UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Osage Nation,

Plaintiff(s),

vs. Case Number: 01-CV-516-JHP-FHM

OTC,

Defendant(s).

MINUTE ORDER

At the direction of James H. Payne, U.S. District Judge, it is hereby ordered that:

Denying Plaintiff's Rule 59 Motion. The instant case was filed July 16, 2001. Plaintiff asserts it is entitled to additional discovery prior to adjudication. However, the Court finds this request is not properly supported with a Fed.R.Civ.P. 56(f) affidavit. See Committee for the First Amendment v. Campbell, 962 F.2d 1517, 1521-22 (10th Cir. 1992)("In this Circuit, counsel's unverified assertion in a memorandum opposing summary judgment does not comply with Rule 56(f) and results in a waiver."). After 8 years of litigation, the Nation's failure to avail itself of Rule 56(f) bars it from now asserting that it required additional discovery to be able to adequately respond to the Commissioner's motion, or that the record was inadequate. Boling v. Romer, 101 F.3d 1336, 1339 n.3 (10th Cir. 1996)(failure to submit Rule 56(f) affidavit forecloses any argument that court erred in granting summary judgment before close of discovery.). Moreover, a "motion under Rule 59(e) is not authorized 'to enable a party to complete presenting his case after the court has ruled against him." In re Reese, 91 F.3d 37, 39 (7th Cir. 1996).

Phil Lombardi,
Clerk of Court, United States District Court

s/P. Lynn
By: P. Lynn, Deputy Clerk