

gambling nuisance on the land in question. As set out in greater length in Protestants' Reply Briefs to the Motion to Strike the Applicants Exhibit 1 and the Request for Judicial and Official Notice, the status of the JIV need not be decided for this tribunal to decide that the land in question does not qualify for gambling, because the Secretary of the Interior has made no Indian lands decision as to the land in question, and, as a matter of law, cannot decide that the land qualifies for gambling, because it was never taken into trust by the Secretary for a tribe under federal jurisdiction in 1934, and for that reason cannot have been proclaimed to be a reservation. 25 U.S.C. §§465, 467; *Carcieri v. Salazar*, 382-83, 388-90, 394-95, 398-99 (2009); *Sandy Lake Band of Miss. Chippewa ("Sandy Lake") v. United States*, 2012 U.S. Dist. LEXIS 63458, *3-4 (D. Minn. 2012); *Littlefield v. DOI* (D. Mass. 2016), 16cv10184, Doc. 87; 2002 Dept. of the Interior and Related Agencies Appropriations Act, Pub. L. No. 107-63, § 134, 115 Stat. 414, 442-43 (2001); 25 C.F.R. 151.3.¹

Thus, contrary to the Department's erroneous argument, the sole basis for Protestants' request for official and judicial notice is not to challenge the status of the JIV, or of the Applicants, which are subsidiary corporations with no ownership, right, title or interest in the land in question. As can be gleaned from Protestants' briefs, the sole reason for their Request for Official and Judicial Notice of Exhibits P11, A-M, is to demonstrate that the Applicants have failed to meet their burden of proof to establish that they are not operating a public gambling nuisance on the land in question, because it does not qualify for gambling, having never been taken into trust by the Secretary for a tribe under federal recognition in 1934, and for the same

¹ "No acquisition of land in trust status, including the transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary." 25 C.F.R. 151.3.

reason, has not been, and cannot have been, proclaimed to be a reservation.

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