Subject: our stormwater suit

From: ARLINDA LOCKLEAR (alocklearesq@verizon.net)

To: FKowalkowski@dkattorneys.com;

Cc: JBITTORF@oneidanation.org;

Date: Tuesday, October 18, 2011 3:02 PM

Three points for your consideration, Frank:
1. I just heard from the Solicitor's Office regarding the US response to the Hobart demand for payment. They advise that the letter is in the final approval stages and should go out no later than Thursday. I have asked them to email it to us both so that we'll have time to get it to the Court, along with a proposed schedule, by Friday.
2. As for the proposed schedule, I assume that your client will file another 3d party complaint against the US once it receives the response (and assuming the response is negative.) If that is the case, I suggest a 30 day deadline for filing the 3d party complaint. If you are agreeable to this proposal, we'll draft up a proposed joint scheduling proposal for your consideration. If not, let me know what you'd propose as an alternative.
3. Because of the uncertainty, we should finalize the proposed stipulation of facts in support of a possible summary judgment motion. I've red-lined your counter-proposal. Consider the following in that regard: para. 4, you don't really need the adjective "original" because of the reference to boundaries "as set in 1838" - and we cannot stipulate to language suggesting a difference between the original and existing boundares; para. 7, 9 - I changed the formulation to charges "Hobart sought to impose" since we cannot stipulate that Hobart has in fact legally imposed the charges - this is the same formulation used in para. 10, 11 & 12, without objection by you. So hopefully this language will be acceptable in para. 7 & 9, as well.
Arlinda.

Exhibit 5

Draft #2, 10/12/11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ONEIDA TRIBE OF INDIANS OF WISCONSIN,

Plaintiff,

v. Case File No. 10-CV-00137

VILLAGE OF HOBART, WISCONSIN,

Defendant.

STIPULATION OF FACTS
IN ACCORDANCE WITH LOCAL RULE 56(b),
UNITED STATES COURT FOR THE EASTERN DISTRICT OF WISCONSIN

1. The Oneida Tribe of Indians of Wisconsin ["Tribe"] appears on the list of Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.

2. The Bureau of Indian Affairs has published a list of recognized Indian entities since 1994 in accordance with an amendment that year to the Indian Reorganization Act [IRA], 25 U.S.C. §479a-1, Act of Nov. 2, 1994, and the Tribe has appeared on every such list.

3. The Tribe is organized under a Constitution adopted pursuant to the IRA, 25 U.S.C. §476, and approved by the Secretary of the Interior on December 21, 1936.

4. The Village of Hobart ["Hobart"] is an incorporated municipality in Brown County, Wisconsin, first organized as the Town of Hobart on March 4, 1908 and is located within the ~~ginal~~ exterior borders of the Oneida Reservation as set aside in 1838.

5. The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart; these parcels are referred to collectively herein as the subject trust lands.

6. The subject trust lands total approximately 1400 acres, all of which parcels were either already held or placed into trust between 1937 and 2007.

7. Since July 2007, Hobart has sought to ~~purported to~~ impose~~d~~ a "charge" upon all the subject trust lands in accordance with its Stormwater Management Ordinance. The "charge" consists of two parts: first, a base charge that is imposed on each and every lot or parcel within Hobart; and second, an equivalent runoff unit charge based upon the amount of impervious area located on the lot or parcel.

8. Hobart's stormwater "charges" are incorporated into property bills issued by Brown County ~~and arrearages are collected through foreclosure proceedings in the same manner as delinquent property taxes~~.

9. By letter dated January 31, 2008, the Tribe advised Hobart that it had received a tax bill that included an assessment in the amount of $70,462.80, representing "charges" Hobart sought to ~~purportedly i~~impose~~d~~ under the Stormwater Management Ordinance for the Tribe's fee land and subject trust lands located in Hobart. The Tribe further advised that it would not pay the "charges" as to either the fee land or the subject trust lands since the Tribe believed the "charges" to be invalid under federal law.

10. In December 2008, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the Tribe's fee and subject trust lands. By letter dated January 14, 2009, the Tribe advised that it paid the "charges" for its fee lands in the amount of $34,427.07 under protest, representing the total amount billed by Hobart for the previous year and for 2008. The Tribe further advised that it would not pay the "charges" imposed on the subject trust lands since the Tribe believed the "charges" to be invalid under federal law.

11. In December 2009, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the subject trust lands in the amount of $42,156.00.

12. In December 2010, Hobart again sought to impose "charges" under its Stormwater Management Ordinance on the subject trust lands in the amount of $41,868.00.

13. On May 18, 2011, Hobart made a demand for payment to the Great Lakes Agency, Bureau of Indian Affairs, in the amount of $237,682.06, representing "charges," interest, and penalties unpaid by the Tribe as to the subject trust lands, among other lands, under its Stormwater Utility Management Ordinance.

_____
Frank W. Kowalkowski
Davis & Kuelthau
318 South Washington Street
Suite 300
Green Bay, Wisconsin 54301
(920) 431-2221
Fkowalkowski@dkattorneys.com

_____
Arlinda F. Locklear
Bar No. 962845
4113 Jenifer Street, NW
Washington, D.C. 20015
(202) 237-0933
Alocklearesq@verizon.net

James R. Bittorf
Deputy Chief Counsel
Bar No. 1011794
Jbittorf@OneidaNation.org
Rebecca M. Webster
Senior Staff Attorney
Bar No. 1046199
Bwebster@OneidaNation.org
Robert W. Orcutt
Bar No. 1043266
Rorcutt@OneidaNation.org
N7210 Seminary Road
Post Office Box 109
Oneida, Wisconsin 54155
(920) 869-4327

Dated: _____