



**A RESOLUTION OF THE DELAWARE TRIBE OF INDIANS APPROVING SETTLEMENT  
REGARDING THE CLAIMS OF THE TRIBE IN  
*DELAWARE TRIBE OF INDIANS V. UNITED STATES*, NO. 02-26L  
IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**Resolution No. 2017-04**

**WHEREAS**, pursuant to the Constitution, Article V, and Bylaws of the Delaware Tribe (1982), the Tribal Council is designated as the body with the power to represent and act on behalf of the Tribe in all matters concerning the general welfare of the Tribe; and

**WHEREAS**, on January 8, 2002, the Tribe and the Trust Board, represented by the Nordhaus Law Firm, filed suit against the United States in the United States Court of Federal Claims in Washington, DC, *Delaware Tribe of Indians and Delaware Trust Board v. United States*, No 02-26L (“Trust Fund Action”), regarding distribution and mismanagement of judgment funds awarded to the Tribe and held in trust by the United States, including historical accountings and other equitable relief relating to those funds; and

**WHEREAS**, on November 24, 2003, by Resolution No. 2003-62, and again on December 20, 2004, by Resolution 2004-70, the Tribal Council approved settlement in principle of the suit, including the pursuit of legislation to direct and streamline the distribution processes; and

**WHEREAS**, resolution of the litigation was delayed by the Tenth Circuit decision on November 16, 2004 in *Cherokee Nation of Oklahoma v. Norton*, Case No. 03-5055, which directed that the Tribe be removed from the list of federally recognized tribes and after which the Supreme Court denied the Tribe’s petition for *certiorari* seeking review of that decision; and

**WHEREAS**, resolution of the litigation was delayed further by the Department of the Interior’s reversal of its position following the denial of *certiorari*, when the Department announced it would no longer support any settlement legislation without the approval of the Cherokee Nation and no longer carry such legislation as an “administration bill”; and

**WHEREAS**, the Tribe’s status as a separately recognized Indian tribe was resolved on May 26, 2009 when the members of the Delaware Tribe approved the 1982 Constitution, as amended by the Tribe and as acknowledged by the Department of the Interior during a Secretarial Election held to reorganize the Tribe under the Oklahoma Indian Welfare Act, thereby restoring the Tribe’s separate federal recognition and leading to publication of the restoration in the *Federal Register* on August 11, 2010 and to the inclusion of the Tribe on the list of recognized tribes; and

**WHEREAS**, resolution of the litigation was delayed again when the Republicans in the House of Representatives determined that the draft settlement legislation would be considered an “earmark” despite the

best efforts of Representative John Sullivan to advance the Tribe's view that funds held in trust accounts are not subject to the ban on earmarks; and

**WHEREAS**, on May 27, 2008, the Tribal Council directed the Chief and the Nordhaus Law Firm to seek release of funds under 25 U.S.C. § 164; and

**WHEREAS**, by Resolution 2009-10, the Tribal Council reaffirmed its direction that any funds available under 25 U.S.C. § 164 be disbursed to the Tribe as quickly as possible; and

**WHEREAS**, the United States conducted an analysis of the funds in judgment fund accounts in the name of the Tribe and concluded that some funds could be disbursed to the Tribe without going through the § 164 process but also improperly determined that some \$180,000 would be disbursed to Tribal members rather than the Tribe; and

**WHEREAS**, by Resolution 2010-7, the Tribal Council reaffirmed that any funds subject to 25 U.S.C. § 164 should be disbursed to the Tribe and that any funds subject to administrative distribution should also be disbursed to the Tribe;

**WHEREAS**, in 2010 and 2011, the following amounts were distributed administratively to the Tribe:

**June 24, 2010:**

JA9484377	\$121,803.00
JA9284371	\$ 80.77
<b>TOTAL</b>	<b>\$121,883.77</b>

**July 1, 2010:**

JA9284108	\$271,396.54
JA9484104	\$17,850.83
JA9484104	\$33,077.44
JA9285105	\$13,943.55
<b>TOTAL</b>	<b>\$336,268.36</b>

**December 2011**

JA9484104	\$9,264.64
JA9285105	\$42,364.13
<b>TOTAL</b>	<b>\$51,628.77</b>

**WHEREAS**, the United States could not determine the correct disposition of some \$63,000 in JA9284108, which funds were transferred to the account ending 4101 for further analysis and subsequent distribution as determined by the parties; and

**WHEREAS**, on December 17, 2013, the United States disbursed funds to the Tribe under 25 U.S.C. §164 in the following amounts:

JA9484104	42,981.02
	3,396.40
JA9285105	215,802.24
JA9285378	653.27

**TOTAL**            **262,832.93**

**WHEREAS**, the Tribe requested that the United States conduct further analysis on the funds remaining in account ending 4101 and some \$12,500 remaining in JA9284108; and

**WHEREAS**, based on that analysis and as discussed in a meeting between the United States and the Tribe in December 2015, it was determined that the funds remaining in JA9284108 should have been included in the §164 request to Congress and would be restored to the Tribe by appropriate means, a process that is still underway; and

**WHEREAS**, it was also determined that, although the funds in account ending 4101 properly belong to the Delaware Nation based on the reallocation of funds under the 1972 Act because of unsuccessful applications for Tribal membership under that Act, the United States could not determine that funds relating to any unsuccessful applications for membership in the Delaware Nation were similarly reallocated, with the proper percentage being transferred to the Tribe under that Act; and

**WHEREAS**, with most of the funds subject to administrative and congressional distribution having been disbursed to the Tribe, the Tribe has engaged in settlement negotiations with the United States to address the Tribe's remaining historical trust accounting and trust mismanagement claims in the Trust Fund Action; and

**WHEREAS**, on November 11, 2016, the Tribe, through the Nordhaus Law Firm, submitted a detailed statement of its settlement position to the United States; and

**WHEREAS**, the Tribe and the United States have discussed the terms and conditions of a proposed settlement of the Tribe's trust account-, trust fund-, and non-monetary trust asset- and resource-related claims in the Trust Fund Action, as set forth in the proposed Settlement Agreement between the Tribe and the United States (Attachment 1 hereto); and

**WHEREAS**, the Tribe is in the final stages of negotiations with the United States regarding a proposed final settlement, including a payment by the United States of a Settlement Amount, \$2,435,000, and including a reservation of rights to pursue claims if the United States does not disburse the amounts remaining in certain accounts in accordance with law; and

**WHEREAS**, as provided in the proposed Settlement Agreement, the United States would pay the Settlement Amount to the Tribe in exchange for the Tribe's waiver, release, and covenant not to sue in any administrative or judicial forum on any and all claims, causes of action, obligations, and/or liabilities of any kind or nature whatsoever, known or unknown, regardless of legal theory, for any damages or any equitable or specific relief, that are based on harms or violations occurring before the date of the execution by the Tribe and the United States of the Settlement Agreement and that relate to the United States' management or accounting of the Tribe's trust accounts, funds and non-monetary trust assets or resources; and

**WHEREAS**, the Tribe has been advised by the Nordhaus Law Firm in evaluating the settlement offers and counter-offers in this case; and

**WHEREAS**, the Tribal Council has reviewed the terms and conditions of the proposed settlement, as set forth in the proposed Settlement Agreement, and the Council finds the proposed settlement terms and conditions acceptable; and

**WHEREAS**, the Tribal Council has reviewed the latest Periodic Statements of Performance (“PSPs”) for its trust accounts, as provided by the United States as Exhibits to the proposed Settlement Agreement (Attachment 2 hereto), and, for purposes of settlement, the Council attests to the accuracy of its trust account balances as stated in the PSPs.

**NOW THEREFORE BE IT RESOLVED THAT**, that the Tribal Council (1) accepts the terms of the proposed Settlement Agreement, attached hereto, subject to any modification as provided herein; and (2) attests to the balances in the most recent PSPs for its trust accounts, attached hereto; and

**BE IT FURTHER RESOLVED THAT**, the Tribal Council delegates to the Chief full and complete authority (1) to approve any revisions to the proposed Settlement Agreement so long as they do not deviate significantly from the proposed Settlement Agreement attached hereto, as determined by the Chief in his discretion after consultation with the Assistant Chief and the Nordhaus Law Firm; and (3) to execute any and all documents and to take any actions consistent with this Resolution to conclude a settlement of the Trust Fund Action; and

**BE IT FURTHER RESOLVED THAT**, the Tribal Council authorizes the Nordhaus Law Firm, as its legal counsel, to continue any negotiations and coordination with the United States regarding the Trust Fund Action and related matters, to advise the Chief and the Tribal Council regarding that action, and to execute and take all necessary steps regarding the Settlement Agreement and all other necessary documents and pleadings to settle the Tribe’s claims in the case on behalf of the Tribe and to bind the Tribe, all in accordance with the final Settlement Agreement approved and executed by the Chief; and

**BE IT FURTHER RESOLVED THAT**, after consultation with the Tribe’s Chief Financial Officer and the Nordhaus Law Firm, the Chief is authorized to approve any subsequent PSPs issued by the United States that may be the “most recent” PSPs on the date of settlement; and

**BE IT FURTHER RESOLVED THAT**, the terms related to the settlement may, but need not, include an agreement that the Tribe will, in coordination with the United States; continue to pursue legislation amending the 1980 Act and for such other purposes as may be beneficial to the Tribe and/or its members; and

**BE IT FURTHER RESOLVED THAT**, the Tribal Council stands ready to take further action to effectuate the settlement if necessary, but states expressly that this resolution is intended (1) to delegate, as provided herein, all authority necessary under the Tribe’s laws to the Chief to approve any revisions to the Settlement Agreement, subsequent PSPs, and other necessary documents; (2) to authorize the Chief to then execute the Settlement Agreement and any other necessary documents; and (3) to authorize the Nordhaus Law Firm to execute the Settlement Agreement upon approval and execution by the Chief.

The above resolution was duly adopted at a regular meeting of the Delaware Tribal Council held January 17, 2017, at Delaware Tribe of Indians by a majority vote of 7 yes, and 0 no, and 0 abstaining.

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Chet Brooks, Chief

*Charles Randall*

Attested by: Charles Randall Secretary

