

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 03-2684L & No. 01-568L (consolidated)**

_____	)	
Sheldon Peters Wolfchild, et al.,	)	
	)	
Plaintiffs,	)	<b>Honorable Charles F. Lettow</b>
	)	
vs.	)	
	)	
The United States of America,	)	
	)	
Defendant.	)	
_____	)	

**PARTIAL RESPONSE OF AMICI CURIAE SHAKOPEE MDEWAKANTON SIOUX  
COMMUNITY AND PRAIRIE ISLAND INDIAN COMMUNITY TO PLAINTIFFS'  
OPPOSITION TO FILING OF AMICUS CURIAE MOTION AND SUBMISSION OF  
PROPOSED MEMORANDUM OF OPPOSITION TO PLAINTIFFS'  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Shakopee Mdewakanton Sioux Community and the Prairie Island Indian Community ("Amici") submit the following Partial Response to Plaintiffs' Opposition to Filing of Amicus Curiae Motion and Submission of Proposed Memorandum of Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment (Docket No. 775).

On September 22, 2010, Amici filed the Motion of Amici Curiae Shakopee Mdewakanton Sioux Community and Prairie Island Indian Community For Leave to File Memorandum in Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment (Docket No. 775), to which Motion was attached a proposed Memorandum and supporting set of Exhibits.

Plaintiffs filed their Opposition on September 23, 2010, referencing an Order of this Court, dated December 16, 2005, at page 30 of which the Court said "... any person or entity seeking to file briefs or memoranda as *amicus curiae* in this case in the future, including the

communities, must specifically seek leave to do so at least 21 days in advance of the proposed filing of such briefs or memoranda... ."

On January 19, 2007, the Court Clerk issued a Notice of Designation that required all filings in this case after January 19, 2007 to be made electronically through the court's case management/electronic case filing ("CM/ECF") system. The CM/ECF filing system available on September 22, 2010 to Amici for filing their Motion For Leave to File did not present any option for a subsequent filing, after 21 or more days, of the Memorandum and Exhibits which Amici proposed in their Motion to be filed. Accordingly, Amici attached the proposed Memorandum and Exhibits to the Motion For Leave to File they filed under the CM/ECF system. The decision on whether to permit the subsequent filing of the proposed Memorandum and Exhibits remains in the discretion of the Court.

By attaching their proposed Memorandum and Exhibits, Amici did not contravene the earlier Order of the Court nor obtain any unfair advantage thereby. If their Motion for Leave to File is denied, the Clerk can delete the Memorandum and Exhibits from the docket. The parties were not prejudiced by the submission and service of the proposed Memorandum and Exhibits on September 22<sup>nd</sup>, as the only impact to them was to provide them with the substance of what Amici seek to file, and, in the case of Plaintiffs, with additional time for any reply briefing and for preparation for their oral argument on October 22<sup>nd</sup>.

Amici the Shakopee Mdewakanton Sioux Community and the Prairie Island Indian Community therefore respectfully renew their request that the Court grant them leave to file their proposed Memorandum in Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment (Docket No. 775), and supporting set of Exhibits which they attached to the Motion For Leave to File they filed on September 22, 2010.

Dated: September 24, 2010

/s/ Philip Baker-Shenk

Philip Baker-Shenk (386662)  
HOLLAND & KNIGHT LLP  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006  
Telephone: (202) 457-7031  
Facsimile: (202) 955-5564

Attorneys for Amici the Shakopee Mdewakanton  
Sioux Community and the Prairie Island Indian  
Community

Of Counsel

Brian B. O'Neill  
Richard A. Duncan  
FAEGRE & BENSON LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
Telephone: (612) 766-7000  
Facsimile: (612) 766-1600

and

Kurt V. BlueDog  
BLUEDOG, PAULSON & SMALL, P.L.L.P.  
Southgate Office Plaza, Suite 500  
5001 American Boulevard West  
Bloomington, MN 55437  
Telephone: (952) 893-1813  
Facsimile: (952) 893-0650

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of September, 2010, a copy of the Partial Response of Amici Curiae Shakopee Mdewakanton Sioux Community and Prairie Island Indian Community to Plaintiffs' Opposition to Filing of Amicus Curiae Motion and Submission of Proposed Memorandum of Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment (Docket No. 775) was filed electronically with the Clerk of the Court through its CM/ECF System and electronic notice was delivered to the parties entitled to receive notice.

Dated: This 24th day of September, 2010.

/s/ Philip Baker-Shenk