



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

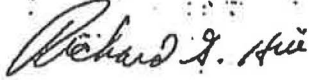
easement over the trust land, the Tribe included a copy of the 2003 Agreement and Mutual Release between the Tribe and the Railroad. The BIA Land Titles & Records Office recorded this easement with the Agreement as an attachment to the easement on April 19, 2006, at the Great Plains Regional Office. 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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JUN 10 2011
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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>

Re: Oneida, WI, railroad right of way claim

1 message

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

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 heads up. 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-N. 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 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 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-NINTH.

(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
TO
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