IN THE UNITED STATES COURT OF FEDERAL CLAIMS

(Electronically Filed on May 10, 2013)

THOMAS CHARLES BEAR, et al.,	)	
	)	
Claimants,	)	No. 13-51X
	)	
v.	)	Hon. Thomas C. Wheeler
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

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I. INTRODUCTION

On December 19, 2012, the House of Representatives referred to this Court, pursuant to 28 U.S.C. § 1492, "Indian trust-related legal or equitable claims" of the members of the Quapaw Tribe of Oklahoma "other than the legal claims that are pending in the Court of Federal Claims on the date of enactment of this resolution." H.R. Res. 668 § 1, 112th Cong. (2012). In Section 1492 proceedings (i.e., congressional reference cases), this Court acts "merely as an aid to Congress" and sits in a "quasi judicial" capacity. Chase v. United States, 50 Ct. Cl. 293, 298 (1915). As such, the confines of the Court's jurisdiction in congressional reference cases are "dependent exclusively upon the bill referred." Creek Nation v. United States, 74 Ct. Cl. 663, 665-66 (1932). The United States is therefore immune from suit in such cases except as to those specific claims referred by Congress.

Here, the House of Representatives explicitly and unambiguously limited its referral to claims "other than the legal claims that are pending" on December 19, 2012. All claims in plaintiffs' complaint are advanced in, and encompassed by, two other cases in this Court that were pending on December 19, 2012: Quapaw Tribe of Oklahoma v. United States, Fed. Cl. No. 12-592L (filed on Sept. 11, 2012); and Goodeagle v. United States, Fed. Cl. No. 12-431L (filed on June 28, 2012). Thus, plaintiffs' complaint fails to advance any claims within the terms of the reference, the United States has not waived its sovereign immunity as to plaintiffs' claims, and plaintiffs' complaint should be dismissed for lack of subject-matter jurisdiction.

II. QUESTION PRESENTED

1. Should plaintiffs' complaint be dismissed for lack of subject-matter jurisdiction?

III. STANDARD OF REVIEW

The House of Representatives instructed this Court to proceed with this reference

according to the provisions of 28 U.S.C. § 2509. See H.R. Res. 668 § 2(1). Section 2509 provides that proceedings in congressional reference cases "shall be under rules and regulations prescribed for the purpose by the chief judge who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Federal Claims insofar as feasible." 28 U.S.C. § 2509(b). The Chief Judge, in turn, has prescribed that "[t]he [Rules of the United States Court of Federal Claims], to the extent feasible, are to be applied in congressional reference cases." Rules of the United States Court of Federal Claims ("RCFC"), App'x D at ¶ 1.

The United States may assert by motion the defense of "lack of subject-matter jurisdiction." RCFC 12(b)(1). If the Court, at any time, determines that it lacks subject-matter jurisdiction over a case or claim, it has to be dismissed. RCFC 12(h)(3).

Jurisdiction must be established before the Court may proceed to the merits of a case. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 88-89 (1998). Courts are presumed to lack subject-matter jurisdiction unless it is affirmatively indicated by the record; therefore, it is plaintiffs' responsibility to allege facts sufficient to establish the Court's subject-matter jurisdiction. Renne v. Geary, 501 U.S. 312, 316 (1991); DaimlerChrysler Corp. v. United States, 442 F.3d 1313, 1318 (Fed. Cir. 2006) ("[I]t is settled that a party invoking federal court jurisdiction must, in the initial pleading, allege sufficient facts to establish the court's jurisdiction." (citations omitted)). Once the Court's subject-matter jurisdiction is put into question, it is "incumbent upon [the plaintiffs] to come forward with evidence establishing the court's jurisdiction. . . . [The plaintiffs] bear[] the burden of establishing subject matter jurisdiction by a preponderance of the evidence." Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) (citation omitted); accord M. Maropakis Carpentry, Inc. v. United States, 609 F.3d 1323, 1327 (Fed. Cir. 2010).

When deciding a motion to dismiss, the Court may review the content of the competing pleadings, exhibits thereto, matters incorporated by reference in the pleadings, whatever is central or integral to the claim for relief or defense, and any facts of which the Court will take judicial notice. Crusan v. United States, 86 Fed. Cl. 415, 417-18 (2009). When a motion to dismiss challenges the Court's subject-matter jurisdiction, the Court may look beyond the pleadings and inquire into jurisdictional facts to determine whether jurisdiction exists. Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir. 1991). The determination of whether this Court has subject-matter jurisdiction to hear plaintiffs' claims is a question of law. Toxgon Corp. v. BNFL, Inc., 312 F.3d 1379, 1381 (Fed. Cir. 2002).

IV. ARGUMENT

A. Congress Explicitly Excluded from this Reference Claims Pending as of December 19, 2012.

As a sovereign, the United States "is immune from suit save as it consents to be sued." United States v. Sherwood, 312 U.S. 584, 586 (1941). A waiver of sovereign immunity must be "'unequivocally expressed' in statutory text," FAA v. Cooper, 566 U.S. ___, 132 S. Ct. 1441, 1448 (2012) (citations omitted), and the "scope" of any such waiver has to be "strictly construed . . . in favor of the sovereign," Lane v. Peña, 518 U.S. 187, 192 (1996), and "not 'enlarge[d] . . . beyond what the language requires.'" United States Dep't of Energy v. Ohio, 503 U.S. 607, 615 (1992) (citation omitted); see Cooper, 132 S. Ct. at 1448. This Court's jurisdiction rests on the House resolution referring this matter. As such, plaintiffs' claim "must fall within the terms of the Congressional Reference itself." Cal. Canners & Growers Ass'n v. United States, 7 Ct. Cl. 69, 75 (1984). Plaintiffs' claims in their complaint do not fall within the terms of the House resolution and should be dismissed.

It is well settled that the Court of Federal Claims' jurisdiction in congressional reference

cases is limited to the specific matters referred by Congress. Creek Nation, 74 Ct. Cl. at 665-66. That proposition is well supported by basic notions of separation of powers. In congressional reference cases, Congress asks Article I institutions to, "merely as an aid to Congress," Chase, 50 Ct. Cl. at 298, perform essentially legislative functions, perhaps because "the cognizant congressional committees lack the time, facilities, and expertise necessary to hear the evidence and make determinations on the issues," Sneeden v. United States, 33 Fed. Cl. 303, 309 (1995). This Court, acting simply as an "aid to Congress," should not legislate and should not expand its own jurisdiction beyond the reference from Congress. See Hobbs v. McLean, 117 U.S. 567, 579-80 (1886) ("When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe."). To judicially expand the scope of a congressional reference beyond the four-corners of the House resolution would be an untoward incursion into Congress's exclusive Article II powers and would be improper. Whether couched in terms of sovereign immunity or the limits of this Court's jurisdiction, if plaintiffs' claims fall outside the matters referred by Congress then this Court lacks subject-matter jurisdiction over those claims and they should be dismissed.

Here, the House resolution explicitly—and unambiguously—excludes from this Court's jurisdiction "claims that are pending in the Court of Federal Claims" on December 19, 2012. H.R. Res. 668 § 1. In interpreting the scope of the House reference, as with any statutory interpretation, the analysis begins with the language of the statute, "[a]nd where the statutory language provides a clear answer, it ends there as well." Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999); see also Land Grantors v. United States, 81 Fed. Cl. 560, 615 (2008) (plain language limited reference despite legislator's post-enactment statement of intent). Furthermore, "[l]egislative history cannot supply a waiver [of sovereign immunity] that is not clearly evident

from the language of the statute." Cooper, 132 S. Ct. at 1448. "Any ambiguities in the statutory language are to be construed in favor of immunity . . . so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires." Id. (citations omitted).

There is nothing ambiguous about "pending . . . on the date of enactment of this resolution." "The dictionary defines 'pending' (when used as an adjective) as 'in continuance' or 'not yet decided.'" Carey v. Saffold, 536 U.S. 214, 219 (2002) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993)). "It similarly defines the term (when used as a preposition) as 'through the period of continuance . . . of,' 'until the . . . completion of.'" Id. "In other words," until final resolution of plaintiffs' claims in the Court of Federal Claims, "by definition [they] remain[] 'pending.'" Id. at 220. A claim is "pending" from the date of filing until final resolution. The reference here excludes all claims "pending" as of December 19, 2012.

Plaintiffs cite to a statement inserted into the Congressional Record after passage of the resolution to argue that this Court has, effectively, contingent jurisdiction over claims (or portions of claims) that may, in the future, be dismissed from their pending Court of Federal Claims cases. Compl. (ECF No. 4) at ¶ 17. Plaintiffs' argument should be rejected, as it was in Land Grantors where the plaintiffs attempted to rely on the sponsor's post-enactment expression of legislative intent. 81 Fed. Cl. at 615. "Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation." Bruesewitz v. Wyeth LLC, 562 U.S. ___, 131 S. Ct. 1068, 1081 (2011) (citations omitted).

Furthermore, resort to any such "legislative history" is unnecessary in this case, since the resolution is clear and unambiguous. Hughes Aircraft Co., 525 U.S. at 438. Furthermore, in congressional reference cases, "it is the duty of the court to see that these resolutions of reference

are not couched in such language as to mislead a member into the belief that he is voting for a reference to a restricted jurisdiction when, by a false liberality of construction on the part of the court, he may be voting to send a claim to a jurisdiction wholly unrestricted." Dowdy v. United States, 26 Ct. Cl. 220, 224 (1891). "No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute." Chase, 50 Ct. Cl. at 304. Where a statute imposes monetary liability on the government, the narrowest possible construction of the statute's provisions should be adopted, even if the language is ambiguous and susceptible to multiple interpretations. United States v. Nordic Vill., Inc., 503 U.S. 30, 37 (1992). A contra-factual interpretation of "pending" by one member of the House on December 21, 2012, two days after the Resolution was passed, does not create any ambiguity in the Resolution's text.

When House Resolution 668 came up for a vote it explicitly limited the reference to claims that were not pending before the Court of Federal Claims as of that date (December 19, 2012). The dictionary (and widely understood) definition of "pending" would lead any reasonable member of the House to understand the resolution to exclude the claims in Goodeagle and Quapaw, as those claims were pending at that time in the Court of Federal Claims. Representatives also would have likely been aware of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law—the subcommittee with jurisdiction over private claims bills—rule that the subcommittee "shall not consider any claim over which another tribunal, court, or department has jurisdiction, until all remedies under such jurisdiction are exhausted." H. COMM. ON THE JUDICIARY, SUBCOMM. ON IMMIGRATION,

CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INT'L LAW, 111TH CONG., Rule 9.[1/] As explained by the subcommittee, "Congress[] is always the place of last resort. If another manner of obtaining redress against the Government has been provided . . . the committee will insist that such jurisdiction be exhausted." Id., Rule 9, Note. In fact, the "other than the legal claims that are pending in the Court of Federal Claims on the date of enactment of this resolution" was added to a prior version of the resolution in the final version that passed the House. Representative Boren's interpretation of "pending," developed two days after the resolution was passed, simply cannot be squared with the text of the resolution, and "every member who read the resolution must have understood" pending to mean pending. Dowdy, 26 Ct. Cl. at 225.

Under the plain and unambiguous terms of House Resolution 668, if plaintiffs' claims advanced in their complaint are encompassed by plaintiffs' claims in Goodeagle and Quapaw this Court lacks subject-matter jurisdiction over those claims in this congressional reference case.

B. All of Plaintiffs' Claims Were Pending on December 19, 2012.

All seven causes of action in plaintiffs' complaint are advanced by the tribe in Quapaw or by the putative class of all tribal members in Goodeagle. Thus, all seven causes of action should be dismissed for lack of subject-matter jurisdiction.

1. Plaintiffs' First Cause of Action.

In plaintiffs' First Cause of Action, plaintiffs allege that the United States mismanaged mineral resources held in trust. Compl. at ¶¶ 27-38. In general, plaintiffs allege that the Secretary of the Interior failed to maximize lead, zinc, and other mineral royalties by, among other things, failing to competitively bid leases (id. at ¶¶ 34, 37); failing to timely collect royalties or collect the appropriate amount of royalties (id. at ¶ 34); failing to account for mineral

[1/] As far as the United States is aware, the 112th Congress did not abrogate or amend this rule, and it remains unaltered in the 113th Congress's rules.

sales or fractionated interests (id.); failing to comply with or enforce leasing regulations (id. at ¶¶ 36-37); and permitting theft of mineral resources (id. at ¶ 35). Identical claims are advanced in Goodeagle and Quapaw.

In Goodeagle, plaintiffs allege that "the federal government was intimately involved in every aspect of the mining operations on the Quapaw allotments." Goodeagle Compl.[2/] (ECF No. 1 in Fed. Cl. No. 12-431L) at ¶ 33. Therein, plaintiffs claim that the United States failed to prudently manage plaintiffs' mining resources; failed to collect "reasonable royalties;" failed to timely collect royalties; improperly "administered chat piles;" and allowed "gross underreporting of tons of chat sold and underpayment of royalties due." Id. at ¶ 34. Plaintiffs also assert that the United States failed to "protect the restricted property of Quapaw owners from removal and sale of restricted chat." Id. at 37. Additionally, plaintiffs claim that the United States allowed mineral interests "to be sold or stolen," provided "inaccurate or false" information about mineral interests, and sold trust resources "at below-market values." Id. at ¶ 58.

In Quapaw, the tribe claims that "mining companies were permitted to exploit the minerals without taking lawfully required and reasonable measures to prevent waste and contamination." Quapaw Compl.[3/] (ECF No. 1 in 12-592L) at ¶ 26. The tribe also claims that, for certain parcels of land, it was "deprived of the use of the property and also of substantial sums that should have been (but were not) collected for . . . mineral royalties." Id. at ¶ 21.

Under any test of claim identity, plaintiffs' claims in its First Cause of Action were pending in Goodeagle and Quapaw on December 19, 2012. Under claim preclusion principles, two claims are the same when they are "based on the same set of transactional facts." Bowers

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[2/] For the Court's convenience, attached hereto as Exhibit 1.

[3/] For the Court's convenience, attached hereto as Exhibit 2.

Inv. Co., LLC v. United States, 695 F.3d 1380, 1384 (Fed. Cir. 2012). Here, plaintiffs' First Cause of Action is based upon the same set of transactional facts as are at issue in Goodeagle and Quapaw: the United States' management of mineral resources held in trust. Under 28 U.S.C. § 1500—a statute that deals with claim identity but does not apply to this congressional reference case—"[t]wo suits are for or in respect to the same claim . . . if they are based on substantially the same operative facts, regardless of the relief sought in each suit." United States v. Tohono O'Odham Nation, 563 U.S. ___, 131 S. Ct. 1723, 1731 (2011). Plaintiffs' First Cause of Action satisfies these tests; all three complaints are based upon the "same . . . funds, lands, and natural resources, [as well as] the same trust relationship between plaintiffs and the United States." Goodeagle v. United States, 105 Fed. Cl. 164, 176 (2012). The conduct, trust corpus, trust assets, alleged trust obligations, and asserted breach of trust are common in all three complaints, which all refer to the so-called Quapaw Analysis. Compare Compl. at ¶ 22 with Goodeagle Compl. at ¶¶ 19-23 and Quapaw Compl. at ¶¶ 9-13. Thus, plaintiffs' claims in their First Cause of Action were "pending in the Court of Federal Claims" on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' First Cause of Action should be dismissed.

2. Plaintiffs' Second Cause of Action.

Plaintiffs' Second Cause of Action addresses the United States' oversight of the sale of chat (mine tailings and reprocessed ore tailings from lead and zinc mining) held in trust status for tribal members. Compl. at ¶¶ 39-48. Plaintiffs assert that the Department of the Interior has failed to account for and segregate chat interests (id. at ¶ 44); allowed chat sales in a manner inconsistent with regulations (id. at ¶¶ 44, 46); permitted loss or theft of chat (id. at ¶¶ 44-45); failed to maximize chat royalties by, among other things, failing to competitively bid leases (id.

at ¶¶ 44, 46); and failed to otherwise act in the best interest of the Indians in permitting the sale of chat (id.).

In Goodeagle, plaintiffs assert identical claims. Specifically, plaintiffs claim that "the Indian allottee retained ultimate ownership of chat" (Goodeagle Compl. at ¶ 29); that sales of Indian chat were "far less than the market value of any reasonable royalty" (id.); that chat was "stolen, unlawfully sold, and otherwise taken" (id. at ¶ 30); that the Department of the Interior failed to account for and segregate chat interest by allowing them to "run with the land" (id.); and that the Department of the Interior failed to lease or sell chat "in accordance with applicable laws" (id. at ¶ 58). These claims are identical to the claims advanced by plaintiffs in their Second Cause of Action. Thus, plaintiffs' claims in their Second Cause of Action were pending in the Court of Federal Claims on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Second Cause of Action should be dismissed.

3. Plaintiffs' Third Cause of Action.

Plaintiffs' Third Cause of Action concerns agricultural leases and "town lot" leases and is limited to "the individual claimants." Compl. at ¶¶ 49-59. Although plaintiffs' complaint cites, at length, leasing regulations first promulgated by the Secretary of the Interior in 2001[4/] (id. at ¶¶ 51-56), plaintiffs' complaint is rather cursory as to when or how the United States allegedly erred in overseeing Quapaw agricultural or town lot leases. Nonetheless, in general, plaintiffs allege damage to land (id. at ¶ 57) and leasing irregularities or failure to enforce lease terms (id. at ¶ 58), resulting in lost profits (id. at ¶ 59). Similarly expansive agricultural leasing and town lot leasing claims have been advanced in Goodeagle.

[4/] See Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust, 66 Fed. Reg. 7,068, 7,079 (Jan. 22, 2001) ("revis[ing], amend[ing] and replac[ing] the existing part 162 in its entirety").

In Goodeagle, the Third Cause of Action is for "Failure to Collect Rents/Payments for Town Lots." Goodeagle Compl. at ¶¶ 40-45. Therein, plaintiffs allege various violations of the 2001 leasing regulations (id. at ¶ 44), including damage to land (id. at ¶ 41), failure to enforce lease terms by properly collecting rent (id. at ¶¶ 42-43), and leasing irregularities such as allegedly unauthorized transfers (id. at ¶ 42). The Fourth Cause of Action in Goodeagle is for "Mismanagement of Agricultural Leases and Rents." Id. at ¶¶ 46-51. Again, plaintiffs allege various violations of the 2001 leasing regulations (id. at 49), including damage to land (id. at ¶ 47); and leasing irregularities, failure to collect rents, and failure to enforce lease terms (id. at ¶ 50). Thus, plaintiffs' claims in their Third Cause of Action were pending in the Court of Federal Claims on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Third Cause of Action should be dismissed.

4. Plaintiffs' Fourth Cause of Action.

In plaintiffs' Fourth Cause of Action they challenge the United States' oversight of easements on the Quapaw Reservation. Compl. at ¶¶ 60-66. Plaintiffs allege that there is "no record of legal rights of way and easements for most of" the easements on the Reservation. Id. at ¶ 60. As such, plaintiffs assert they have not been properly compensated for easements on their land. Id. at ¶ 66. In Quapaw, the tribe claims that "[t]he Quapaw Analysis accounting report also concluded that, in violation of its fiduciary and trust obligation, Defendant granted rights-of-way and other easements over this land for little or no consideration to various railroads and utility companies." Quapaw Compl. at ¶ 24. This is identical to the claim asserted in this case, which is also based upon the same Quapaw Analysis. Compl. at ¶ 66 ("as more fully described in the Quapaw Analysis, which is hereby incorporated by reference."). Thus, plaintiffs' claims in their Fourth Cause of Action were pending in the Court of Federal Claims on December 19,

2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Fourth Cause of Action should be dismissed.

5. Plaintiffs' Fifth Cause of Action.

In plaintiffs' Fifth Cause of Action they claim that the United States mismanaged, failed to account for, and failed to properly distribute[5/] proceeds awarded to the tribe by the Indian Claims Commission in 1954. Id. at ¶¶ 67-76. In Quapaw, the tribe's first cause of action is for "Mismanagement of Tribal Trust Accounts." Quapaw Compl. at ¶¶ 14-16. This count necessarily includes claims for alleged mismanagement of plaintiffs' Indian Claims Commission award. See 25 C.F.R. § 115.002 (defining a "tribal account" as "a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary."). Thus, plaintiffs' claims in their Fifth Cause of Action were pending in the Court of Federal Claims on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Fifth Cause of Action should be dismissed.

6. Plaintiffs' Sixth Cause of Action.

Plaintiffs' Sixth Cause of Action attempts to cover all claims for, and arising out of, the environmental pollution that has allegedly "turned much of the prime farm land [of the Quapaw Reservation] into a desolate wasteland, now laden with heavy metals." See Compl. at ¶ 85. Plaintiffs allege that the Department of the Interior had either a direct obligation to protect the environment, or an indirect obligation to assure that lessees and permittees of plaintiffs' land did not foul the environment. Id. at ¶¶ 82-84. Plaintiffs seek damages for harm to the environment (id. at ¶ 85) through loss of leasing opportunities and hunting resources (id. at ¶¶ 87-88), harm to human health (id. at ¶ 89), and consequential harms to the tribe (id. at ¶ 91).

[5/] The disbursement of the tribe's Indian Claims Commission award was governed by the Quapaw Distribution Act, Pub. L. No. 86-97, 73 Stat. 221 (1959).

In Goodeagle, plaintiffs' Fifth Cause of Action is for "Failure to Protect Natural Resources and Failure to Protect the Environment." Goodeagle Compl. at ¶¶ 52-56. Therein, plaintiffs allege that the Department of the Interior had either a direct obligation to protect the environment, or an indirect obligation to assure that lessees and permittees of plaintiffs' land did not foul the environment. Id. at ¶¶ 52-53. Plaintiffs seek damages for harm stemming from "environmental, cultural, social, and other effects" in the form of lost profits. Id. at ¶¶ 55-56. In Quapaw, the tribe's Third Cause of Action is for "Failure to Properly Manage Natural Resources/Tribal Land Resulting in Lost Income." Quapaw Compl. at ¶¶ 26-28. Therein, the tribe alleges that the Department of the Interior had an obligation to "appropriately [manage] the natural resources of Indian trust lands." Id. at ¶ 26. The tribe seeks damages for "unnecessary and undue degradation of Tribal lands and resources" in the form of lost profits. Id. at ¶¶ 27-28. Thus, plaintiffs' claims in their Sixth Cause of Action were pending in the Court of Federal Claims on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Sixth Cause of Action should be dismissed.

7. Plaintiffs' Seventh Cause of Action.

In plaintiffs' Seventh Cause of Action, the tribe seeks payment of the $1,000 annual gratuity called for in the Treaty of 1833, 7 Stat. 424, "since at least 1932." Compl. at ¶¶ 92-96. Similarly, in Quapaw, the tribe seeks payment of the $1,000 annual gratuity called for in the Treaty of 1833 "from 1932 onward." Quapaw Compl. at ¶ 15. Thus, plaintiffs' claims in their Seventh Cause of Action were pending in the Court of Federal Claims on December 19, 2012, this Court lacks subject-matter jurisdiction over those claims, and plaintiffs' Seventh Cause of Action should be dismissed.

V. CONCLUSION

Wherefore, for the reasons stated herein, the United States respectfully requests that plaintiffs' complaint be dismissed in its entirety for lack of subject-matter jurisdiction.

Respectfully submitted, May 10, 2013,

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