

ORIGINAL**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

Grace M. Goodeagle, Thomas Charles
 Bear, Edwina Faye Busby, Phyllis Romick
 Kerrick, James E. Gilmore, Jean Ann
 Lambert, Florence Whitecrow Mathews,
 Ardina Revard Moore, and Fran Wood,
 individually and on behalf of similarly
 situated Members of the
 Quapaw Tribe of Oklahoma (O-Gah-Pah),

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

FILED

JAN 5 2011

**U.S. COURT OF
FEDERAL CLAIMS**

11-9 L
 Case No. _____
 Judge _____

COMPLAINT**Introduction**

This is a lawsuit for money damages arising from Defendant's breach of fiduciary and trust obligations owing to Plaintiffs, Grace M. Goodeagle, Thomas Charles Bear, Edwina Faye Busby, James E. Gilmore, Jean Ann Lambert, Florence Whitecrow Mathews, Ardina Revard Moore, and Fran Wood, and the class they represent, all of whom are enrolled Members of the Quapaw Tribe of Oklahoma (O-Gah-Pah), a federally recognized Indian nation. The claims arise from Defendant's failure to properly manage amounts due and owing to the Quapaw Tribal members under leases, permits, and agreements and government actions or inactions relating to certain real property, personal property (including chat severed from the surface and mineral estate by mining), mineral

rights, as well as other sums due and owing to them by operation of law. These claims also arise from Defendant's serious and sustained mismanagement of the Quapaw Tribal members' Individual Indian Money Accounts, trust accounts, and other monetary assets. These claims also arise from Defendant's similar mismanagement of the natural resources and other assets on Quapaw Tribal members' trust/restricted lands, including but not limited to the mismanagement arising from federally managed mining activities on Quapaw Tribal members' land, resulting in the destruction of natural resources and the environment, including the ability of Tribal members to use the land and other resources for grazing or agricultural or any other economically beneficial purpose.

An accounting of Defendant's historical management of Quapaw trust assets—as set forth in a report known as the Quapaw Analysis—recently was completed and accepted as final by the Office of Historical Trust Accounting of the United States Department of the Interior. That accounting report, the product of a settlement of a previous suit for an equitable accounting, identifies and details Defendant's mismanagement of numerous sampled Tribal and individual Tribal member trust assets, including but not limited to Defendant's failure to collect monies due and owing under leases, permits, and agreements for the Quapaw Tribe and for the restricted interest holders of 13 allotments and of the class they represent, the degradation of the natural resources on the land and the environment, and the waste and dissipation of other trust assets, all of which was the result of mismanagement and negligence by the Defendant. The substantive law governing the United States' trust responsibilities that were breached

in this case may be fairly interpreted as mandating monetary compensation for damages sustained as a result of the breach of those duties.

Parties

1. Plaintiff, Grace M. Goodeagle, is an enrolled member of the Quapaw Tribe residing in Commerce, Oklahoma. Goodeagle is a successor-in-interest to an undivided ownership interest in the Francis Quapaw Goodeagle allotment and the Wah Tah Noh Zhe allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

2. Plaintiff, Thomas Charles Bear, is an enrolled member of the Quapaw Tribe residing in Miami, Oklahoma. Bear is a successor-in-interest to an undivided ownership interest in the Anna Beaver allotment and the John Beaver allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

3. Plaintiff, Edwina Faye Busby, is an enrolled member of the Quapaw Tribe residing in Miami, Oklahoma. Busby is a successor-in-interest to an undivided ownership interest in the Francis Quapaw Goodeagle allotment and the Ho-Gha-Meh Goodeagle allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

4. Plaintiff, James E. Gilmore, is an enrolled member of the Quapaw Tribe, residing in Bernice, Oklahoma. Gilmore is a successor-in-interest to an undivided ownership interest in the Harry Crawfish allotment and the Robert Lottson allotment.

These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

5. Plaintiff, Jean Ann Lambert, is an enrolled member of the Quapaw Tribe residing in Miami, Oklahoma. Lambert is a successor-in-interest to an undivided ownership interest in the Benjamin Quapaw allotment and the Robert Thompson allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

6. Plaintiff, Florence Whitecrow Mathews, is an enrolled member of the Quapaw Tribe residing near Quapaw, Oklahoma. Mathews is a successor-in-interest to an undivided ownership interest in the Harry Crawfish allotment. This allotment, ratified by the United States in 1897, is located within the Quapaw Tribe's 1833 reservation.

7. Plaintiff, Ardina Revard Moore, is an enrolled member of the Quapaw Tribe and resides in Miami, Oklahoma. Moore is a successor-in-interest to an undivided ownership interest in the Slim Jim allotment and the Sin-Tah-Hah-Hah-Track allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation, in Quapaw, Oklahoma.

8. Plaintiff, Fran Wood, is an enrolled member of the Quapaw Tribe residing in Miami, Oklahoma. Wood is a successor-in-interest to an undivided ownership interest in the John Quapaw allotment, the Red Sun Quapaw allotment, and the Charlie Blackhawk Quapaw allotment. These allotments, ratified by the United States in 1897, are located within the Quapaw Tribe's 1833 reservation.

9. Plaintiff, Phyllis Romick Kerrick, is an enrolled member of the Quapaw Tribe residing in Lawton, Oklahoma. Kerrick is a successor-in-interest to an undivided ownership interest in the Mary Whitebird allotment. This allotment, ratified by the United States in 1897, is located within the Quapaw Tribe's 1833 reservation.

10. Defendant is the United States of America, acting through the Department of the Interior, including the Bureau of Indian Affairs (BIA), and other federal agencies, departments, bureaus, and offices.

Jurisdiction

11. This Court has jurisdiction over these claims under 28 U.S.C. § 1491 (the Tucker Act) as a "claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department or upon any express or implied contract with the United States," and under 28 U.S.C. § 1505, for "any claim against the United States accruing after August 13, 1946, in favor of any Tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian Tribe, band or group."

Operative Facts

The Quapaw Tribe of Oklahoma (the O-Gah-Pah)

12. The Quapaw Tribe formerly was a southeastern American Indian nation whose name, “O-Gah-Pah” (anglicized as “Quapaw”), means the “people who went downstream” or the “Downstream People.” The Tribe’s homeland for many centuries was near the confluence of the Mississippi and Arkansas Rivers within the present-day State of Arkansas. When first encountered by Europeans in the 1670s, approximately 15,000 to 20,000 Quapaw lived in villages in this region. Historically, the Quapaw were agriculturalists of remarkable ability, and the focus of Quapaw life was on their farming villages. Their social organization had its basis in the family unit.

13. In 1818, under pressure from increasing white settlement and a territorial government, the Quapaw Tribe signed a treaty ceding their land in Arkansas to the United States, except for a strip between Little Rock and Arkansas Post below Gillette, Arkansas.¹ This cession included the lands and waters known as the “sacred hot springs area,” today’s Hot Springs National Park. The Quapaw Tribe was forced to cede its remaining land in Arkansas through an 1824 treaty,² and was moved by the United States to a location along the Bayou Treache in Caddo Country on the south side of the Red River in Louisiana.

¹ Indian Affairs: Laws and Treaties, Vol. II, Treaties 160 (Charles J. Kappler, ed. 1904); 7 Stat. 176, 176–78 (1818).

² Indian Affairs: Laws and Treaties at 210; 7 Stat. 232, 232–35 (1824).

14. The forced removal to Caddo Country was disastrous for the Quapaw Nation. The Quapaw were unwelcome in Louisiana, their assigned lands flooded, and starvation became rampant. As a result, the Quapaw became a homeless nation, and many of its people staggered back to their former homeland.

15. But the United States again removed the Quapaw, this time to a location along the present-day Oklahoma/Kansas border, where the Quapaw have resided ever since. Under a Treaty of May 13, 1833,³ the United States set aside a reservation for the Quapaw Tribe, consisting of 150 sections of land west of the Missouri state line and between the lands of the Seneca and Shawnee Tribes. This land was promised to the Quapaw Tribe as a homeland for “as long as they shall exist as a nation or continue to reside thereon.”⁴

16. The reservation created by the 1833 Treaty was located within the far northeastern corner of present-day Oklahoma, with a smaller portion located within the far southeastern corner of present-day Kansas. The portion of the original Quapaw Reservation within present-day Kansas consisted of approximately twelve sections of land, and was approximately one-half mile in width from north to south. This area of the reservation came to be known as the “Quapaw Strip.”

17. At the end of the Civil War, with most of the Quapaw population returning from Kansas refugee camps to a devastated reservation, the Quapaw desperately needed

³ Indian Affairs: Laws and Treaties at 395–96; 7 Stat. 424, 424–26 (1833).

⁴ Indian Affairs: Laws and Treaties at 396; 7 Stat. at 425.

reconstruction funds to restore living conditions on the reservation. Under the Treaty of February 23, 1867,⁵ the Quapaw Tribe ceded or sold to the United States the Tribal land within the Quapaw Strip, with the exception of a tract set aside for a member of the Tribe. This cession established the current Kansas State Line as the northern boundary of the present-day reservation in Oklahoma. Under the same treaty, the Tribe also sold approximately 18,500 acres in the western part of the reservation to the United States for use by the Miami Nation thus creating the present-day western reservation border. The eastern border of the present-day reservation remains the Missouri State Line. The southern boundary line joins the Peoria Reservation's northern boundary. The present-day reservation consists of approximately 92 square miles with well-defined ceded territories in southeastern Kansas and central Arkansas.

Tribal Allotments

18. Under increasing federal pressure during the allotment era, the Quapaw decided to self-allot to insure that all reservation lands remained in Quapaw hands. By an enactment of the Quapaw National Council on March 23, 1893, the Quapaw Tribe self-allotted all the Tribal land within its reservation in present-day Oklahoma to individual Members of the Tribe. The allotments were carried out in two phases. First, with the allotment of 200-acre tracts in the fall of 1893, and then with the allotment of surplus or additional 40-acre tracts in the spring of 1894. Congress ratified all of the Tribe's

⁵ Indian Affairs: Laws and Treaties at 961; 15 Stat. 513, 514–16 (1867).

allotment determinations in the Quapaw Allotment Act.⁶ Each of the named Plaintiffs is a successor-in-interest to one or more of these original allotments, which the United States has or should have continuously managed for their use and benefit since allotment.

The Quapaw Analysis

19. On November 5, 2004, the Quapaw Tribe of Oklahoma, in settlement of a suit for an accounting of historic federal management of the funds and assets of the Tribe, entered into a Settlement Agreement with the United States Department of Interior, the Bureau of Indian Affairs and others, in which the parties agreed that Quapaw Information Systems, Inc., a not-for-profit Tribal entity, would identify, select, and analyze documents, and prepare an analysis of the federal government's management of certain Tribal assets, as well as of the Government's management of the lands and other assets allotted to eight individual members of the Tribe. In return, the Tribe agreed to dismiss its lawsuit and to waive any rights to obtain from the United States an accounting of its trust assets or asset management history of its trust assets for all time periods up to and including the effective date of the Settlement Agreement. The Parties further agreed that upon completion of the Quapaw Analysis, the Tribe would be deemed to have been furnished with an accounting of the Tribe's trust assets from which the Tribe can determine whether there has been a loss within the meaning of Pub. L No. 108-7 (2003), the Appropriations Act of 2003, and similar provisions passed each successive year.

⁶ See Act of March 2, 1895, 28 Stat. 876, 907 (1895).

20. In entering into this Settlement Agreement with the United States, the Quapaw Tribe specifically reserved all claims for money damages arising from past events and transactions, whether or not specifically addressed in the Quapaw Analysis. The Tribe's settlement did not purport to compromise or waive the claim of any individual Tribal member for money damages.

21. Between 2004 and 2010, Quapaw Information Systems worked diligently to investigate and prepare the Quapaw Analysis, a report on the Government's historic management of Quapaw Tribal and individual trust funds and assets. The Quapaw Analysis team conducted a methodical examination of the files and documents that were made available by the Office of Historical Trust Accounting and other agencies to determine whether and the extent to which the Secretary of the Interior met his or her fiduciary obligations to the Tribe and to the participating individual trust beneficiaries, as defined by applicable federal law and by regulations prescribed by the Secretary in the fulfillment of trust responsibilities to individual Indians and to Tribes. Specifically, Quapaw Information Systems:

- Examined the lease files for the individual allotments studied, and supporting documentation;
- Reconstructed lease files;
- Prepared abstracts of title from court land records;
- Tracked receipts to restore payment histories;
- Researched documents by date to establish timelines;
- Made comparisons when documents were available;

- Constructed synopses to show management practices;
- Accumulated miscellaneous facts necessary to support conclusions in analysis; and
- Assembled relevant documents for review in a dossier for each issue.

22. On June 1, 2010, Quapaw Information Systems completed and transmitted its completed Quapaw Analysis Report to the Government, and on November 19, 2010, the Department of Interior accepted the Report as complete.

23. The Quapaw Analysis identified numerous and pervasive breaches of the Government's fiduciary duty of trust as to the assets of the Quapaw Tribe and its members, as described more fully in this Complaint.

Class Action Allegations

24. Each of the named Plaintiffs in this case is an enrolled member of the Quapaw Tribe who has a claim for money damages against the United States arising from the Government's breach of its fiduciary obligations of trust regarding the management of Plaintiffs' monetary and non-monetary trust and restricted assets. And each named Plaintiff brings this suit as a representative of the class of all similarly situated enrolled members of the Quapaw Tribe. Plaintiffs estimate that the class they represent includes 500 to 700 members. This class is thus so numerous that individual joinder of all members is impracticable. The identity of the members of the class is readily ascertainable from the records of the Tribe and of the Government and the class is manageable under the procedures provided in Rule 23 of the Rules of this Court.

25. The claims of the representative Plaintiffs are typical of the claims of the other members of the class and there are questions of law and fact in this case that are common to all members of the class Plaintiffs represent. Plaintiffs have agreed to represent the interests of the other members of the Quapaw Tribe who qualify as members of the class they represent, and they will fairly and adequately protect the interests of the class in this action.

26. The leadership of the Quapaw Tribe has agreed to assist in identifying and notifying the members of the class as this case progresses, and to assist in communicating with class members—all of whom are also members of the Quapaw Tribe.

27. Thus, under all of the facts of this case, a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

FIRST CAUSE OF ACTION

FAILURE TO COLLECT RENTS/ROYALTIES FOR MINERAL RIGHTS AND TO PROPERLY MANAGE THOSE ASSETS

28. Rich lead and zinc deposits were discovered on Quapaw lands in the late 1800s, resulting in a rush to lease Quapaw lands. From allotment, the federal government has exercised some type of control over the leasing of Quapaw lands. Immediately after mining began, the BIA recommended that the federal government consolidate federal control over Quapaw lands. Subsequently, the United States Congress in 1921 passed a special statute granting complete federal authority over leasing for a specific set of named individual Quapaw allottees with mineral interests and their

heirs.⁷ The Plaintiffs all are descendants of and successors in interest to those individuals, who were deemed incompetent by direct Congressional action. This list of specific names was also incorporated into the leasing regulations promulgated by the Department of the Interior in 1929. During the many decades of extensive mining on Quapaw Tribal members' allotted land, all mining and property was under the direct and exclusive supervision and control of the Defendant. For Quapaw Tribal members, the lease documents maintained by Defendant show a pattern of failure to accurately account for and manage Quapaw Tribal members' mining proceeds and trust accounts.

29. In addition, lead and zinc mining operations produced a by-product of mine tailings, known locally as "chat." The mining leases explicitly established that the Indian allottee retained ultimate ownership of chat, with the title to the chat held in restricted or trust status by the United States for the benefit of Plaintiffs and the class they represent. Since its creation, chat has always been valued as a commodity used in road and other construction. Defendant's records of royalty payments owed to the Quapaw Tribal members under lease or sale agreements contain reports of tons of chat sold. These reports also show a history of Defendant's underreporting of royalty payments owed to Quapaw Tribal members, mismanagement of trust accounts, and mismanagement of property records and title. On average, the Quapaw Analysis reports that royalty amounts paid to the Quapaw Tribal members for chat sales averaged \$0.06 per ton, far less than the market value of any reasonable royalty for the chat during any relevant period.

⁷ See Act of March 3, 1921, 41 Stat. 1225, 1248-49 (1921).

30. Additionally, records available to the Plaintiffs show that the Defendant has permitted federally managed Quapaw trust and restricted assets, including but not limited to chat, to be stolen, unlawfully sold, and otherwise taken without just compensation to the Indian owners, thus failing to collect royalties owed for those assets. Among other mismanagement, officers of the Defendant have permitted title to federally managed trust assets, including chat, to be transferred to non-Indian owners contrary to law and without compensation to the Indian owners. Among other means by which this has occurred, officers of the Defendant knowingly and intentionally have permitted federally managed trust or restricted Indian chat to “run with the land,” when lease and other documents conclusively indicate that chat historically was legally severed from the land and thereby made trust personality.

31. The Quapaw Analysis also contains a detailed analysis of the records of royalties received in connection with the leases on the Pioneer Chat Pile/Francis Q. Goodeagle allotment. The Quapaw Analysis reports that 5,574,000 tons of chat were removed from the Pioneer Chat Pile for the years 1952 to 1982, resulting in a loss of royalties to the Francis Q. Goodeagle allotment heirs of \$332,390 based on 1932 royalty rates to \$1,122,623 using 1982 royalty rates. As the allotments studied for the Quapaw Analysis are representative samplings, upon information and belief, all of the Plaintiffs have also sustained losses from the mismanagement of the chat and other federally managed assets.

32. Under a comprehensive regulatory and statutory scheme, including but not limited to 25 C.F.R. § 215.2 and its predecessor regulations, the United States had and has a specific fiduciary duty and a trust obligation to ensure that (among others):

- All royalties belonging to the lessor shall be paid to the superintendent of the Quapaw Agency at Miami, Okla., or such other official as the Secretary of the Interior may designate, for the benefit of the lessor, not later than 15 days from the 1st of each month for ore and concentrates sold during the preceding month.
- [S]aid sale-price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the lead and zinc ores and concentrates at the usual and customary place of disposing of such ores and concentrates at the time of sale: Provided, however, That the right is reserved to the Secretary of the Interior to determine and declare such market price if it is deemed necessary for him to do so for the protection of the interests of the Indian lessor: And provided further, That the right is reserved to the Secretary of the Interior on behalf of the Indian lessors to reserve at any time it shall be deemed to be to the best interests of the Indian lessors and upon due notice to the lessee, the royalty share of the gross production of the ore and concentrates and upon such notice that the royalty share of such production shall be stored and not sold, the lessee shall be required to store, free of charge to the Indian lessors in the ore bins of said lessee, said royalty shares of the gross production of ore and concentrates, provided that the lessee may not be required to store ore or concentrates for the lessor in amounts greater than one-third of his bin capacity or for a period longer than 6 months.

33. Further, as provided by statutes and regulations, documents indicate that the federal government was intimately involved in every aspect of the mining operations on the Quapaw allotments from determining leasing, to deciding mining safety decisions such as pillar spacing and placement, to royalty account, to chat sales, to choosing and hiring employees for incompetent Quapaw Indians, to approving purchases, services and disbursements made with mining proceeds.

34. In breach of its statutory regulatory and fiduciary duties to Plaintiffs, the United States has failed to manage Plaintiffs' trust property as a responsible fiduciary, to collect reasonable royalties, and to timely collect amounts owed to Plaintiffs under the leases, permits, or agreements for mineral lands or mineral rights. In violation of its fiduciary duty, the United States has consistently sold chat and administered chat piles to allow gross underreporting of tons of chat sold and underpayment of royalties due. The United States has also failed to maintain lease management documents and records of chat piles, demonstrating a pattern of disregard for accuracy in ownership and compensation of Plaintiffs and the class they represent.

35. As a direct and proximate result of Defendant's breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class they represent have been deprived of substantial sums of property, rent, and other amounts for their mineral rights that the United States was obligated to collect and deposit in their Individual Indian Money accounts, together with interest thereon. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

SECOND CAUSE OF ACTION

FAILURE TO COLLECT RENTS/PAYMENTS FOR TOWN LOTS

36. The former mining boom town of Picher, Oklahoma was constructed largely on Quapaw Indian lands allotted to Plaintiffs and the class they represent. In

1913, lead and zinc ore was discovered on the Harry Crawfish Allotment and other allotments and mining began immediately. A town site developed overnight around the new workings and was named Picher in honor of the owner of Picher Lead Company. Incorporated in 1918, by 1920 Picher had a population of 9,726. Peak population occurred at 14,252 in 1926 followed by a gradual decline paralleling a decrease in mining activity, to 2,553 by 1960. The Picher area became the most productive lead-zinc mining field in the Tri-State district producing over \$20 billion worth of ore between 1917 and 1947. More than 50% of the lead and zinc metal used during World War I was produced by the Picher district. At its peak, over 14,000 miners worked the mines and another 4,000 worked in mining services.

37. Plaintiffs and the members of the class they represent are owners of restricted lands leased as town lots in the city of Picher, Oklahoma and surrounding areas. BIA records show that historically, Defendant has mismanaged the town lots by failing to maintain adequate and accurate records for the leased lands and by failing to collect and deposit lease proceeds into the Individual Indian Money accounts of Plaintiffs and the class they represent. Further, records indicate that federal officials threatened restricted Indian lands with condemnation in order to coerce signing of deeds to correct past mistakes in property management.

38. Further, the BIA allowed mining companies to dump large amounts of chat on the town lot trust allotments. The lots in these areas have been unleaseable since the early 1900s. Therefore, no Plaintiff has received any revenue on these lots for many

years. Defendant failed to hold the mining lessees responsible for the environmental damage as required under the terms of their mining leases, nor were their bonds forfeited for any cleanup or reclamation efforts.

39. The Quapaw Analysis states that Defendant also allowed for “Bills of Sale” and similar documents to transfer from one tenant to another, further exacerbating the BIA’s failure to timely collect due and owing but unpaid rent. The BIA’s own records show that tenants have obtained permits on several lots from the Agency and then sublet the restricted lots to other renters, pocketing the rent. Defendant also allowed mill sites and large piles of chat to accumulate on the land of Plaintiffs and the class they represent, contaminating the soil and ground water and destroying the value of the land for agricultural or any other use.

40. The Quapaw Analysis also contains comparisons of the actual rental payments (Official Receipts) against the town lot leasing cards that the BIA made available for analysis. Those records show that there were 14,500 town lots on trust allotments. But Defendant did not have any type of payment history for years 1949 to 1962 or from 1982 to present, and it only produced 3,500 town lot cards in all. There were very few active leases in 2006 and the majority of those had huge amounts of back rent due and owing but uncollected.

41. Under a comprehensive regulatory and statutory scheme, including 25 C.F.R. § 162.108 and its predecessor regulations, the United States has a fiduciary duty and a trust obligation to (among others):

- “[E]nsure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions.”
- “[A]ssist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to [the United States] under these or other regulations.”
- “[E]nsure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them.”
- “[T]ake immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.”

42. As a direct and proximate result of Defendant’s breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class they represent have been deprived of substantial sums of rent and other amounts for their town lots that the United States was obligated to collect and deposit in their Individual Indian Management accounts, together with interest thereon. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

THIRD CAUSE OF ACTION

MISMANAGEMENT OF AGRICULTURAL LEASES AND RENTS

43. Much of the Quapaw Tribal allotment lands were rich and highly productive farmland, and the Quapaw had historically grown a wide variety of crops on

their lands. According to an 1892 report by the Indian Affairs Commissioner: “The principal productions are wheat, corn, oats, sweet and Irish potatoes, peas, beans, watermelons, muskmelons, *all of which grow to great perfection.*” (Emphasis in original.) In addition, the Quapaw also had a large supply of timber, and ample grazing lands for cattle. But the king of crops for the Quapaw was hay: “Ottawa County, Oklahoma (where Plaintiffs’ lands are located) was once known as the ‘Hay Capital of the World.’ In the late 1800s (after destruction of the buffalo herds), *hay was the chief income for Indian people in the area . . .*” (Emphasis in original.)

44. Today much of what was productive farm and grazing land is a virtual moonscape that EPA has designated as the Tar Creek Superfund site, one of the nation’s worst environmental disasters. Despite its fiduciary duty to Plaintiffs and the class they represent with respect to these trust/restricted lands, Defendant allowed the mining companies to pile hundreds of millions of tons of toxic mining wastes on the land, undermine the subsurface support of the area, create toxic millponds, pollute Tar Creek and other surface and ground waters with lead, zinc and cadmium, and create toxic dust storms of blowing mine tailings. As a result, today the entire town of Picher and its surroundings are an abandoned, worthless ghost town. Former Governor of Oklahoma Frank Keating states in the Tar Creek Superfund Task Force Report that:

What once was a lush prairie so thick and high that Ottawa Country is referred to in many historic accounts as the ‘hay capital of the world,’ the site is now reduced to churned up terrain with abandoned mining areas piled up to two hundred feet with chat and mine tailings, and forty (40) square miles of chat covered surface with very little vegetation.

45. The Quapaw Analysis, which reconstructed 165 leases on Tribal and member allotment lands from archival and agency files, also found that “the examination of the leases, permits, and contracts made between 1957 and 2004 reveal a plethora of cases that illustrate the DOI’s failure to uphold its fiduciary duty on non-monetary trust assets located on selected Quapaw Tribal and Individual trust lands.”

46. Under a comprehensive regulatory and statutory scheme, including 25 C.F.R. § 162.108 and its predecessor regulations, the United States has a fiduciary duty and a trust obligation to (among others):

- “[E]nsure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions.”
- “[A]ssist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to [the United States] under these or other regulations.”
- “[E]nsure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them.”
- “[T]ake immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

47. Yet Defendant has consistently failed in its trust responsibilities to Plaintiffs and the class they represent, and has failed to follow its own regulations to properly manage the allotted agricultural lands of Plaintiffs and the class they represent by (among others) failing to collect rent due, enforce lease provisions, institute

appropriate collection or enforcement actions, institute appropriate inspection and enforcement actions as needed, take action against holdover tenants and trespassers, renew existing leases, seek new leases as appropriate, obtain appraisals and competitive bids for leases, and take other actions as needed to preserve the value of the land.

48. Nor has Defendant maintained or made available to Plaintiffs and the members of the class they represent, and in some instances has intentionally and actively concealed, records of Defendant's leasing, rent collection, enforcement and inspection or other aspects associated with the leasing of their agricultural property.

49. As a direct and proximate result of Defendant's breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class they represent have been deprived of substantial sums of rent and other amounts for their agricultural lands that the United States was obligated to collect and deposit in their Individual Indian Money accounts, together with interest thereon. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

FOURTH CAUSE OF ACTION

FAILURE TO PROTECT NATURAL RESOURCES AND FAILURE TO PROTECT THE ENVIRONMENT

50. Under a comprehensive regulatory and statutory scheme, including 25 U.S.C. § 162a(d)(8), Congress has defined the Secretary of the Interior's fiduciary

duty and trust obligation to include (among others) appropriately managing the natural resources of Indian trust lands:

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following: . . .
(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

51. And the Secretary has adopted regulations, including 25 C.F.R. § 215.23 (among others), that specifically regulate mining on Quapaw lands. Those regulations require (among other things) that Defendant maintain files of "notices, reports, drill logs, maps, and records, and all other information relating to mining operations" on Quapaw lands, and also maintain "the supervision of all operations, including safety and efficiency, health and sanitation, and prevention of material or economic waste."

52. Yet from the time Defendant initially leased the lands of Plaintiffs and the class they represent to mining companies in the early part of the twentieth century, through the mining boom of World War I and World War II, and continuing through the mine closures at mid-century and subsequent efforts to clean up the environmental devastation left behind, Defendant has failed utterly in its fiduciary duty of trust to manage appropriately the natural resources located on these lands, or to supervise operations so as to maintain safety and efficiency, health and sanitation, and prevention of material or economic waste. For example, Defendant has:

- Allowed 100 million tons of mine waste to be deposited and to accumulate on the leased land, making it unusable and valueless for any purpose;

- Allowed the mine waste to leach and emit serious soil, airborne and water-borne contaminants, including lead, arsenic, and cadmium into the surrounding area;
- Allowed the children of the Quapaw Tribe to suffer extensive lead poisoning, with resultant health effects including learning and development disabilities;
- Allowed the mines to fill with water and overflow into Tar Creek, spreading acid mine drainage throughout the area, contaminating the shallow ground aquifer and surface waters with iron, sulfate, zinc, lead, and cadmium, poisoning local water wells; and,
- Allowed mountains of chat, mine tailings, floatation ponds, sink holes, and abandoned debris to mar the terrain, damaging or destroying the wildlife, birds, and plants important for the subsistence, medicinal, and cultural uses of Plaintiffs and the class they represent.

53. Additionally, Defendant has breached its fiduciary and other obligations with respect to its management of Quapaw lands and resources, as set forth under applicable statutes, regulations, lease agreements, and other laws. Among other legal obligations Defendant has failed to follow, or has breached, are its obligations to act in the best interests of the Indian interest holders in real property and other non-monetary assets, to consider the potential environmental, cultural, social, and other effects of its actions on the Quapaw Tribe and its members, to protect the Indian lessor from the commission of waste, to prevent unnecessary and undue degradation of lands and resources, to protect the environment and to promote conservation, to ensure that a lessee completes a reasonable restoration of the surface and subsurface of lands before it is released from its obligations, and other similar requirements.

54. As a direct and proximate result of Defendant's breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class

they represent have been deprived of substantial sums of rent and other amounts that they would have received from their land had it not been contaminated and destroyed, and that the United States was obligated to collect and deposit in their Individual Indian Money accounts, together with interest thereon, as well as the value of the land, wildlife, plants, ground and surface water, air and other natural resources that have been destroyed—including the very health of Plaintiffs and the class they represent. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

FIFTH CAUSE OF ACTION

FAILURE TO PROTECT ITS FIDUCIARIES AND OTHERWISE TO ACT IN THEIR BEST INTERESTS

55. It is well-settled that a fiduciary obligation exists in all of the Defendant's actions with respect to Indian trust assets. In addition to the specific laws that govern the Defendant's actions with respect to Indian assets, it is an overriding requirement of law that the Defendant, through its officers, agencies, and bureaus, is required to act in the best interests of the individual Indian.

56. With respect to Quapaw property, the Defendant historically has, and continues, to ignore its legal responsibilities concerning the individual Quapaw Tribal members' assets. Among other breaches of its legal duties, the Defendant has:

- Allowed individual Quapaw restricted personal property (trust personalty) to be sold or stolen, without any compensation to the restricted interest holders;

- Miscalculated percentages of restricted Quapaw ownership interests and allowed restricted trust property to be transferred to non-Indians, contrary to law and without any compensation to the Quapaw owners;
- Permitted individual Quapaw restricted owners to be sued by non-Indian third parties, including mining companies, for acts of the Defendant, including acts in permitting contamination of Quapaw lands, for which Defendant is legally responsible as a trustee, without providing a defense and indemnity, as provided under applicable law;
- Provided information to the restricted Quapaw asset holders concerning their Indian trust assets, including chat, which the Defendant knew or reasonably should have known were inaccurate or false;
- Failed properly to manage commingled restricted Indian and fee lands and assets in accordance with applicable laws and consistent with the Defendant's fiduciary obligations;
- Withheld information from individual Quapaw trust asset interest holders about their own assets, while at the same time releasing information to mining companies and other non-Indians who the Defendant knew would use such information against the Quapaw trust asset holders;
- Cooperated with non-Indians in coercing restricted Quapaw owners into selling restricted property at below-market values, including attempting to induce restricted owners to sign unapproved contracts for the sale of Indian trust property and contracts purporting to retroactively approve unlawful removal of Indian trust property; and
- Participated in efforts to artificially suppress values of rentals and sales of restricted Indian property.

57. As a direct and proximate result of Defendant's breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class they represent have been deprived of substantial sums that they would have received from their IIM accounts had they not been mismanaged, and had the United States not

breached its fiduciary and trust obligations to collect and deposit funds in their Individual Indian Money accounts, together with interest thereon, for the benefit of the Plaintiffs and the class they represent. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

SIXTH CAUSE OF ACTION

FAILURE TO ADEQUATELY MANAGE IIM ACCOUNTS

58. IIM accounts are commonly referred to as Individual Indian Money accounts. IIM accounts include money, which is the property of individual Indians and held by the United States as trustee on their behalf. The bulk of the funds held by the United States in trust for Plaintiffs in the IIM accounts are largely derived from income from individual lands allotments through the leasing of the land for grazing or farming, town lots, and mining or mineral leasing.

59. Defendant, the United States, has grossly mismanaged, and continues to mismanage, Plaintiffs' IIM accounts by:

- Failing to keep adequate records and to install an adequate accounting system, including an adequate accounts receivable system;
- Failing to account to the trust beneficiaries with respect to their money; and
- Failing to ensure that the moneys maintained in trust are not lost, dissipated, or converted to the United States for its own use.

60. Under a comprehensive regulatory and statutory scheme, including 25 C.F.R. § 162a(d) and its predecessor regulations, the United States has a fiduciary duty and a trust obligation (among others):

- To maintain adequate systems for accounting and reporting;
- To provide periodic, timely reconciliations to assure the accuracy of accounts;
- To determine adequate cash balances;
- To prepare and supply account holders with periodic statements of their account performance and balances;
- To establish written policies and procedures for trust fund management and accounting; and
- To provide adequate staffing, supervision, and training for trust fund management and accounting.

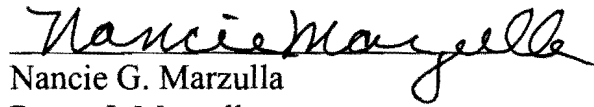
61. As a direct and proximate result of Defendant's breach of its duty of trust and fiduciary obligations to Plaintiffs and the class they represent, Plaintiffs and the class they represent have been deprived of substantial sums that they would have received from their IIM accounts had they not been mismanaged, and had the United States not breached its fiduciary and trust obligations to collect and deposit funds in their Individual Indian Money accounts, together with interest thereon, for the benefit of the Plaintiffs and the class they represent. Plaintiffs are uncertain of the exact amount of these damages, which they will calculate and present to Defendant and the Court at the appropriate time in compliance with the procedure to be established by the Court.

PRAYER FOR RELIEF

Plaintiffs, the Quapaw Tribal members, individually and on behalf of the class of all those similarly situated, pray for relief as follows:

1. A money judgment in an amount as yet unascertained, according to proof at trial;
2. Attorneys' fees, expert witness fees, and other incurred costs and disbursements;
3. Further relief as this Court may deem just and appropriate.

Respectfully submitted,



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Dated: January 5, 2010

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