



Saint Regis Mohawk Tribe

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Chief Barbara A. Lazore
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TRIBE SUES INTERIOR SECRETARY FOR ABUSE OF OFFICE

Secretary Ignores the Record, Previous Determinations

AKWESASNE- The St. Regis Mohawk Tribe announced today that it has filed suit against Interior Secretary Dirk Kempthorne in the federal district court of New York to overturn his unlawful decision to deny placing approximately 29 acres of land in Sullivan County into trust for the Tribe.

The suit alleges that the Secretary's decision, received last Friday, is arbitrary and capricious, an abuse of discretion, has no basis in the law, and constitutes an abuse of his position as Secretary.

The complaint alleges that the Department of the Interior cannot lawfully apply new requirements to the Tribe's long-standing application without giving fair notice and the opportunity to comment.

On January 4, the Tribe received a letter from Assistant Secretary James Cason informing the Tribe its application was being denied based on a new "commutable distance" factor that it determined would result in negative impacts to the Akwesasne community. The "commutable distance" factor is part of the newly imposed federal guidelines imposed only the day before the tribe received the decision.

The new rules violate the Administrative Procedure Act on several counts, including the requirement to consult with tribes or provide a comment period. Some 20 other tribes across Indian Country received similar denials.

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Kempthorne rejected ten years of administrative record and adopted a new rationale, having no precedent, to deny the Tribe's application. The Department stated that, the proposed casino nearly 350 miles away from the reservation, was essentially a prohibitive distance from the Tribe's territory and would result in negative impacts to reservation life. With these new rules, the Secretary unilaterally, and without foundation in law, overturned the Interior's own determination, issued in April 2000 that said the proposed project was "in the best interest of the Tribe."

The Secretary's decision not only runs in direct contradiction with previous determinations made by both Kempthorne himself and the previous Secretarial determination dating back to 2000, but Governor Eliot Spitzer's concurrence. In addition, the New York Legislature passed a law in 2001 allowing for an Indian casino specifically in the Catskills.

The Tribe was never given an opportunity to respond to the distance concern. The St. Regis Mohawk Tribe is famous for producing generations of Mohawk ironworkers who have commuted to New York City and beyond, building America's skyline. The Smithsonian Institution has a permanent exhibit showcasing Mohawks' ironworking legacy. More recently, Mohawk ironworkers traveled weekly to Manhattan risking their lives in the clean up at Ground Zero following the 9/11 attack. Commuting hundreds of miles for work and livelihood is an ongoing and ingrained part of Mohawk life where families, permanent residences and community ties remain unbroken.

Secretary Kempthorne has been vocally opposed to off-reservation casinos, dating back to his days as governor of Idaho. Tribal Chief Lorraine White has repeatedly said that there is no basis in the law—or anywhere that allows personal bias to override federal law and the Interior Department's own regulations. In fact, proposed legislation to curtail off-reservation casino projects on a similar basis failed to pass in Congress in recent years.

"The Secretary decided to simply rewrite the law in his own way, without consulting Congress. What we have here is a Secretary who has attempted to devise a way to circumvent federal law by creating new federal guidelines for existing fee-to-trust applications," said Chief White. "The problem is that his decision is based on new rules which hop scotched straight over the required tribal consultation process and never bothered to give proper notice. Beyond this, we feel his decision failed to consider the very strengths and merits of our application and the administrative record."

In addition to filing suit, the Tribe is communicating with other tribes to explore the collective options for Indian Country, including additional legal action and protests. In alliance with other affected tribes, Mohawk leadership will be calling for oversight hearings by the House Natural Resources Committee and the Senate Select Committee on Indian Affairs—particularly to call attention to the Interior's complete lack of consultation with Indian tribes on the new federal regulations, and the failure to give fair notice of the new requirements.

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“We will join force with Indian Country to put the agency’s feet to the fire on this issue,” said Tribal Chief Barbara Lazore. “We realize that the Secretary has what they call ‘discretionary authority.’ But does that mean absolute and unfettered authority to make unjust, far-reaching and discriminatory decisions? The Secretary is a public servant, charged with the responsibility to faithfully execute the law.”

The St. Regis Mohawk Tribe previously filed a complaint against Secretary Kempthorne in late October for his inaction on its completed trust application which languished at the department for nearly a year. The Tribe moved to dismiss the action today in light of the denial.

“What we are asking for is a fair shake from a federal agency that is charged with and entrusted with trust responsibility for tribes.” said Tribal Chief James W. Ransom.