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Letter to the Editor

2007 FEB 20 AM 11: 01 'Tribal problems will not go away'

Thurston

ENVIR. APPEALS BOARD Dear Editor,

"How many legs does a dog have if you call the tail a leg? Four. Calling a tail a leg doesn't make it a leg." Abraham Lincoln.

Effective March 1, 2007, the Villages of Pender and Walthill will receive their Wastewater Treatment Permits through the federal Environmental Protection Agency (EPA), instead of State of Nebraska. There are 10 EPA regions in the United States and Nebraska is located in Region 7. In September of 2006, I submitted comments to EPA in opposition to the federal government superseding state authority to issue the Pender and Walthill Wastewater Permits. EPA's response letter states, "Region 7 has determined that the Wastewater Treatment Plants for the Village of Walthill and the Village of Pender are within the exterior boundaries of the Omaha Indian Reservation, as established by the Treaty of 1854. Region 7 received information from the Department of the Interior Bureau of Indian Affairs, Realty Division, including a map of the Omaha Reservation describing the exterior boundaries. . . . The State does not have the requisite jurisdiction and authorization on Federal Indian reservations. Primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the State."

Throughout EPA's response letter, they often wrote, *See Administrative Record*. I requested and received the Administrative Record, which is a collection of technical information, correspondence, comments, and any information relating to the issuing of the Pender and Walthill Wastewater Treatment Permits.

The source of the maps used in the EPA Administrative Record came from the Conservation and Survey Division, University of Nebraska, and from the Nebraska Department of Water Resources. These "Omaha reservation" maps include the original reservation lands from the Treaty of 1854, including Pender and lands within Bancroft, Cleveland, and Grant Townships in Cuming County. Omaha reservation lands that were ceded to provide a home for the Winnebago tribe by treaty in 1865, and by an 1874 Act of Congress, are excluded from the map.

I find it interesting that EPA's Administrative Record regarding the Pender Wastewater Treatment Permit includes a letter from the Nebraska Department of Revenue to the Omaha tribe's attorney, Ben Thompson. This letter was to notify Mr. Thompson about the 2005 Motor Fuel Tax Agreement, in which the State fuel tax would be replaced with a tribal fuel tax. A copy of the 11-page fuel tax agreement between the state and tribe is included in EPA's record. Also in the EPA Administrative Record is a "Frequently Asked Questions" document pertaining to the 2005 Motor Fuel Tax Agreement. This document, with the tribal emblem on the left side of the page and the Nebraska Department of Revenue on the right side, states, "The tribal fuel tax will apply to sales at all retailers located within the Reservation's boundaries, including those in Macy, Walthill, Rosalie and Pender. . . . By entering into an agreement with another government and exercising its authority to tax transactions occurring on the Omaha Indian reservation, the Omaha Tribe is strengthening its tribal sovereignty."

What does a Motor Fuel Tax Agreement between the State and the Omaha tribe have to do with environmental issues, and why would this information be included in the EPA Administrative Record?

Last week, the liquor retailers in Pender received their second notice from the Omaha tribal council stating, "The Omaha Tribal Code is now effective throughout the Omaha Indian Reservation. Failure to comply with the Alcoholic Beverage Control Title can result in administrative fines to non-members of up to \$10,000 or jail sentences for tribal members. To avoid enforcement action against you, please contact the Omaha tribe's Director of Liquor Control."

Whoa, are the tribe and the federal government trying to turn the dog's tail into a leg?

The truth, is Pender was removed from the Omaha Reservation by an 1882 Act of Congress. This land cession is listed in the U.S. Serial Set, Number 4015, 56th Congress, 1st Session. The Act of 1882 "Provides for sale, with the Omaha's consent, a portion of their reservation lying W. of Sioux City and Nebraska Railroad." This Act ceded 50,000 acres of the original Omaha reservation, and as the act specified, the land was appraised and sold. This act is written in plain English and has been determined in the Nebraska District Court to mean exactly what it says. (Nebraska vs. Picotte (2000)). In addition, Congress declared in an 1888 Act, that any homestead defaults on land west of the railroad right-of-way would not revert to the Omaha tribe, but would be sold at public auction.

Many residents of Pender have ignored the issues I have described because they believe problems will just go away as they have in the past. In the past, federal agencies did not have written policies to "recognize tribal governments as sovereign entities with primary authority and responsibility for the reservation populace." In the past, federal and state agencies acknowledged the fact that the majority of land in this area is owned by American citizens, not affiliated with a tribe, because Congress passed acts to open this land for settlement. Today, 1854 reservation boundaries are all federal agencies recognize to determine "tribal lands," synonymous with tribal and federal jurisdiction. They act as though the 153 years of congressional acts following 1854 don't exist, unless those acts benefit a tribe. Federal law is interpreted that any ambiguity in law which involves a tribe must be found in favor of the tribe. (United States Supreme Court opinions favor legal "ambiguities" to be resolved in favor of Native Americans.)

The truth, is there isn't ambiguity in the Acts of Congress that ceded lands from the Omaha reservation. The tribe has created ambiguity by calling the dog's tail a leg, and the federal government has agreed in order to fulfill its "trust obligation" to the tribe.

Many people are afraid to get involved or even talk about these issues because they do not want to be perceived as racist. These issues are not about race. These issues are about TRUTH, and the truth is, no matter how many times the tribe, the federal, or the state governments call our property Indian country; it does not make it so. This country is America and the dog's tail is a tail, not a leg.

Teri Lamplot

(Editor's Note: The EPA held a Public Hearing on the EPA Agency's Objection to the state issuing the Wastewater Permits in Pender and Walthill in 1999. Many citizens requested that the state maintain issuing the permits. EPA provided a public comment period in 2002. Again, most of the 17 written comments requested the state continue issuing the permits. In 2006, EPA offered a public comment period in which one individual offered comment to again contend that the state has the authority to issue these permits. The EPA permits for Pender and Walthill will become effective on March 1, 2007, unless the Environmental Appeals Board is petitioned by any person who has filed comments regarding these permits by February 16, 2007. All pleadings filed by mail must be addressed to:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.