

NEWSLETTER

ONEIDA INDIAN NATION

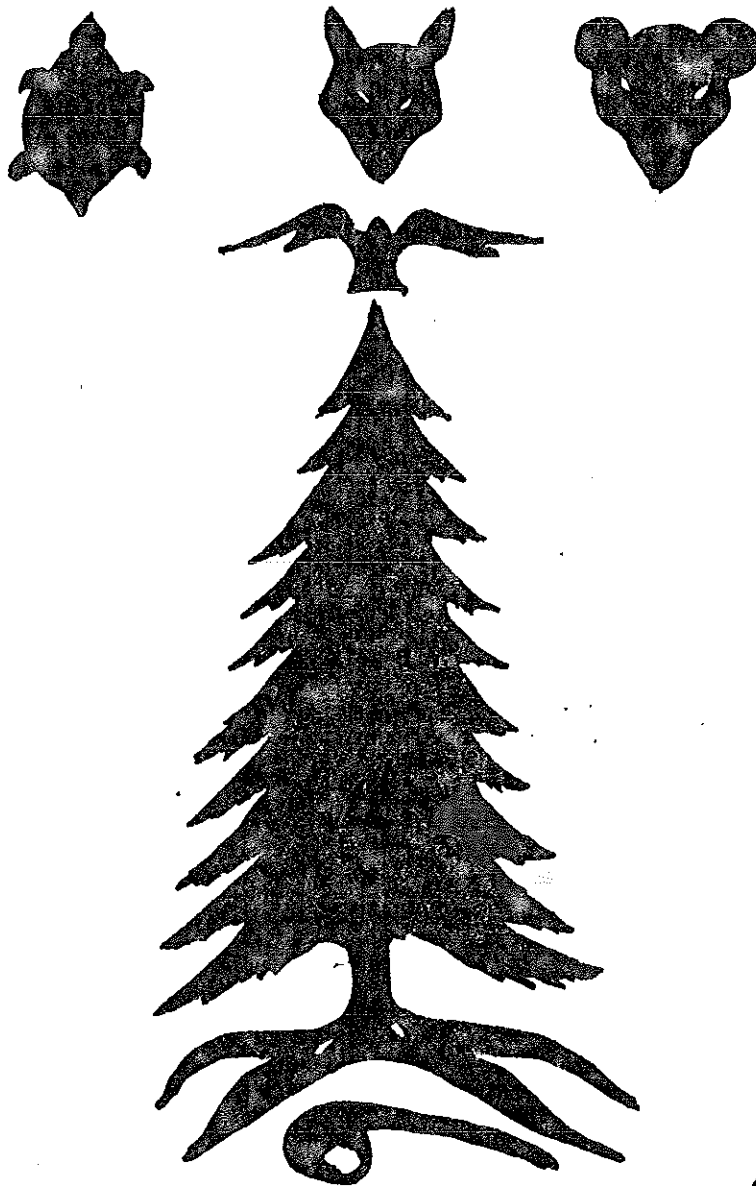
NEW YORK

R.D. 2 WEST ROAD ONEIDA TERRITORY

ONEIDA, NEW YORK 13421

AUGUST 1979

*Rel of 10/29
He*



MS

This newsletter is being sent to all of our Oneida Indian people so that the Oneidas may be better informed about what is affecting and what will be affecting them now and in the future.

As we all know, since August 1975 there has been no federally recognized leadership of the Oneida Indian Nation of New York. An attempt was made by the B.I.A. and the elective group to compile a roll of Oneidas and thereby legalize a poll conducted by the B.I.A. in April 1979. Because less than 30% of the adult Oneidas in New York participated, the poll failed. The Traditional Oneidas refused to participate and also refused to relinquish any information about our rolls to the B.I.A. As a sovereign nation, we believe that determining membership and determining leadership belongs only to the Oneida Indian Nation.

Immediately following the poll's failure, a letter was sent to the Oneidas of New York by Leo Krulitz, solicitor of the Dept. of the Interior, suggesting a method by which the Oneida Indian land claims could go ahead. The proposal was that 4 Oneidas from Wisconsin, 3 Oneidas from New York- one each from the traditional, elective and Marble Hill groups and 2 from Ontario Canada, be chosen by the people for a land claim negotiation committee.

Since this letter from Krulitz was received, the Traditional Oneida people have contacted the Wisconsin Oneidas in an attempt to get all Oneidas to work together, whether traditional or elective. Much progress has been made in this regard. Three meetings have been held to try to put aside all personal and political differences among our people so that we can be united and strong. Much of the discussion at these meetings has been in considering ways that we can accomplish this.

At the last meetings held on August 4 and 5, 1979 at the Oneida Indian Territory, it was very encouraging to see all elements of our Oneida people, from Wisconsin, Canada, and New York, both traditional and elective, present. Each presented their positions. On Sunday, August 5, Chip Burr read a statement of the elective groups position. A copy is attached.

We would therefore like to present the position of the Traditional Oneida people. In the past 4 years since our people have been separated, we have sent several letters to Chip Burr in an attempt to unite our people. We have never received a reply. Attached is a copy of one. These were earnest efforts to get the Oneidas at least talking to one another.

In January 1979, the Traditional Oneida Indian people met in Washington with Leo Krulitz. At that time we offered a suggestion of how the Oneidas of New York could all be represented fairly. We proposed that 2 representatives from Marble Hill, 2 from the elective group and 2 from the Traditional people form a negotiating council to work on behalf of the Oneida people. We also suggested that any decision or position made by this group would have to be a unanimous agreement. These representatives could meet together,

discuss whatever topics or problems that were of concern to the Oneidas and report back to their respective people for their approval or disapproval. By unanimous decision these representatives could not act alone. In this way, it would be possible for all of our people to be represented despite political or personal differences and the Oneida land claims could continue. Much is up to the Oneida people themselves. It is possible for the people to direct their representatives or leaders to put aside their differences and to communicate and work together for the future of all our people. Whether we realize it or not, division is hurting all of us. If we intend to accomplish anything out of our land claims we will have to be strong and stand together.

Let us try not to let the differences between our people hurt the future of our children. It is in our hands to protect those children who are looking up to us and those who will come after us. It is our responsibility whether we let anger or petty disagreements of a few stand in the way of many.

The strength of our Nation lies in our people. Our leaders are there to carry out the peoples decisions. The Oneida Traditional people intend to proceed with negotiations and the land claims, and hopefully with all Oneidas working together. If you feel that it is time to go ahead, then it is time to let your leaders know this.

There is an Oneida Indian Nation meeting held at the Oneida Indian Territory on the first Sunday of every month at 2 P.M. All Oneidas are welcome. In the event of a holiday weekend the meeting will be held the following Sunday.

ONEIDA LAND CLAIMS

THERE ARE NOW PENDING THREE CASES CHALLENGING THE LEGALITY OF POST-1790 TREATIES BETWEEN THE ONEIDA INDIAN NATION AND NEW YORK STATE. THE FIRST CASE (ONEIDA v. ONEIDA CO., CIV. NO. 70-CV-35) IS USUALLY REFERRED TO AS THE "JUDGE PORT'S CASE" AND WAS FILED IN 1970 BY GEORGE SHATTUCK. THE COMPLAINT CHALLENGES THE VALIDITY OF ONLY ONE OF THE POST-1790 STATE TREATIES, THE TREATY OF 1795, AND SEEKS AS RELIEF TRESPASS DAMAGES FOR TWO YEARS FROM MADISON AND ONEIDA COUNTIES, THE ONLY DEFENDANTS.

THE SECOND CASE (ONEIDA v. ONEIDA COUNTY., CIV. NO. 74-CV-187) FILED IN 1974 BY GEORGE SHATTUCK, CHALLENGES THE VALIDITY OF ALL OTHER POST-1790 TREATIES BETWEEN THE ONEIDA NATION AND NEW YORK STATE.

THE THIRD CASE, (ONEIDA TRIBE OF NEW YORK v. ABRAHAM WILLIAMS CIV. NO. 74-CV-167), FILED BY NARF AND KNOWN AS THE ABRAHAM WILLIAMS CASE, WAS FILED ON BEHALF OF THE ONEIDA NATION OF NEW YORK AND CHALLENGES THE LOSS THROUGH TAX FORECLOSURE AND OTHERWISE OF SOME 750 ACRES OF LAND RESERVED FOR THE NEW YORK ONEIDAS.

BECAUSE ALL THREE POST-1790 CASES INVOLVE MANY OF THE SAME LEGAL ISSUES, THE 1974 CASE AND THE ABRAHAM WILLIAMS CASE WERE HELD IN ABEYANCE WHILE THE 1970 TEST CASE WAS TRIED. THE LIABILITY ISSUE IN THE TEST CASE HAS BEEN TRIED AND JUDGE PORT RULED FOR THE ONEIDAS.

ON APRIL 2, HOWEVER, MADISON COUNTY MOVED FOR SUMMARY JUDGEMENT IN BOTH THE TEST CASE AND THE 1974 CASE ON THE THEORY THAT THE POST-1790 STATE TREATIES HAD BEEN RATIFIED FOR PURPOSES OF THE NONINTERCOURSE ACT BY PROCEEDINGS BEFORE THE INDIAN CLAIMS COMMISSION INVOLVING THOSE SAME TREATIES. JUDGE PORT DENIED THE MOTION FOR SUMMARY JUDGEMENT ON MAY 17 AND CERTIFIED HIS ORDER FOR INTERLOCUTORY APPEAL. ON MAY 23, MADISON COUNTY PETITIONED TO APPEAL.

THERE IS EVIDENCE THAT DOCKET 301 IN THE INDIAN CLAIMS COMMISSION CASE MAY THREATEN THE ONEIDA NATION'S CHANCES FOR RETURN OF LAND.

IN THE PAST, WHEN THE ONEIDAS WERE OFFERED 3.3 MILLION IN SETTLEMENT OF DOCKET 301, MANY OF OUR ONEIDAS WERE ADVISED BY THE LAWYERS AND THEIR LEADER TO ACCEPT THIS OFFER, AT A MEETING HELD IN SYRACUSE ON MARCH 12, 1977. IT IS NOW AGREED THAT IF THE MONEY HAD BEEN ACCEPTED WITH THE STIPULATIONS, WE WOULD HAVE BEEN GIVING UP ALL CLAIMS AGAINST THE UNITED STATES FOREVER ON LANDS IN NEW YORK. THERE WAS ALSO AN AGREEMENT THAT THE ONEIDAS COULD NEVER APPEAL EVEN IF IT WAS LATER DETERMINED TO HAVE BEEN IN ERROR.

WHILE IT IS TRUE THAT THE INDIAN CLAIMS COMMISSION ACT DOES NOT EXPRESSLY AUTHORIZE THE RETURN OF LAND, THERE IS A PROVISION IN THAT SAME ACT WHICH STATES THAT WHEN THE CLAIMS AWARD IS PAID, THE UNITED STATES IS DISCHARGED OF "ALL CLAIMS AND DEMANDS TOUCHING ANY OF THE MATTERS INVOLVED IN THE CONTROVERSY."
(25 U.S.C. 70u(a)).

SOME QUESTIONS ONEIDAS HAVE ASKED ON NEGOTIATIONS

- What specific lands will be covered in negotiations ?
- Will we be negotiating all of our claims ?
- How soon will negotiations start ?
- Will Federal and State governments be sitting together ?
- Can there be negotiations without a federally recognized government of the Oneida Nation of New York ?
- Where do the three Oneida Indian communities (Wisconsin, Canada and New York) stand in negotiations ?
- At the three meetings held where all Oneidas were invited, Wisconsin, Canada and New York, what progress has been made concerning negotiations with the United States ?
- How will Representative James Hanleys proposed Congressional Bill to wipe out Oneida land claims affect us ?
- What effect would the Cayuga settlement have in relation to Oneida land claim negotiations ?

FOR THE NEXT ISSUE _____

We would like to hear your questions, comments or opinions or any information that you would like to share with the rest of the Oneidas.

Anyone who would like to submit a drawing for the cover of the next newsletter---

Send to the following address

Oneida Indian Nation Newsletter
Oneida Indian Territory
Via Oneida, New York 13421

Supervisors ^{8/14/79} *Oneida Dispatch* asking Hanley for claim bill

WAMPSVILLE — The Madison County Board of Supervisors today approved a resolution aimed at resolving Indian land claims in Madison and Oneida counties.

The resolution, which was adopted unanimously without comment, asks Rep. James Hanley, D-32nd Dist., to introduce a bill in Congress clearing title to lands in the two counties involved in the Oneida Indian claims.

Hanley has said in the past he would introduce such a bill if the Board of Supervisors asked him to. He was unavailable for comment today, however.

In a speech presented more than a year ago in Oneida, and repeated since then, Hanley opposed the introduction of such a bill, claiming it could result in the Oneida Indians bringing suit directly against individual landowners. He said it would cause "immediate economic disruption."

"If the Madison County Board of Supervisors desires to approve a formal resolution urging me to introduce such a bill, I will do it, with the clear understanding that they take any moral or political responsibility for the action," Hanley said in the speech.

The resolution adopted by the supervisors, as well as a proposed bill and an analysis of the measure, were drafted by Boston attorney Allan van Gestel, who is representing Madison County in its defense of an Oneida Indian claim.

According to Madison County Attorney William Burke, the Oneida County Board of Legislators will also consider a resolution asking Rep. Donald Mitchell, R-C, 31st Dist., to introduce a similar a bill.

The bill would eliminate the Indians' claims by retroactively ratifying the Oneidas' treaties with New York state. The land claims are based on the state's alleged failure

to comply with the federal Trade and Intercourse Act which required federal approval of Indian treaties.

"... to the extent that an Indian claim is grounded on the assertion that a transfer of lands or waters was in violation of the Constitution or federal law applicable to such transfers, the purported violation shall be deemed cured and the basis for the claim removed," said van Gestel in his analysis.

The proposed bill would also eliminate any aboriginal title which the Oneidas may have had to the land.

The bill does not, however, provide for any settlement for the Oneida Indians.

"The proposed act deliberately omits any provision to provide either monetary or land relief from the counties or private individuals to the plaintiff, Oneida Indians," van Gestel said.

"This is because it is the strongly held position of the counties that neither they nor the private landowners who presently possess the land which is the subject of the litigation are responsible for the current situation.

"If there was a breach of responsibility which caused harm to the ancestors of the present plaintiffs, that breach was caused by the action or inaction of the federal government many years ago -- not any acts of the counties or private landowners.

"Consequently, the federal government should bear the full burden of any compensation which may be due to the Indians," van Gestel said.

He also said the Oneida Indians are assured of receiving full compensation of their claims in their claim against the federal government. That claim is now pending before the U.S. Court of Claims.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

-7-

MAY 1 1979

Mr. Purcell Powless, Chairman
Oneida Tribe of Indians
of Wisconsin, Inc.
Route 4
De Pere, Wisconsin 54115

Mr. Ray Halbritter
Route 46 West Road
Oneida, New York 13421

Mr. Robert W. Burr, Jr.
P.O. Box 60
Nedrow, New York 13120

Mr. Lyman Johns
RFD #2, Marble Hill Road
Oneida, New York 13421

Re: Settlement of the Land Claim
of the Oneida Indian Nation

Gentlemen:

Since 1977, this Department has taken the formal position that the Oneida Indian Nation has a credible claim under the Indian Nonintercourse Act (25 U.S.C. §177) to nearly a quarter million acres of land in Madison and Oneida Counties, New York. It has also been our position that such massive claims are best negotiated among the principal parties in an effort to achieve an amicable legislative settlement. Litigation, on the other hand, is costly and time-consuming. For example, the suit filed on behalf of the Oneida Nation by Mr. George Shattuck (No. 70-CV-35), in the U.S. District Court for the Northern District of New York, is already nine years old--and far from being concluded.

We cannot ignore the fact that a full-fledged land claim suit--one seeking ejectment of all property holders within the claim area--would result in severe economic hardship for thousands of people. We often hear the contention that past injustices and illegal actions perpetrated against Indian people should not be remedied by means which result in present injustices to others. We also hear the calls for unilateral Congressional action to prevent this by extinguishing the Indian claims. We oppose such a drastic remedy.

-2-

We prefer to avoid disruptive litigation and legislative confrontations, both of which tend to create serious tensions along racial lines. Instead, these land claims can be settled in frank discussions, where mutually acceptable legislative solutions are geared to the future well-being of the tribal claimants. That process has already worked to the satisfaction of the Narragansett people and all other parties in Rhode Island. On September 30, 1978, the President signed P.L. 95-395, the Rhode Island Indian Claims Settlement Act, into law. In addition, the State of New York has been negotiating for some time with the St. Regis Mohawk Tribe and the Cayuga Indian Nation. It is clear that New York is willing to begin serious negotiations with the Oneida Nation as well.

Such discussions have not taken place thus far, mainly because of division within the Oneida Nation of New York over its governmental system. Whatever solution ultimately resolves that basic conflict, it is now evident that it will not be timely enough to facilitate settlement of the land claim. The statute of limitations governing pre-1966 trespass claims expires on April 1, 1980, and unless there is movement toward a settlement soon, there is little chance that settlement legislation can be enacted before that deadline. This would only increase the pressure for the drastic remedies mentioned above.

Accordingly, I wish to offer the following proposal to begin a settlement negotiation process:

A 7-member Land Claim Negotiating Committee shall be formed by the Oneida Indian Nation for serious settlement discussions with representatives of the State of New York and the Federal Government. The Committee shall be composed of four representatives from the Oneida Tribe of Indians of Wisconsin and three representatives of the Oneida Nation of New York, one named by each of the traditional, elective, and Marble Hill groups. The proposed composition of the Committee is intended to reflect the larger Oneida population in Wisconsin, while giving weight to the special interests of the New York Oneida people who reside within the claim area itself and have personal familiarity with local controversy resulting from the assertion of the claim.

We have no objection to the participation of the Oneida of the Thames in this process, though it is questionable whether the United States has a trust relationship with any Canadian Indian Tribe. We regard the matter of the participation of the Canadian Oneidas as within the discretion of the New York and Wisconsin Oneida people. We ask only that any Canadian representation on the Committee be limited to two negotiators.

-3-

Please note that this proposal for a Land Claim Negotiating Committee is made independently of efforts by the Assistant Secretary--Indian Affairs to determine which system of government is desired by the people of the Oneida Nation of New York. Neither process is dependent upon the other.

We encourage all Oneida people to endorse this settlement process and to support the participation of their representatives. Nevertheless, if any one faction refuses to participate in this process, we will not feel constrained from moving ahead with negotiations with those Oneida representatives who do wish to participate. We look forward to your response to this proposal.

Sincerely,

LEO M. KRULITZ

SOLICITOR

cc: Governor Hugh L. Carey
Attorney General Robert Abrams
Senator Jacob Javits
Senator Daniel Patrick Moynihan
Rep. James M. Hanley
Rep. Donald J. Mitchell
Lawrence Aschenbrenner, Esq.
Burt Hirsch, Esq.
George C. Shattuck, Esq.
Robert T. Coulter, Esq.

December 15, 1976

-10-

FIRST LETTER

Dear Chip,

We write to you today, the people of the Oneida Indian Territory, with the earnest desire of uniting our Oneida Indian people. We are all related somewhere along the line. We all know this, and it is with sadness that we think of what will happen to our future generations, if we do not act now to resolve our problems. We believe here that we can resolve the problems that exist between us. They are not unsummountable. It has to be done with everyone wanting and willing to meet together to examine these problems.

We have already met with some representatives from the Syracuse area and we came very close to a meeting with all of the Oneida people. Probably misunderstanding and lack of communication are the main reasons that we are not back together yet.

We have such great opportunities in store for us in the future as a nation. Let us put aside our differences and start working together as one people for the benefit of all. We must make the right decisions that will effect our future and more important, the future of our children.

If we try to keep foremost in our minds the welfare of all our people, we will accomplish what we are striving for, a united Oneida Nation.

Please contact us by phone or letter and we can go on from there.

Sincerely,

Ray Halloran

I am sending a copy of this letter to several people.

THE EXECUTIVE COMMITTEE OF
THE ONEIDA INDIAN NATION OF NEW YORK

AUGUST 4, 1979

Gentlemen:

We, the elected delegates who represent the majority of the enrolled members of the Oneida Indian Nation of New York, make this statement of policy:

RECOGNITION OF A GOVERNING BODY FOR THE ONEIDA INDIAN NATION OF NEW YORK IS THE MOST IMPORTANT ISSUE FACING OUR NATION AT THIS TIME. Since 1975, the Bureau of Indian Affairs has managed to keep our Nation in a state of governmental limbo, as regards the Oneida relationship with the United States government. In 1975, the Bureau of Indian Affairs, through its Eastern Area Director Harry Rainbolt, arbitrarily, and without any notice or hearing, withdrew recognition of the Constitutional Government as the constituted governing body of the Oneida Indian Nation of New York. The resulting confusion has been termed an internal problem of the New York Oneidas, and, indeed, it is. However, it was created and has been prolonged by the Bureau of Indian Affairs. This kind of action threatens the very bulwark of any government and serves to undermine the Congressional policy of the self-government of the Indian Nations.

We hold the Bureau of Indian Affairs directly responsible for the stalemate on our land claims, as well as for undermining the government recognized by the majority members of the Oneida Indian Nation of New York as their government. There is no reason whatsoever why the government of a sovereign Indian Nation, should suffer the abrupt non-recognition by a mere branch, or any other segment of, the United States government. This issue must be resolved. No other form of business can or will be done by or with the Oneida Indian Nation of New York until the re-instatement of our Tribal government is accomplished.

Oneida Indian Nation of New York
Statement of Policy
August 4, 1979
Page 2

Under Judicial Enforcement of the Federal Trust Responsibilities to Indians, the United States is obligated to provide services related to the specific, individual treaty responsibilities, as well as to take any appropriate actions which are necessary to protect tribal self-government. By their actions, we feel that Mr. Gerard and Mr. Rainbolt have overstepped their administrative bounds and stand in violation of the Trust Responsibility Policy as set forth by Congress. Basic administrative law principles dictate that administrative officials are subject to judicial review for situations in which they exceed their delegated authority, as well as a most recent U.S. Supreme Court decision that states "Government officials can be held responsible for any and all actions taken by them in their respective positions." For example, a letter from Mr. Forrest J. Gerard, dated June 22, 1979, addressed to members of the Oneida Indian Nation of New York. quote: " It may become necessary for me, in order to properly discharge my Trust Responsibilities, to speak for the Oneida Indian Nation of New York on certain matters which would normally require Tribal government action. further, as to Oneida Land Claims the Solicitor for the Department proposed a Land Claim negotiating committee on May 1, 1979. Although he has received one favorable acknowledgement, he has yet to receive any positive acceptance of his proposal. In the absence of positive acceptance, we are exploring with him other possible alternatives." End quote.

THEREFORE, THE FOLLOWING IS OUR STATEMENT OF POLICY;

WE WILL NOT NEGOTIATE, TRANSACT, DISCUSS, OR ACT IN ANY WAY OR MANNER WITH UNITED STATES, STATE, COUNTY OR LOCAL GOVERNMENTS, OR CITIZENS THEREOF, ON OUR LAND CLAIMS IN NEW YORK STATE UNTILL MR. GERARD AND MR. RAINBOLT'S ARBITRARY DECISION IS REVERSED AND RECOGNITION IS RE-INSTATED TO OUR GOVERNING BODY IN NEW YORK STATE.

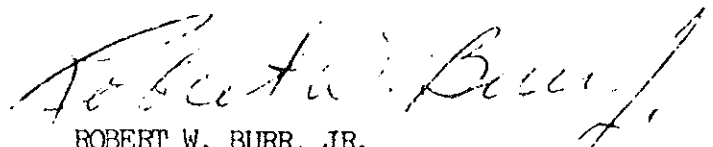
WE WILL NOT ATTEND ANY MEETING FOR THE PURPOSE OF DEVISING A NEGOTIATING COMMITTEE FOR OUR LAND CLAIMS.

WE, THE ELECTED LEADERS OF THE ONEIDA INDIAN NATION OF NEW YORK, REFUSE TO SIT AT A TABLE FOR ANY REASON OR CAUSE FROM THIS DAY FORTH WITH ANY SO-CALLED ONEIDA TRADITIONAL GROUP TO GIVE THEM BARGAINING STATUS. THE ELECTED LEADERS OF OUR NATION WERE ELECTED TO DEAL WITH ALL MATTERS CONCERNING THE ONEIDA INDIAN NATION OF NEW YORK. To give them bargaining status as some of you have been attempting to do serves only to frustrate the Constitutional Government which the Oneida Indian Nation of New York has for many years fostered and recognized.

ANY ACTS, DECISIONS, NEGOTIATIONS MADE BY ANY SO-CALLED TRADITIONAL ONEIDA GROUP OR INDIVIDUALS PROCLAIMING TO REPRESENT THE ONEIDA INDIAN NATION OF NEW YORK AND ITS MEMBERS IS NULL AND VOID.

ANY ACTS, DECISIONS, NEGOTIATIONS MADE BY THE BUREAU OF INDIAN AFFAIRS OR ANY OF ITS OFFICIALS PROCLAIMING TO REPRESENT THE ONEIDA INDIAN NATION OF NEW YORK AND ITS MEMBERS IS NULL AND VOID.

HOWEVER, THE ONEIDA INDIAN NATION EXECUTIVE COMMITTEE AND ITS MEMBERS WILL PURSUE THE ONGOING RESOLUTION OF OUR LAND CLAIMS THROUGH THE COURTS, LETTING THE JUSTICE SYSTEM TAKE ITS NATURAL COURSE.



ROBERT W. BURR, JR.
PRESIDENT
ONEIDA INDIAN NATION OF NEW YORK