

Mohawk Nation Rejects 1796 Land Agreement, Court Told

By **Crystal Owens**

Law360 (February 27, 2024, 10:03 PM EST) -- The Mohawk Nation says it has numerous outstanding issues regarding a proposed settlement with the state of New York over 2,000 acres of land stemming from a 1796 treaty, arguing that its concerns have yet to be addressed or considered relevant by the court or its present counsel as negotiations continue.

The nation argues that since 2005 its three clan families have disagreed about the Mohawk Nation Council of Chiefs' participation in the litigation and settlement, according to a **declaration** filed with the court on Monday, and that it should never have continued without reaching a full consensus.

Despite the impasse, the nation says certain individuals of the MNCC, along with its attorney, Alexandra Page, decided to move forward with settlement negotiations without the full consensus of the People of the Longhouse.

"We believe that this has wrongly given the impression to the court and the rest of the settlement legal counsel that the Mohawk Nation is a willing party and active participant before this court," the tribe said in the declaration.

The People of the Longhouse refers to the original five nations — Cayuga, Mohawk, Oneida, Onondaga and Seneca — that formed the original Haudenosaunee (Iroquois) Confederacy that shared a territory thought of as a longhouse, according to the New York State Museum.

The Mohawk Nation operates on a traditional Native American form of government, in which each of its three clan leaders – Turtle, Wolf and Bear – are chosen by clan mothers, according to the tribe.

Those clan leaders are responsible for hearing matters of the people that they can bring before the MNCC, which consists of five elected representatives.

All three clan leaders must agree that the issue is important enough to ask the MNCC to support a resolution to resolve the matter, a debate that can take weeks or months, depending on the problem.

The Mohawk Nation put out calls for all Native Americans to attend a gathering outside the New York federal district courthouse in Syracuse on Monday where a conference was held to settle any outstanding issues related to the settlement negotiations, according to a tribal press release.

A Feb. 22 minute order by U.S. District Judge Therese Wiley Dancks, which emphasized that only "identifiable individuals, including attorneys and party representatives" would be allowed to attend the "closed-door nature of the proceeding" on Monday, excluded the public and the relevant decision-makers from observing the process, according to the tribe.

According to a Jan. 22 **status report** filed with the court by Page, those to attend the conference on Monday included herself and fellow Berkey Williams firm counsel Jenna Macaulay, as well as MNCC Chief Howard Thompson and Joyce Mitchell, assistant to the chief.

Page did not immediately respond to requests for comment on Monday.

New York Gov. Kathy Hochul on Nov. 22, 2023, signed Senate Bill S7566B, which authorized a settlement of certain land claims between the state and the Saint Regis Mohawk Tribe, the Mohawk

Council of Akwesasne and the MNCC.

The Mohawk Nation contends that three representatives of its clans submitted letters on Nov. 15 to the federal district court that were never put into the record by their counsel, which notified the litigation's parties that it was withdrawing from the agreement because they could not come to a consensus on the settlement.

The decision to withdraw from the settlement, the nation says, was reached during a general council meeting at the Mohawk Nation Longhouse in Akwesasne on Dec. 3 and Dec. 30, 2023, reflecting "the unwavering stance of the Mohawk people in defending their ancestral lands."

"Federal courts are an unfit negotiation forum for the Kanyen'kehà:ka Longhouse People, and we are not to be the subjects of the U.S. court system – as the Kanyen'kehà:ka Longhouse People follow the nation-to-nation framework laid out by the Two Row Wampum," the tribe said its court declaration.

The Two Row Wampum refers to a mutual 1613 treaty between representatives of the People of the Longhouse and the Dutch government in what is now upstate New York, according to the Canadian Museum for Human Rights. The treaty is considered the basis for all their subsequent agreements with European and North American nations and was founded upon the respect and coexistence of two separate nations.

The land suit, filed by the Mohawk Council of Akwesasne, first opened in 1982 and had been paused from 2014 to January 2021, when a stay was lifted after the parties **failed to settle**.

Separate land claims were filed by the tribes in 1989, and the cases were consolidated in 1992. In 1998, the United States intervened as a plaintiff in the case.

New York legislators in June 2023 approved a bill authorizing Gov. Hochul to sign an agreement once all parties had given the go-ahead to its final terms.

New York and Franklin County also reached an agreement that same month on the long-standing issue of payments from the state to the county, according to the tribes' status reports.

Under a June 2022 agreement, Franklin County and the towns of Bombay and Fort Covington each received \$15 million from New York for the unrestricted use of the reservation land. New York also must pay \$2 million annually to be split among the county and the towns for past services rendered, the report said.

Litigation in the decades-long case came to a head in March 2022, when a federal district court ruled that New York's purchase of reservation lands in the 1800s violated the Nonintercourse Act. The court found that the state did not follow six statutes of the act, which regulates commerce within tribal nations and clearly establishes rules for the purchase of tribal property.

The federal law specifies that only legislation by Congress can transfer title to a purchaser.

New York attempted to purchase approximately 2,000 acres of reservation land in 1824 and 1825 without the presence of a federal commissioner or any subsequent ratified federal act, the tribes alleged in the suit. The lands that make up the Hogansburg Triangle, at the center of the reservation near the Canadian border, were explicitly reserved for tribal use under the 1796 treaty ratified by Congress.

The Mohawk Council of Akwesasne is represented by Frank S. Holleman of Sonosky Chambers Sachse Endreson & Perry LLP.

The St. Regis Mohawk Tribe is represented by Michael L. Roy and Caroline P. Mayhew of Hobbs Straus Dean & Walker.

The Mohawk Nation Council of Chiefs are represented by Alexandra Page, Curtis G. Berkey and Jenna Macaulay of Berkey Williams LLP.

The United States is represented by James B. Cooney of the U.S. Justice Department's Environmental

and Natural Resources Division.

New York is represented by its state attorney general's office.

The case is Canadian St. Regis et al. v. State of New York et al., case number 5:82-cv-00783, in the U.S. District Court for the Northern District of New York.

--Editing by Peter Rozovsky.