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Feds want dismissal of Cherokee County lawsuit involving casino

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Jun. 5--COLUMBUS, Kan. -- A lawyer for the federal government has filed a motion to dismiss Cherokee County's lawsuit against the U.S. Department of the Interior stemming from the Quapaw Tribe's new casino.

David Cooper, the attorney representing Cherokee County on gambling issues, said no hearing has been set on the government motion.

The county's lawsuit, filed in February in U.S. District Court in the District of Columbia, alleges that Interior Secretary Dirk Kempthorne conveyed the interests of what is known as the Meh-No-Bah Allotment to the tribe in trust without conducting an environmental review of the tribe's casino development under the National Environmental Policy Act. The allotment is the location of the tribe's \$301 million casino and hotel, just off Interstate 44.

Cooper's expenses are charged to the county, and the county is reimbursed by [Penn National Gaming.](#) ▼

Penn National Gaming.

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Penn National is planning a competing casino near the tribe's **Downstream Casino** Resort, which is scheduled to open July 5.

The court filing by the county also included a request for a preliminary injunction to stop the construction on the project.

The dismissal motion was filed May 28 by Amy Tryon, a trial attorney with the U.S. Justice Department's Environment and Natural Resources Division.

"The complaint should be dismissed because plaintiff lacks standing to challenge the transfer of the Meh-No-Bah Allotment," reads a document filed in support of the motion.

The argument also states that the county has suffered no injury as a result of the transfer of the land to the tribe under the Indian Land Consolidation Act.

"The United States did not endorse, authorize, allow or cause any construction for the proposed casino," the document reads. "The tribe has engaged in construction activities on its own -- activities which, to date, involve no violation of law of which the United States is aware."

The document also states that the land transfer didn't require documentation under the National Environmental Policy Act, as alleged in the lawsuit.

"In any event, even if plaintiff were correct that the ILCA transfer authorized the tribe to build a casino, plaintiff's NEPA claim would be moot because the casino is virtually complete," the document reads.

The court filing also states that the federal government has no power to halt construction on the casino.

"This injunctive relief is unavailable because the United States is not engaging in any construction on the property; the Quapaw Tribe is doing so," the document states. "Therefore, if the court were going to enjoin construction activities on the Meh-No-Bah Allotment, it would have to enjoin the tribe, not the United States. However, the Quapaw Tribe is not a party to this case and cannot be enjoined by the plaintiff because it has sovereign immunity from suit."

The Kansas Lottery Commission last month approved [Penn National Gaming](#) ▼

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's contract to build a casino with an initial investment of \$125 million plus a \$25 million privilege fee to the state. The company would invest an additional \$100 million in the project over 12 years, according to the contract. The company hopes to open the casino by May 5, 2010. The project is scaled back from an initial application for a \$295 million casino and hotel.

The Kansas Lottery Gaming Facility Review Board also began reviewing casino contracts Tuesday. The board will conduct a public meeting July 9 in Cherokee County.

The Cherokee County commissioners have accepted an invitation from John Berrey, chairman of the Quapaw Tribe's business committee, to tour the **Downstream Casino** Resort construction site on Monday afternoon.

