement was signed, construction of the railroad proceeded rapidly. (Oberly Report I, p. 24, Attachment I).

In 1871, the United States Congress approved the use of the reservation land for a railroad right-of-way "in accordance with and subject to the conditions of" the Right-of-Way Agreement (hereinafter "1871 Congressional Act," March 3, 1871, attached hereto as Attachment VI). The 1871 Congressional Act provided, in its entirety:

March 3, 1871  
Right of way across the Oneida reservation granted to the Green Bay and Lake Pepin Railroad Company.

CHAP. CXLII. - An Act granting the Right of Way to the Green Bay and Lake Pepin Railway Company for its Road across the Oneida Reservation, in the State of Wisconsin.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Green Bay and Lake Pepin Railway Company be, and is hereby authorized to build and maintain its railway across the Oneida*

Reservation, in the State of Wisconsin and to take sufficient land, not more than a strip one hundred feet in width, for the purposes of said railway, in accordance with and subject to the conditions of an agreement made by the chiefs and headmen of the Oneida Tribe of Indians, on the twenty-third day of May, eighteen hundred and seventy, approved by and on file with the Secretary of the Interior.

APPROVED, March 3, 1871.

By 1871, construction of the railroad through the Oneida Reservation was complete. (Oberly Report I, p. 25, Attachment I).

Congress passed the (Dawes) General Allotment Act (hereinafter "Allotment Act") in 1887. The Allotment Act provided "for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes." The Allotment Act further provided, "the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or re-surveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon."

The Oneida Reservation was allotted in the 1890s pursuant to the Allotment Act. The original land surveys conducted pursuant to the Allotment Act typically excluded the right-of-way land. (See Oberly Report II, pp. 14-24, Attachment II). Indian Agents Dana Lamb and Charles Kelsey were among the surveyors responsible for surveying the Oneida Reservation. Their original survey book shows the Agents excluded the right-of-way land from some of the allotments, and failed to mention the right-of-way land with respect to others. The federal government also hired an additional Indian Agent, N.S. Boardman, to survey the Oneida Reservation and instructed Mr. Boardman to work with Agents Lamb and Kesely. In all surveys Boardman completed, he excluded the right-of-way land from the surveyed parcels. (See Oberly Report II, p. 24, Attachment II). Based upon the historical record, Professor Oberly concluded, "It is my opinion that Agents Lamb & Kesely meant to exclude

the Green Bay & Minnesota's right-of-way from parcels they allotted." (Oberly Report II, p. 20, Attachment II). Considering the right-of-way land was not included in the allotments, and no separate allotments were made for the land, the right-of-way land remained tribal trust land.

FVW continued to actively use the railway into the 1990s. In 2000, FVW notified the Tribe it was petitioning the Federal Surface Transportation Board for authority to abandon the railroad right-of-way. In 2003, the Oneida Tribe entered into an Agreement and Mutual Release with FVW (hereinafter "Agreement and Mutual Release," attached hereto as Attachment VII). Pursuant to the Agreement and Mutual Release, FVW acknowledged the Oneida Tribe granted FVW's predecessor a right-of-way through the reservation for construction and maintenance of a railroad. (Agreement and Mutual Release, Second Whereas Clause, Attachment VII). FVW also acknowledged that the "United States holds title to such land in trust for the Oneida Tribe's beneficial use and occupancy pursuant to the 1838 Treaty with the Oneida." (Agreement and Mutual Release, Fifth Whereas Clause, Attachment VII). Through the Agreement and Mutual Release, FVW agreed to consummate abandonment of the estimated eleven (11) westernmost miles of the railroad while preserving the right-of-way for the estimated one (1) easternmost mile. (Agreement and Mutual Release, ¶ 1, Attachment VII). FVW paid the Oneida Tribe \$93,000 for the railway's past use of the right-of-way land. (Agreement and Mutual Release, ¶¶ 6,7, Attachment VII).

#### Title History

There are 97 parcels adjacent to the right-of-way land; of those, 29 are owned by the Oneida Tribe. Current legal descriptions for the adjacent parcels of land do not include the right-of-way land. All deeds referencing the right-of-way exclude the right-of-way land from the title. All those that do not reference the right-of-way provide simple legal descriptions referencing only the lot number, i.e. allotment parcel number, and one parcel merely identifies the quarter quarter section. (See First American Title Reports, Attachment III).

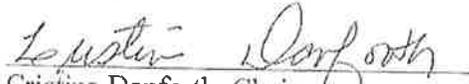
An additional source of the property's legal descriptions can be found on the tax rolls of the local municipalities. Professor Oberly researched historical tax assessments for the two municipalities

in which the right-of-way land is located, the Village of Hobart, located in Brown County, and the Town of Oneida, located in Outagamie County. (See Oberly Report II, pp. 28-37, Attachment II). (See also Municipal Boundaries Map, attached hereto as Attachment VIII; and Map of Former Right-of-Way, attached hereto as Attachment IX). According to the tax assessment rolls, the Village of Hobart did not and does not include the right-of-way land as taxable property of the adjacent land owners. Historically, the Town of Oneida did not explicitly exclude the right-of-way land from the tax roll legal descriptions. However, tax parcel maps prepared by Outagamie County for the tax year 2004 demonstrate that no parcels adjacent to the right-of-way land include the right-of-way land, even those parcels that have tax roll legal descriptions that do not explicitly exclude the right-of-way land. (Town of Oneida Tax Roll Legal Descriptions, attached hereto as Attachment X; Town of Oneida Tax Parcel Maps, attached hereto as Attachment XI). No current landowners in the Town of Oneida or the Village of Hobart are paying property taxes on the right-of-way land, and the Oneida Tribe does not pay property taxes on the right-of-way land.

#### Summary

The boundaries of the Oneida Reservation were created pursuant to the Treaty. In 1870, the Oneida Tribe entered into an agreement with a railway company for a right-of-way through the Oneida Reservation. In 1871, Congress ratified that agreement. In 1887 Congress passed the Allotment Act. Pursuant to the Allotment Act, the entire Oneida Reservation was allotted with the exception of the right-of-way land. In 2003, the railway company abandoned the railroad and entered into an agreement with the Tribe governing the terms of the abandonment. That agreement acknowledged the railway company's interest in the land was limited to a right-of-way and further acknowledged that title to the right-of-way land remained in trust for the Oneida Tribe pursuant to the Treaty. The original allotment surveys, the fee patents, and all the deeds in the chain of title for the adjacent land owners demonstrate that the right-of-way land was not allotted and remains treaty-reserved trust land. The BIA may want to consider updating its records to reflect the extinguishment of the right-of-way over this land.

Sincerely,

  
Cristina Danforth, Chairwoman  
Oneida Tribe of Indians of Wisconsin

Attachments:

- I. "Report on the History of Green Bay & Lake Pepin Railway Company's Right of Way Across the Oneida Indian Reservation, 1866-1876" by Professor James W. Oberly
- II. "The Green Bay & Western Railroad's Right-of-way Across the Oneida Indian Reservation; Part Two: the Allotment Era and After, 1887-2002" by Professor James W. Oberly
- III. Title Reports prepared by First American Corp. on parcels adjacent to railroad right-of-way land
- IV. Treaty With the Oneida, 7 Stat. 566, February 3, 1838
- V. 1870 Agreement between Oneida Chiefs and Lake Pepin Railway Co.
- VI. Oneida Railroad Act of Congress - March 3, 1871
- VII. Agreement and Mutual Release between Fox Valley & Western Ltd. and the Oneida Tribe
- VIII. Map of Oneida Reservation Municipal Boundaries
- IX. Map of Oneida Reservation with former railroad right-of-way
- X. Town of Oneida Tax Roll Legal Descriptions, excluding Oneida Tribal Property
- XI. Town of Oneida Tax Parcel Maps, excluding Oneida Tribal Property

cc: Oneida Business Committee (one copy of attachments submitted to Tribal Secretary)  
Carl Artman, Chief Counsel  
James R. Bittorf, Deputy Chief Counsel  
Eleanora Smith, Interim Land Management Director

JO ANNE HOUSE  
CHIEF COUNSEL  
JAMES R. BITTORF  
DEPUTY CHIEF COUNSEL

## ONEIDA LAW OFFICE

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ANDREW J. PYATSKOWIT  
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ROBERT W. ORCUTT

May 29, 2008

Angela Kelsey  
US DOI - Solicitor's Office - DIA  
Mail Stop 6513 - MIB  
1849 C Street NW  
Washington, DC 20240

Re: Tax Parcel and Allottee Maps and Chart

Dear Ms. Kelsey:

On Thursday April 24, 2008, we met at the Department of Interior offices in Washington, D.C., to discuss the trust status of a former railroad right-of-way traversing the Oneida Reservation. At that meeting, you requested several additional pieces of information pertaining to the tax parcels and their relation to the former allottees for property adjoining the former railroad right-of-way. In an effort to provide you with information pertaining to this issue, I am providing you with a chart and two wall-sized maps depicting parcels along the former railroad right-of-way. The enclosed chart and maps include the following information as it pertains to each parcel: 1) the tax parcel number; 2) the current owner; 3) the Section, Township and Range; 4) the allottee(s); and the allottee number(s). There is one map for the parcels located in Outagamie County and another map for the parcels located in Brown County.

I compiled this information from a variety of sources including: 1) Outagamie County on-line tax maps; 2) Outagamie County on-line tax rolls; 3) Outagamie County plat books; 4) Brown County on-line tax maps; 5) Brown County on-line tax rolls; 6) Brown County plat books; 7) Evans Title Company title searches; 8) historical wall-sized allotment map prepared by the Tribe's Geographic Land Information Department in 1995; 9) historical wall-sized allotment map of unknown origin or date; and 10) hand-drawn section maps stored at the Tribe's Division of Land Management.

Sincerely,



Rebecca M. Webster  
Staff Attorney

cc: Jennifer Spencer, Land Law Examiner, Bureau of Land Management  
Gerald Danforth, Chairman, Oneida Tribe of Indians of Wisconsin  
Kathy Hughes, Vice-Chairwoman, Oneida Tribe of Indians of Wisconsin  
Bill Gollnick, Chief of Staff, Oneida Tribe of Indians of Wisconsin

UNITED STATES: DISTRICT COURT: EASTERN DISTRICT OF WISCONSIN.

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SAMSON STEVENS and others, acting for themselves as well as for and on behalf of the members of the Oneida Tribe of Indians in the State of Wisconsin,

Complainants,

-vs-

(Opinion filed  
November 3, 1935)

THE COUNTY OF BROWN, the COUNTY OF OUTAGAMIE, the township of HOBART in the County of Brown and the township of ONEIDA in the County of Outagamie,

Defendants.

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It is believed that a brief statement of the grounds recognized upon the motion to dismiss will suffice.

The complainants commenced this action as a class, or rather as members and representatives of the Oneida Tribe of Indians in the State of Wisconsin, against the defendants, for the purpose of recovering taxes which had been levied and assessed on their lands and on the lands of other Oneida Indians since the organization of the Towns of Hobart and Oneida in the respective counties of Brown and Outagamie. The theory of the complaint is that when the original Oneida Reservation was granted to the Indians by the Government, the latter, by treaty, guaranteed to them the right of maintaining their own government, and that the Reservation was not to be made a part of any state - consequently the lands located on the Reservation were tax exempt. The plaintiffs also pray for an injunction against any further assessment, levy, or collection of taxes upon the lands.

The defendants have moved to dismiss on four grounds:

FIRST: That the complainants have not pursued the remedy outlined by Section 74.73 of the Statutes of Wisconsin.

SECOND:- That more than twenty years have elapsed since the creation of the towns of Oneida and Hobart without questioning the same by writ of certiorari, or by other appropriate proceedings as prescribed in the state statute.

THIRD:- That the Oneida Reservation was lawfully discontinued, the allotments made thereunder superseding the Indian treaty.

FOURTH:- That complainants are barred by laches from questioning the legality of the organization of the towns and the assumption of authority over the Oneida reservation.

If the third ground above is well assigned, it is believed there can be no doubt respecting the first and second grounds. Even if it be assumed that in a treaty with the Oneida Indians many years ago, language was used which supports the contention that there was a purpose to assure the Indians perpetual immunity against the incorporation of the lands into any state or governmental subdivision of a state, the uniform judicial recognition of the efficacy of the Dawes Act since its passage is entirely repugnant to the right of the Indians, after congressional action, to insist upon the treaty provision; and likewise against the existence of judicial power to enforce the treaty stipulation. The language in Lone Wolf against Hitchcock, 157 U.S., 553, dispenses with the necessity of any fur-

their discussion. That is to say, the congressional power is recognized as "plenary", and not subject to review or control by the judicial department of the Government. While Indian tribes may have been parties to treaties, the plenary authority of Congress over the tribal relations of the Indians is deemed political, and its exercise, notwithstanding treaties, must be recognized by the courts for the reasons indicated in the Hitchcock case. Therefore, there is no escape from the proposition that the Government, in passing and applying the Dawes Act, conceived itself in duty bound to carry out its provisions in the interest of the tribe and its members. Plainly, this resulted in a discontinuance of the reservation, and a recognition of the power of the state to incorporate the lands in the towns in question. If that be true, then the state of Wisconsin, or its governmental subdivisions, could properly authorize and be authorized to proceed, and receive the protection of the state laws with respect to the kind and character of proceedings that might be instituted to question the organization of towns or other subdivisions; and to be bound by appropriate limitation acts with respect to the time within which such questions could be raised; and to provide with respect to the new, as well as of other towns and counties in the state, appropriate and exclusive remedies for recovery of taxes. Likewise all such acts must be deemed binding both on the National Government and on tribal members.

Therefore, when the Hitchcock and other cases referred to are accepted as definitely supporting the third ground assign-

ed, it seems to me to follow that the plaintiffs, in seeking to recover taxes, are bound by the state statute governing procedure and also limitation. Indeed, I feel that, with respect to the second ground either with or without the state statute respecting the manner in which legality of organization of a town may be tested, it can never be tested other than by a direct proceeding, and in no event by a mere action to recover taxes paid.

I have not considered the fourth ground assigned. The conclusion is that the motion to dismiss must be granted, and an order may be entered accordingly, with leave on the part of the plaintiffs to amend within twenty days, failing which, judgment may be entered dismissing the complaint.

*J. H. Giger*

District Judge



**C**

District Court, E.D. Wisconsin.  
 UNITED STATES  
 v.  
 HALL et al.  
 July 1, 1909.

On Demurrer to Indictment.

West Headnotes

**Guardian and Ward 196 ↪1**

196 Guardian and Ward

196I Guardianship in General

196k1 k. The Relation in General. **Most**

**Cited Cases**

“Guardianship” is a trust which is dual in its nature involving two distinct and separate functions, viz., the control of the person of the ward and the management of his estate.

**Indians 209 ↪321**

209 Indians

209VIII Intoxicating Liquors

209k321 k. Introduction Into, or Possession

In, Indian Country. **Most Cited Cases**

(Formerly 209k35)

**Indians 209 ↪323**

209 Indians

209VIII Intoxicating Liquors

209k323 k. State or Tribal Regulation. **Most**

**Cited Cases**

(Formerly 209k35)

Act Feb. 8, 1887, c. 119, § 6, 24Stat. 390, 25 U.S.C.A. § 349, provides that any Indian who adopts the habits of civilized life may become a citizen, and 24 Stat. 388, 25 U.S.C.A. § 331 et seq., declares that every allottee shall be subject to the laws of the state or territory. Held that, where an Indian reservation had been broken up and a large

part of it was owned in trust by allottees, such allottees became citizens of the state, and were not subject to prosecution in the federal courts for carrying ardent spirits into the reservation in violation of Act Cong. Jan. 30, 1897, c. 109, 29 Stat. 506, 25 U.S.C.A. § 241; the regulation of the liquor traffic being within the exclusive jurisdiction of the state.

The defendants, who are Oneida Indians, are indicted under the law of 1897 (Act Jan. 30, 1897, c. 109, 29 Stat. 506), for carrying ardent spirits into the Indian Reservation. A demurrer has been interposed to the indictment. The defendants are themselves allottees, to each of whom a tract of land has been allotted, and to whom has been given by the government what is known as a trust patent, whose terms and legal effect are discussed in several of the cases cited in the opinion. It is conceded in argument that a large fraction of the Oneida Reservation is now owned and occupied by white men who have obtained title through the heirs at law of deceased allottees pursuant to an act of Congress. Act May 27, 1902, c. 888, 32 Stat. 245. It further appears by the statutes of the state that the former Oneida Reservation has been organized and divided into two townships- with provisions for local government.

\*215 H. K. Butterfield, U.S. Dist. Atty., and E. J. Henning, for the United states.

Kittell & Burke, for defendants.

QUARLES, District Judge (after stating the facts as above).

The demurrer questions the jurisdiction of the government in the premises to enforce Act Jan. 30, 1897, c. 109, 29 Stat. 506. This is a serious and important question, which, for many reasons, ought to be speedily and finally settled.

The relation between the United States government and the Indians was settled by a learned and elaborate opinion by Mr. Justice Marshall in *Cherokee*

*Nation v. Georgia*, 5 Pet. 1, 8 L.Ed. 25, which opinion has been followed in many later cases. The United States, as in duty bound, assumed guardianship over the United States, as in duty inferior race, and as such has exercised all the functions of guardianship over them. It assumed personal control, and directed tribes to move west of the Mississippi river when their hunting grounds were obstacles in the way of advancing civilization. It corralled them upon reservations. Congress legislated to protect the Indian against the wiles of the white man as well as against his own appetite. Stringent laws were passed prohibiting the introduction of ardent spirits into the Indian country. For many years the tribes were recognized as possessing certain qualified sovereignty and capable of making treaties. But as time progressed experience demonstrated that the tribal relation was an insuperable obstacle to civilization. In 1871 Congress passed an act, now found in the Revised Statutes as section 2079, whereby no Indian nation or tribe as such should thereafter be recognized by treaty or otherwise. But finally the great truth was made manifest to the Indian Bureau that in civilization, as in education or religion, the individual is the unit, and that it is hopeless to undertake to civilize a tribe as such; that public sentiment is as strong a factor among a band of Indians isolated on a reservation as in a white community; that the influence of the tepee was neutralizing the training of the school. Experience showed that a graduate of Carlyle or Hampton who returned to his tribe was compelled to go back to the blanket with all that this implies. Education and culture were not popular, and were treated with ridicule and contempt. The reservation impaired the strength and vigor of the race, but did not weaken its instincts and prejudices. Finally Congress came to the wise conclusion that, if the red men were to be civilized, they must be dealt with like other foreign elements, and assume the duties and responsibilities of citizenship. Whereupon it was provided that any Indian who adopts the habits of civilized life may become a full citizen. Act Feb. 8, 1887, c. 119, Sec. 6, 24Stat. 390. Thereupon Congress adopted the

policy of breaking up reservations and allotting the territory to the individual members of the respective bands or tribes. In the enforcement of this policy Congress declared (24 Stat. 388) that each and every member of the respective bands or tribes to whom allotments have been made \*216 shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside. This statute was construed by the Supreme Court in *Re Heff*, 197 U. S. 488, 499, 25 Sup.Ct. 506, 508, 49 L.Ed. 848. This case involved the supposed crime of selling liquor to an allottee outside the reservation. The Solicitor General argued that:

‘The continuance of the relation as wards relates both to property and personal protection. The personal protection is at least as important, and the time of all others when Indians need this protection is when they are taking their first tentative steps as citizens.’

The court held that the government was under no constitutional obligation to perpetually continue the relationship of guardian and ward; that it might at any time abandon its guardianship, and leave the ward to assume and be subject to all the privileges and burdens of one sui juris. At page 505 of 197 U.S., at page 510 of 25 Sup. Ct. ( 49 L.Ed. 848), the court say:

‘The general police power is reserved to the states, subject, however, to the limitation that in its exercise the state may not trespass upon the rights and powers vested in the general government. The regulation of the sale of intoxicating liquors is one of the most common and significant exercises of the police power. And so far as it is an exercise of the police power it is within the domain of state jurisdiction.’

At page 508 of 197 U.S., at page 512 of 25 Sup.Ct. ( 49 L.Ed. 848), the act of 1897 is designated as a mere statute of police regulation. At page 509 of 197 U.S., at page 512 of 25 Sup. Ct. ( 49 L.Ed. 848), the court further say:

‘When the United States grants the privileges of citizenship to an Indian, it gives him the benefit of and requires him to be subject to the laws, both civil and criminal, of the state. It places him outside the reach of police regulations on the part of Congress. That the emancipation from federal control thus created cannot be set aside at the instance of the government without the consent of the individual Indian and the state,’ etc.

It is further held that two sovereignties cannot at the same time exercise the police power over a given territory.

The attention of the court was again called to the same subject in *Dick v. United States*, 208 U.S. 352, 28 Sup.Ct. 402, 52 L.Ed. 520, where the indictment was for introducing liquor into the Indian country. The court say:

‘If this case depended alone upon the federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country, we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant; for that statute, when enacted, did not intend by the words ‘Indian country’ to embrace any body of territory in which at the time the Indian title had been extinguished, and over which, and over the inhabitants of which, the jurisdiction of the state for all purposes of government was full and complete.’

The Dick Case was differentiated by the provision in a treaty which stipulated for the continuance of the jurisdiction and laws of the United States over the allotted territory. It would seem, therefore, that both features of the liquor law of 1897 have been considered as inapplicable to Indians who are allottees under the act of 1887. These cases would seem to rule the instant case.

\*217 To get a comprehensive view of the legal situation we must read *United States v. McBratney*, 104 U.S. 621, 26 L.Ed. 869, and *Draper v. United States*, 164 U.S. 240, 17 Sup.Ct. 107, 41 L.Ed. 419. These cases clearly recognize the exclusive juris-

diction of any state that is admitted upon an equal footing with other states to try and punish its own citizens for offenses committed upon a reservation, in the absence of any modifying clause in statute or treaty. This doctrine as to white citizens was clearly asserted by the Supreme Court of Wisconsin in *State v. Doxtater*, 47 Wis. 278, 2 N.W. 439, holding that, as there was no reservation of jurisdiction in the Wisconsin enabling act (Act Aug. 6, 1846, c. 89, 9 Stat. 56), the state jurisdiction over all its citizens wherever found is complete. In *United States v. Kagama*, 118 U.S. 381, 6 Sup.Ct. 1109, 30 L.Ed. 228, the court sustained the federal jurisdiction over an Indian who had committed the crime of murder upon a reservation located within a state pursuant to Act March 3, 1885, c. 341, Sec. 9, 23 Stat. 362. On page 383 of 118 U.S. on page 114 of 6 Sup. Ct. ( 30 L.Ed. 228), the court say:

‘These Indian tribes are the wards of the United States. They are communities dependent upon the United States. \* \* \* They owe no allegiance to the states, and receive from them no protection.’

This is the basic proposition upon which the decision rests. It is obvious that the later legislation of Congress providing for allotments and consequent citizenship has changed the attitude of the parties. The defendants, being allottees, are citizens of the state of Wisconsin to all intents and purposes, receiving protection from the laws of the state, and being amenable thereto. Here the color line fades out. While conceding that this prosecution cannot rest on the police power, it is, however, strenuously urged that another line of decisions of the Supreme Court give countenance to the present contention of the government. *United States v. Rickert*, 188 U.S. 437, 23 Sup.Ct. 478, 47 L.Ed. 532, is cited in this connection. The Ricker Case involved the protection of the lands of allottee Indians against the taxing power of the state. The fee title of such lands being in the government, they were held to be an instrumentality of the government to carry out the purposes of Congress, and were therefore beyond the taxing power of the state. It was a case of the

guardian interposing to protect the property of his ward. *Jourdan v. Barrett*, 4 How. 168, 177, 11 L.Ed. 924, is also relied upon, which merely holds that the federal government has power to punish a trespass on government lands. See, also, *United States v. Gardner*, 133 Fed. 285, 66 C.C.A. 663. *McKay v. Kalyton*, 204 U.S. 458, 27 Sup.Ct. 346, 51 L.Ed. 566, emphasizes the supervisory control of the government over these allotted lands, and the court in that case expressly held that it was not in conflict with the doctrine of the *Heff Case*, supra. *Camfield v. United States*, 167 U.S. 518, 17 Sup.Ct. 864, 42 L.Ed. 260, merely elaborates the doctrine of the earlier cases, vindicating the power of Congress to pass regulations to control the conservation and management of these lands which the government holds for the benefit of its wards; and that such regulations may even savor of the police power, but the opinion expressly limits its scope and meaning by the clause 'so long as such power is directed solely to its own protection.' The argument of the \*218 government ignores a fundamental distinction.

Guardianship is a trust which is dual in its nature, involving two distinct and separable functions. One is the control of the person of the ward, the other the management of his estate. We have seen that it has been settled that the government may at any time terminate this relation of guardianship. It follows, therefore, it may at its pleasure emancipate the Indian from personal control, and still retain the other function of managing and conserving his property. That the emancipation of the Indian from further federal control was the purpose of Congress is so plain from the language employed in the act of 1887 that no argument could make it plainer. The purpose of the government to protect the title of allotted land has been declared with equal distinctness. To control the habits and restrain the passions of a people is the peculiar province of the police power. This jurisdiction has been distinctly renounced by the United States, and is now clearly vested in the states. To say that temperate habits and correct living by the inhabitants will enhance the value of government land, and that, therefore,

federal jurisdiction may find in this fact a substantial basis within the territory formerly occupied as a reservation is far-fetched and illogical. It is contended that it is competent for the government to determine what shall constitute a trespass upon its lands. To say that an allottee when entering upon his own land becomes a trespasser thereon if he carries a pint bottle of whisky in his pocket is a confusion of ideas. A trespass upon lands is something so familiar and well-defined that it cannot be distorted to cover the misconduct charged against these defendants.

Furthermore, it is conceded in argument that a large fraction of the territory formerly known as the Oneida Reservation is owned and occupied by white men. It is conceded that the state has complete and exclusive jurisdiction over such white men. If the theory of the government here presented were to be adopted, we should have this anomalous situation: a quarter section occupied by a white man would be under the jurisdiction of the state, while the next quarter section, occupied by an allottee, would fall under the federal jurisdiction. There would be two rules of conduct, which might be entirely different, operating at the same time upon the same township, according to the complexion of the inhabitants. This amounts to a *reductio ad absurdum*. When understandingly read, there is no conflict in the federal decisions. The Indian allottees are citizens of the state of Wisconsin upon an even footing with all other citizens. It is the exclusive prerogative of the state to pass and enforce laws relating to the liquor traffic which is wholly separate and apart from the jurisdiction which the federal government retains to protect and regulate the allotted lands. This jurisdiction of the state extends to all its citizens without regard to color, race, or former condition. Under the legislation of Congress, the allottee has certain vested rights. The state has assumed a vested jurisdiction. In the *Heff Case* it is distinctly held that these vested rights 'cannot be set aside at the instance of the government without the consent of the individual Indian and the states.'

For these reasons, I feel constrained to hold that the demurrer should be sustained, and that the defendants should be discharged.

D.C.Wis. 1909.  
U.S. v. Hall  
171 F. 214

END OF DOCUMENT

**Kelsey, Angela**

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**Subject:** Meeting w/Onieda  
**Location:** Asia Conference Room - Video TeleConferencing Unit

**Start:** Wed 7/21/2010 3:00 PM  
**End:** Wed 7/21/2010 4:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

**Meeting Status:** Not yet responded

**Organizer:** Laverdure, Del  
**Required Attendees:** Newland, Bryan; Warrington, Burton; Thomas, Pilar; Lindquist, Karen; Kelsey, Angela; tom@carlyleconsult.com

**When:** Wednesday, July 21, 2010 3:00 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Asia Conference Room - Video TeleConferencing Unit

\*~\*~\*~\*~\*~\*~\*~\*~\*~\*

Dajuana, the meeting request involves the Oneida Nation of Wisconsin's request for a final decision on the railroad right-of-way land issue.

We have previously met on this issue almost seven weeks ago and Pilar requested additional time to do some additional research.

Oneida Chairman Rick Hill and Councilman Brandon Stevens will be in attendance.

Best,

Tom