



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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The Honorable Joe Bunch
Chief, United Keetoowah Band
of Cherokee Indians
P.O. Box 746
Tahlequah, Oklahoma 74464

Dear Chief Bunch:

On July 30, 2012, Assistant Secretary – Indian Affairs Larry Echohawk approved the acquisition of a 2.03-acre parcel into trust for gaming purposes of the United Keetoowah Band of Cherokee Indians (UKB). The decision from Assistant Secretary Echohawk expressly found that the parcel qualified for gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(a)(2)(A)(i) and 25 C.F.R. § 292.2 because the parcel was within the former reservation of the UKB.

On March 24, 2020, the United States District Court for the Northern District of Oklahoma issued a decision finding that the Assistant Secretary's acquisition was arbitrary and capricious, and that the Cherokee Nation of Oklahoma's "former reservation" is not the "former reservation" of the UKB under same provisions of the Indian Gaming Regulatory Act.

On July 9, 2020, the Supreme Court of the United States found that the Creek Nation reservation had never been disestablished. *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Subsequently, the State of Oklahoma Court of Criminal Appeals, using similar reasoning, concluded that the Cherokee reservation was never disestablished. *Hogner v. State*, 2021 OK CR 4 (March 11, 2021) and *Spears v. State*, 2021 OK CR 7 (April 1, 2021). The *McGirt* decision and cases applying its reasoning have changed the legal landscape of Oklahoma lands. These decisions make it clear that these lands are still considered reservation lands, and as such, undermine the Department of the Interior's (Department) decision regarding "former reservation" status for these lands under 25 U.S.C. § 2719(a)(2)(A)(i) and 25 C.F.R. § 292.2. These unprecedented new developments in Oklahoma require the Department to conduct a novel analysis of the status of the former reservation of the UKB. Additionally, the Tenth Circuit decision, *Cherokee Nation v. Bernhardt*, 936 F.3d 1142 (10th Cir. 2019) (*petition for cert. denied*), that successfully placed a 76-acre non-gaming parcel into trust for the UKB, was unavailable when the Assistant Secretary made the July 30, 2012, decision.

Therefore, I am withdrawing the July 30, 2012, decision. This withdrawal will allow the UKB to submit a new application consistent with the changes in the law identified above.

Sincerely,

Bryan Newland
Assistant Secretary – Indian Affairs