



United States Department of the Interior

OFFICE OF THE SOLICITOR

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WASHINGTON, DC 20240

NOV 08 2017

Joe Walsh
Mille Lacs County Attorney
Mille Lacs County Justice Center
225 6th Ave. SE
Milaca, MN 56353

Dear Mr. Walsh:

The Department is aware of various law enforcement issues on the Mille Lacs Band of Ojibwe's (Band) reservation, including that Mille Lacs County (County) has impeded law enforcement efforts by tribal police officers within the Band's reservation and has failed to renew a cooperative agreement with the Band to provide law enforcement support on and off the reservation. The lack of certainty with regard to tribal law enforcement officers' authority on the Band's reservation has caused significant problems for the community residing on and around the reservation. The Department is also aware of a longstanding dispute between the Band and the County regarding the boundary of the Band's reservation.

The Mille Lacs Band's Reservation

It is the position of the United States that the Band's reservation has not been diminished or disestablished by Congress. As the County is aware, the Solicitor of the Department of the Interior issued a legal opinion in November, 2015 affirming that the Band's reservation remains intact despite over 100 years of encroachment by non-members and the unlawful sale of the Band's lands by the United States. *See* Department of the Interior Solicitor's Opinion M-37032. Indeed, the United States Department of the Interior provided its opinion on the reservation boundary to the United States Department of the Justice when responding to a request for input on the Band's application for the assumption of jurisdiction under the Tribal Law and Order Act (TLOA). Therefore, the County's assertion that the Band's reservation has been diminished or disestablished has no basis in law and conflicts with the federal government's longstanding position.

Tribal Law Enforcement Jurisdiction on the Mille Lacs Band's Reservation

The Band has inherent, sovereign authority to provide for public safety and law enforcement with regard to its own members within its reservation. The United States' acceptance of concurrent jurisdiction within the Band's reservation, though significant, does not impact this right. *See Hester v. Redwood County*, 885 F. Supp. 2d 934, 939 (2012) (stating that a tribe

“retains inherent criminal jurisdiction over its own members within its boundaries.”). Moreover, the Secretary of the Interior, and therefore the Bureau of Indian Affairs, is authorized to issue Special Law Enforcement Commissions (SLECs) to tribal officers pursuant to the Indian Law Enforcement Reform Act of 1990, 25 U.S.C. §§ 2801-2809, which provides, in part:

The Secretary may enter into an agreement for the use . . . of personnel or facilities of a Federal, tribal, or State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws. The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under [25 U.S.C. § 2803].

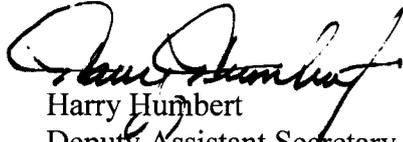
Id. § 2804(a); *see also Hebert v. United States*, 438 F.3d 483, 484 (5th Cir. 2006). SLECs are typically governed by deputation agreements and tribal officers who receive SLECs are cross-deputized as BIA law enforcement officers. *Id.* Furthermore, “SLECs support the sovereignty of tribes by allowing tribal law enforcement officers to enforce Federal law, to investigate Federal crimes, and to protect the rights of people in Indian country . . .”¹ and tribal officers with SLECs are “fully qualified to enforce Federal law and to perform functions which would otherwise be performed by BIA officers” Notice, 69 Fed. Reg. 6321 (Feb. 10, 2004); *see also Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691, 695 (9th Cir. 2004) (citing 69 Fed. Reg. 6321 and the scope of SLEC authority).

The United States, through the Bureau of Indian Affairs Office of Justice Services (BIA OJS), approved Mille Lacs Band’s SLECs, which means the Band’s law enforcement have the authority to conduct investigations and refer cases to the U.S. Attorney for prosecution. It is important to note that all SLECs are required to complete rigorous training and certification in accordance with the requirements of the Federal Law Enforcement Training Accreditation (FLETA) Board. SLEC officers must also pass a firearms certification, background investigations, a Criminal Jurisdiction in Indian Country Examination, and satisfy other requirements as described in the OJS Law Enforcement Handbook, 3d. Ed. BIA OJS continuously evaluates the qualifications of SLEC officers to ensure that they meet or exceed the standards set out by FLETA. In any case in which the United States has concurrent jurisdiction on the reservation, Mille Lacs Band SLEC officers have the authority to pursue and investigate to the extent permitted by Federal law. Mille Lacs County law enforcement officers should under no circumstances impede SLECs from conducting investigations in accordance with their authority under the Band’s inherent law enforcement authority or Federal law.

¹ Under Federal law, “‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,” 18 U.S.C. § 1151, and therefore all of the Band’s reservation is included, not just the trust lands.

We hope that this letter clarifies the Band's law enforcement authority within its reservation. Should you have questions or wish to discuss this matter further, please contact me at (202) 208-1927.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry Humbert", written in a cursive style.

Harry Humbert
Deputy Assistant Secretary
Public Safety, Resource Protection
and Emergency Services