

Downstream Development Authority of the Quapaw Tribe of Oklahoma
Supplement to Minutes dated 6/5/19
Email Poll

Roll Call:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Marilyn Rogers, Member	Present
	Tamara Reeves, Member	Present
	Jack Brill, Member	Present

An email poll was conducted on Wednesday June 12, 2019.

All,

Please see the attached resolution to make more clear and explicit the wavier of the defense of immunity and consent to the jurisdiction and courts to the State of Arkansas in regards to the operation of the casino and the holding of the license.

Any questions please let me know.

Thank you,

Vote:

John Berrey	Yes	Marilyn Rogers	Yes
Larry Ramsey	Yes	Tamara Reeves	Yes
Jack Brill	Yes		

3 yes, 0 no, 0 abstaining, 2 absent

Motion Carries.



Resolution No. 06 12 19-A

A RESOLUTION AUTHORIZING A WAIVER OF IMMUNITY AND CONSENT TO THE JURISDICTION OF THE STATE OF ARKANSAS FOR PURPOSES OF LICENSING OF THE SARACEN CASINO RESORT

***WHEREAS**, the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Authority"), is an unincorporated governmental subdivision wholly owned by the Quapaw Nation (or the O-Gah-Pah) (the "Nation" or the "Tribe"), a federally recognized Indian tribe; and*

***WHEREAS**, the Authority was created under the laws of the Tribe and authorized to develop, operate, and manage the Downstream Casino Resort (the "Resort") and to engage in gaming pursuant to Tribal, federal, and state laws; and*

***WHEREAS**, the Authority is expressly authorized to exercise its powers in the best interests of the Nation, to enter into binding agreements, and to grant waivers of its sovereign immunity, as well as to pursue economic development to benefit the Nation; and*

***WHEREAS**, the Authority has applied to the Arkansas Gaming Commission of the State of Arkansas (the "ARC") for a casino gaming license for the planned Saracen Casino Resort in Jefferson County/Pine Bluff, Arkansas (the "Casino"), to be owned and operated by and through a subsidiary entity to be created under the laws of the State of Arkansas, to be known as Saracen Development, LLC (the "Company"); and*

***WHEREAS**, if it is awarded a casino gaming license for the Casino, the Authority intends to apply to the ARC to transfer such license to the Company, although it may hold such license for an undetermined period of time, and therefore the Authority has been requested by the ARC to provide assurances that as the licensee the Authority will be subject to Arkansas laws and other laws without regarding to its status as a tribal governmental subdivision; and*

***WHEREAS**, to confirm State of Arkansas jurisdiction over its activities as a licensee, the Authority hereby grants certain waivers of its governmental privileges and immunities with respect to the Casino and the pending issuance of a casino gaming license by the state, along with certain consents to the jurisdiction of the state and its courts and the ARC for such purpose.*

NOW, THEREFORE BE IT RESOLVED THAT the Authority finds and determines as follows:

1. The Authority hereby voluntarily, explicitly, and unequivocally agrees and consents, on behalf of itself and any other limited liability companies, corporations, or other entities, including successors and assigns, involved in the ownership or operation of the Casino, to waive any and all claims and defenses of Indian tribal sovereign immunity, or any other form, defense or claim of immunity that it may possess as a governmental entity under tribal law or the laws of the United States, for the duration of all periods of time the Authority holds a casino gaming license in the State of Arkansas issued by the ARC, for any claims and actions arising



from or relating to the Authority's casino gaming license and the Authority's operations of the Casino.

2. The Authority agrees that its voluntary waiver of sovereign immunity hereunder includes a waiver of such defenses and claims in any legal actions brought by the State of Arkansas, the United States, the ARC, local governmental entities, Casino patrons, contractors, suppliers, vendors, and citizens of the State of Arkansas or the United States, or any other individual, entity, or governmental entity with standing to bring claims in the State of Arkansas or the United States under Arkansas law.

3. The Authority voluntarily agrees and consents that it shall be subject to the jurisdiction of any court in the State of Arkansas and the United States, which have jurisdiction and venue over such actions, on the same basis as any other citizen, resident or corporate entity doing business in the State of Arkansas, under the laws of the State of Arkansas and the United States, with respect to any actions brought pursuant to the waivers of immunity granted hereunder.

4. The Authority voluntarily agrees and states that it will not assert the defense of tribal or governmental sovereign immunity in any action brought against Downstream in any action permitted under the limited waiver of immunity granted hereunder in the courts of the State of Arkansas, including the courts of the United States, or in any proceedings before the State, including the ARC.

5. The Authority voluntarily agrees and states that as a casino gaming licensee it will be subject to the Rules, Regulations and Orders of the ARC, the laws of the State of Arkansas, and any applicable laws of the United States in the same manner as any other entity or person doing business in the State of Arkansas, and that Arkansas or federal law will apply in any court or arbitration proceeding. The Authority further agrees that it will not assert tribal law, including sovereign immunity, in any proceeding permitted within the limited waiver of immunity granted hereunder.

6. The Authority agrees that it will pay all final orders or adjudications directing it to pay federal, state, and local taxes applicable to the Authority under the law with respect to the Casino, and that it will not assert sovereign immunity as a defense to any such claims filed against the Authority by a federal, state or local government; provided, however, that the Authority shall retain the right to challenge and assert any defenses to such actions as are available to any person or entity.

7. The limited waivers of immunity, waivers of defenses, and consents granted by the Authority hereunder: (a) shall not alter or impair any contractual or other obligations of the Authority, whether existing or made in the future, and shall not impair the Authority's rights to contract, including but not limited to its right to enter into agreements to arbitrate and other types of agreements relating to dispute resolution; (b) shall not create new causes of action not otherwise recognized under Arkansas or other laws; (c) shall permit only actions and claims arising as of or after of the date of the issuance of a casino gaming license to the Authority, and continuing thereafter only so long as the Authority holds a casino gaming license; and (d) shall not create jurisdiction or venue in any court.

8. The limited waiver of immunity granted by the Authority hereunder shall become effective upon the issuance of a casino gaming license to the Authority and shall continue in effect for so long as the Authority holds a casino gaming license issued by the ARC for the Casino, and until such license is transferred to another licensee, at which time such waiver will terminate.

9. For the avoidance of any doubt about the nature of gaming under state law at the Casino, the Authority hereby finds and determines and affirms that the Casino will not be located within the Indian country jurisdiction of the Quapaw Nation or subject to tribal jurisdiction, and further that the Authority shall not assert tribal law in any action permitted hereunder.

10. To provide further assurances to the State of Arkansas and/or the ARC concerning jurisdiction over the gaming operations at the Casino, the Authority hereby authorizes and directs its officers and employees to execute and deliver such individual waivers as may be requested by the ARC to confirm that the signatories will not assert the defense of individual immunity in any enforcement action relating to the state's regulation of the Casino, that they will consent as individuals to the jurisdiction of the state and its courts, agencies, and administrative tribunals, and that they will comply with the requirements of applicable state and other laws for such purposes.

11. The limited waiver of immunity and consents hereunder are granted by the Authority solely as set forth herein, and solely for purposes of any action permitted herein. No waivers of immunity or consents are granted hereunder other than as are expressly set forth herein. No waivers or consents are granted hereunder by any entity other than the Authority, and, specifically, no waiver of immunity is granted hereunder for any actions against the Nation.

12. The Authority acknowledges and agrees that the limited waiver of sovereign immunity and consents set forth in this Resolution were and are granted and given knowingly, willfully, and voluntarily.

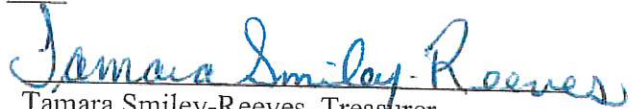
[Certification follows on the next page.]

CERTIFICATION

The foregoing resolution of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) was presented and duly adopted through an electronic/telephonic vote of the members of the Authority on June 12, 2019, with a vote reflecting 5 yes, 0 no, 0 abstaining, and 0 absent.



John L. Berrey, Chairman
Downstream Development Authority



Tamara Smiley-Reeves, Treasurer
Downstream Development Authority