

Downstream Development Authority of the Quapaw Tribe of Oklahoma
Supplement to Minutes dated 5/8/19
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 Monday June 3, 2019.

All,
Attached are two proposed resolutions from Steve Ward. The first one Authorizes the creation of Saracen Development LLC and the second one provided a Limited waiver of sovereign immunity. Below are the details from Steve.
Any questions please let me know.
Thanks,
Tena

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John:

I am attaching, for approval by the Downstream Authority, two resolutions relating to the planned operation of the Saracen Casino Resort as a state-regulated casino under Arkansas law.

Background and Summary: The Arkansas Racing Commission has requested assurances—including an immunity waiver—that the Authority will operate the Saracen Casino Resort within the jurisdiction of the state, and that the state could take necessary enforcement measures against the Authority. The time period of the Authority's exposure should be brief, as it is planned to seek a transfer of the license from the Authority to a new Arkansas subsidiary of the Authority immediately after the issuance of the license. To summarize the two resolutions:

1. Resolution Authorizing the Creation of Saracen Development, LLC: This resolution authorizes the creation of a new limited liability company under Arkansas law to develop, finance, and own the new resort, as well as to hold the license. Further, this resolution provides assurances requested by the ARC that the new company will not be a governmental entity, but rather will be a company within state jurisdiction and subject to state law.

At the ARC's request, this resolution contains a back-up waiver of immunity—which is largely meaningless. Under controlling law, this company is a state entity, and does not enjoy sovereign immunity. This resolution therefore simply confirms this status for the ARC, which is not used to working with tribes and tribal entities.

2. Resolution Providing for a Limited Waiver of Immunity With Respect to the Authority's Obligations as a Licensee. This resolution provides a limited waiver of the Authority's immunity, effective upon the issuance of the license to the Authority, to permit the State of Arkansas and any of its agencies and officials to bring an action against the Authority in Arkansas and under Arkansas law to "enforce any legal obligations of the Authority as holder of [an Arkansas gaming] License." Upon transfer of the license to Saracen Development, LLC, this waiver would permit actions only to enforce "any legal obligations of the Authority" arising under state law "with respect to the initial issuance of the license or to its transfer."

This waiver would permit actions for money damages, for injunctive relief, and for any other relief." The waiver would broadly permit the state to sue the Authority to enforce any of its obligations under Arkansas law with respect to the license. However, this is the extent of the waiver, and, as currently planned, the Authority will not hold the license for more than a month or two.

While we typically try to make immunity waivers as narrow as possible, in this case I think the language is about as narrow as is advisable. If we try to limit the scope of the waiver further, I think the ARC may become concerned the Authority is trying to avoid reasonable enforcement. The resolution contains the usual

protections we include in waivers, including that it is limited to suits by the state and its agencies, and that it does not provide a waiver to sue the Nation.

Action Requested: The Authority’s approval of these resolutions is requested as soon as possible. We will need to provide certified copies of these resolutions to the Authority by Friday, at the latest.

Should you have any questions or comments, please do not hesitate to contact me.

Stephen R. Ward

Partner

Thank you,

Vote:

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

5 yes, 0 no, 0 abstaining, 0 absent

Motion Carries.