

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF OKLAHOMA**

CADDO NATION of OKLAHOMA)

Plaintiff,)

vs.)

Case No. CIV-16-559-HE

WICHITA AND AFFILIATED TRIBES,)

TERRI PARTON, in her official capacity as)

Tribal President of Wichita and Affiliated)

Tribes,)

JESSE E. JONES, in his official capacity as)

Vice President of the Wichita and Affiliated)

Tribes,)

MYLES STEPHENSON, JR., in his official)

capacity as Secretary of the Wichita and)

Affiliated Tribes,)

VANESSA VANCE, in her official)

capacity as Treasurer of the Wichita and)

Affiliated Tribes,)

SHIRLEY DAVILA, in her official capacity)

as Committee Member of the Wichita and)

Affiliated Tribes,)

NAHUSEAH MANDUJANO, in her official)

Capacity as Committee Member of the)

Wichita and Affiliated Tribes, and)

MATT ROBERSON, in his official capacity)

as Committee Member of the Wichita and)

Affiliated Tribes)

)

)

Defendants.)

FIRST AMENDED COMPLAINT

Plaintiff Caddo Nation, by and through undersigned counsel, request that the Court grant relief and state for cause the following:

PRELIMINARY STATEMENT

1. Plaintiff Caddo Nation of Oklahoma (“Caddo Nation”) brings this lawsuit to protect and preserve the sanctity of land that holds the remains of Caddo ancestors and Caddo funerary objects associated with their burials at the site of the original Riverside Indian Boarding School.

2. Recently, the Wichita Tribe rushed to construct a new “History Center” on a twenty-acre tract of land located 1.5 miles north of Anadarko, Oklahoma. This twenty-acre tract of land is described as “being E/2 NW & SW Sec. 10 Township 7 Range 10 West, Caddo County, OK.” *Environmental Assessment for HUD-funded Proposals, Project Identification #B-14-SR- 40-3286*, at 2, May 15, 2015 (“EA”), attached as Ex. 1. This twenty-acre tract sits within a larger 71-acre parcel of land described as: “[a] portion of the west half W/2 of Section 10, Township seven North (T-7-N), Range 10 West (R-10-W) of the Indian Meridian (1.M.), Caddo County, Oklahoma.” Ex.1, 2.

3. The twenty acres of land at issue are jointly-held trust lands, lands the Federal Government holds in trust for three Tribes: the Caddo Nation, the Delaware Nation, and the Wichita and Affiliated Tribes (“Wichita Tribe” and collectively, with the Caddo Nation and the Delaware Nation, the “WCD Tribes”).

4. Thus, the Caddo Nation brings this lawsuit to protect and preserve its rights as a joint-owner of the lands where the Wichita Tribe now seeks to unilaterally construct and develop a casino, other business enterprises and cultural facilities.

5. The land at issue is also the site of the original Riverside Indian Boarding School. In 1871, the Federal Government opened the Riverside Indian Boarding School

for the purpose of removing Caddo, Wichita, and Delaware children from their homes, their cultures, and their Nations.

6. As is the case with many federal boarding schools for Indian children, young students died while in attendance at Riverside Indian Boarding School. Those who passed while attending the school were not returned to their families but buried on grounds near the school.

7. In 1878, the school burned down and was moved.

8. There is some evidence to support the conclusion that some of the graves formerly located at the site of the original Riverside Indian Boarding School were moved in the 1950s for the construction of a nearby highway.

9. Many Caddo elders, however, have stated that not all of the graves of Caddo children were moved and that as a result, the remains of Caddo children once attending the Riverside Indian Boarding School remain interred on the twenty-acre parcel.

10. Further, citizens of both the Delaware Nation and Wichita Tribe have stated that the site of the original Riverside Boarding School is near or on former cemeteries that contain the remains of children who once attended the school when it was in operation.

11. In April of 2015, the Wichita Tribe's own archaeologist, John Northcutt issued a report to the Wichita Tribe, concluding that this twenty-acre parcel of land where the Wichita Tribe planned to construct the History Center was indeed the site of the "Riverside Indian School that opened in 1871." See John D. Northcutt, *Cultural Resource*

Inventory of 20 Acres Proposed for Construction of a Wichita Historical Center, North of Anadarko, Caddo County, Oklahoma, BLM Federal Cultural Resource Permit No. 253-2920-12-B, at 9 (April 6, 2015) (hereafter known as the “Northcutt Report,” attached as Ex. 2.) Northcutt also concluded that the site was of great historic significance and could be eligible for inclusion on the National Register of Historic Places. Ex. 2, at ii. In his report, Northcutt noted that “[t]he site could be eligible for the National Register if future excavations find significant artifacts below the surface.” Ex. 2, 24.

12. The Wichita Tribe, however, failed to undertake further testing to determine the site’s eligibility for inclusion on the National Register of Historic Places.

13. To confirm that graves were located on the twenty acres where the History Center sits, the Caddo Nation utilized Human Remains Detection (HRD) dogs to test the site. On June 4, 2016, the HRD dogs alerted to three specific sites near the History Center construction site.

14. In addition to the History Center, the Wichita Tribe now seeks to construct additional facilities and buildings on the twenty-acre parcel that contains the site of the original Riverside Indian Boarding School, including but not limited to a dance arena, an outdoor amphitheater for concerts, traditional grass house, grass arbor, and parking lots. Counsel for the Wichita Tribe confirmed these plans when he told the Tenth Circuit Court of Appeals on November 13, 2017, that “[t]here are plans to further develop the site.” Oral Argument at 18:25-35, *Caddo Nation of Oklahoma v. Wichita and Affiliated Tribes*, 877 F.3d 1171 (10th Cir. 2017).

15. Wichita President Terri Parton recently stated in an Associated Press article that the Wichita Tribe intends to continue unilateral development on the jointly-owned WCD lands. Specifically, she stated that “her group can’t get development fast enough.” Sarah Terry-Cobo, *Oklahoma tribes work to promote development*, AP News, February 12, 2018.¹

16. The Wichita Tribe’s unilateral and unlawful construction on the former site of the Riverside Indian Boarding School is made all the more egregious by the fact that the land is jointly-owned, and held in trust, for the benefit of all three WCD Tribes.

17. The Wichita Tribe now seeks to further unilaterally develop the land in a way that will significantly undermine the ability of Caddo Nation to use and enjoy the land the Federal Government has set aside for all three WCD Tribes. This is particularly true for the Caddo Nation, whose elders have communicated—to both the Caddo Nation’s leadership as well as the leadership of the Wichita Tribe—that the lands where the Wichita seek to build its History Center and surrounding buildings and facilities contain the bones of their relatives and ancestors.

18. Under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, a reviewing court can set aside the Defendants’ actions if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” § 706(2)(A).

19. Defendants have violated the APA, as well as the National Historic Preservation Act (“NHPA”), 54 U.S.C. § 300101 *et seq.*,² by unlawfully commencing

¹ Available at <https://www.apnews.com/b71bf06f4e264950a1d6fa9f2aa5176c>

² The NHPA was formerly codified at 16 U.S.C. § 470 *et seq.*

construction on the History Center, a project that constitutes a “federal undertaking” under federal law, but for which there has been no adequate consultation or consideration of historic properties to which Plaintiffs attaches cultural or religious significance in compliance with NHPA’s fundamental mandates. Defendants’ completion of an Environmental Assessment without conducting the required consultation with the Caddo Nation constitutes an arbitrary and capricious action, an abuse of discretion and not in accordance with the law and therefore violates the NHPA’s Section 106.

20. Defendants have further violated the APA, as well as the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, by unlawfully commencing construction on the History Center, a project that constitutes “major federal action” under federal law, but for which there has been no adequate consultation or consideration of reasonable alternatives in compliance with NEPA’s fundamental mandates. Defendants have violated the APA by taking actions and making findings and conclusions that are arbitrary, capricious, abusive of discretion, or otherwise not in accordance with law.

21. The WCD land where the Wichita Tribe is constructing its History Center and adjoining buildings is jointly-held trust land for all three Tribes, the Caddo Nation, the Delaware Nation, and the Wichita Tribe, and was intended for the “use and benefit” of the Caddo Nation and Delaware Nation. *See* Exec. Order No. 3228, 28 Fed. Reg. 10157, at 1 (Sept. 11, 1963) (noting “the said lands are hereby restored to tribal ownership for the use and benefit of the Wichita . . . Caddo Tribe and the Absentee Band of Delaware Indians . . .”). *See* Exec. Order No. 3228, attached as Ex. 3. Because the

lands are intended for the use and benefit of all three Tribes and not the Wichita Tribe alone, the Wichita Tribe is without legal authority to unilaterally construct and operate its History Center on these lands.

22. In a July 15, 2017 President's Report by Wichita President Terri Parton, President Parton admitted that lawful title to the WCD lands where the Wichita Tribe has been building its History Center continues to run to all three WCD Tribes and, furthermore, that the Wichita Tribe never individually received title to the land. *See* President Terri Parton, *President's Report*, (July 15, 2017), attached as Ex. 4. The President's Report states, in pertinent part that:

The Tribes tried to go through the [Bureau of Indian Affairs ("BIA")] to have them place the land in title for each tribe. The Tribes were told that they would have to get Congressional approval. They tried and kept hitting road blocks and with changeover in all three Tribes *the Tribes, individually, never received title to the land.*

Ex. 4, 22 (emphasis added).

23. In the May 2014 President's Report, President Parton admitted the Wichita Tribe only owns a specific parcel of land where the Wichita Tribe's casino sits. President Parton states: "Currently the only land we have title to in our name is the land that we own that Sugar Creek Casino sits on." President Terri Parton, *President's Report*, Wichita Newsletter, at 3 (May 2014) (hereafter referred to as "May 2014 President's Report"), attached as Ex. 9.

24. The newly constructed History Center does not sit on the same parcel of land upon which the Sugar Creek Casino sits.

25. Instead, the newly constructed History Center now sits on land to which President Parton has made clear the Wichita Tribe cannot, unilaterally, claim lawful title.

26. On January 4, 2018, the Department of the Interior, Anadarko Agency, issued a Notice of Decision to Acquire Land in Trust for the Wichita Tribe (“Notice”). *See* Hydro Tract Notice of Decision, B-804-2016-0001 (Jan. 4, 2018) (“Notice”), attached as Ex. 5. The Notice states that the Wichita Tribe only unilaterally owns a very small amount of land, a little over 5 acres in total. The Notice specifically said “[t]he sum of the Tribe’s trust property owned independently by the Tribe is 5.23 acres of land.” Ex. 5, 3.

27. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, in their individual capacities, have misrepresented and continue to misrepresent the legal status and ownership of the WCD lands where the Wichita Tribe has sought to—and continues to construct—the History Center and surrounding structures.

28. In 2007, the Wichita Tribe, the Caddo Nation, and the Delaware Nation each passed identical resolutions setting aside 600 acres of WCD jointly-held lands for the exclusive use of each individual Tribe. *See Resolution of the Caddo Nation Council*, No. 02-2007-01 (Feb. 2, 2007); *Resolution of the Wichita and Affiliated Tribes*, No. WT-07-09 (Jan. 9, 2007); *Tribal Resolution of the Delaware Nation*, No. 07-019 (Feb. 2, 2007).

29. None of the three WCD Tribes created or signed any contract, treaty, or other inter-governmental legal document that would serve to bind any of the three Tribes

to another Tribe's agreement or individual resolution concerning the status of the jointly-owned WCD lands.

30. After the resolutions passed, the WCD Tribes each sent a letter to the Superintendent of the BIA's Anadarko Agency informing the BIA of the agreement and requesting the BIA to approve the agreement and transfer title for these 600 acres to each individual WCD Tribe. *See* Letter from Gary McAdams, Wichita Tribe President, LaRue Parker, Caddo Nation Chairman, and Kerry Holton, Delaware Nation President, to BIA Superintendent Betty Tippeconnie (Feb. 8, 2007).

31. After receiving the letter, the BIA Superintendent stated that the BIA did not have the legal authority to transfer title of the jointly-held trust lands to any of the individual WCD Tribes because such a "partition w[ould] require congressional authority," and could not be accomplished by the BIA alone. *See* Memorandum from the Superintendent, Anadarko Agency, to the Regional Director, Southern Plains Region (May 7, 2007). Accordingly, the BIA Superintendent never signed any legal documents to effectuate the WCD Tribes' requested partition.

32. The WCD Tribes requested Congress to effectuate the partition, but Congress never acted to transfer legal title to any of the individual Tribes.

33. On June 7, 2013, the BIA Anadarko Agency determined that partitioning the WCD lands would require an appraisal of the lands under 25 C.F.R. § 152.25(b). Absent such an appraisal, no transfer of legal title could take place.

34. On July 3, 2013, concerned with the lack of an appraisal, lack of congressional authority, and lack of BIA approval, the Caddo Nation Tribal Council

suspended its earlier 2007 Resolution and passed a new resolution stating that no WCD lands could be partitioned or exchanged without Caddo Nation approval. *See* Caddo Nation Council Resolution, *Resolution of the Caddo Nation Regarding the Partition of Lands Jointly Owned by the Wichita and Affiliated Tribes, the Caddo Nation and the Delaware Nation*, #07-2013-02, (July 3, 2013), attached as Ex. 6.

35. The 2013 Caddo Nation Resolution highlighted the lack of a fair market value appraisal—as required by the BIA and federal law—as grounds for rescinding the Nation’s 2007 resolution, stating that the Caddo Nation:

[B]elieves that there are grounds to suspend Resolution 02-2007-01 pending an appraisal of the lands to determine whether the value of the consideration received by the Caddo Nation in the exchange is at least substantially equal to the appraised fair market value of the consideration given by the Nation . . . the Caddo Nation Tribal Council hereby suspends the effectiveness of Resolution 02-2007-01 until further action of the Caddo Nation Tribal Council.

Ex. 6, 3.

36. Under Caddo Nation law, a resolution passed by a current Caddo Nation Tribal Council is not binding on a future Tribal Council if and when a subsequent Tribal Council amends or rescinds the prior resolution.

37. Likewise, on February 23, 2016, the Delaware Executive Committee passed a resolution rescinding its 2007 Resolution, Delaware Nation Resolution 07-019, as the Delaware Nation “determined that the unequal division of the land is not in the best interests of the Citizens of the Delaware Nation” and “the Delaware Executive Committee intends to seek an equal division based on value and partition of lands under the joint jurisdiction of the WCD.” Delaware Executive Committee Resolution,

Resolution Rescinding WCD Land Partition Resolution 07-019, #2016-023, at 1 (Feb. 23, 2016), attached as Ex. 7. The 2016 Delaware Resolution stated “Resolution 07-019 is hereby rescinded, effective immediately, and [the Delaware Nation Executive Committee] does not consent to the partition of the 600 acres as described therein.” *Id.* at 2.

38. The 2016 Delaware Resolution stated that “the Executive Committee has the sovereign power under its Constitution, Article VI, to rescind prior Resolutions,” Ex. 7, at 1, and consequently, a resolution passed by a current Delaware Executive Committee is not binding on a future Executive Committee if and when a subsequent Executive Committee amends or rescinds the prior resolution.

39. Because of the cultural and historical significance of the site of the original Riverside Indian Boarding School, all three Tribes, the Caddo Nation, Delaware Nation, and Wichita Tribe, had an understanding that no one would develop on this site.

40. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson have willfully violated this understanding, and have further misrepresented to the United States Department of Housing and Urban Development (“HUD”), courts, other agencies and corporate entities, as well as individuals, that the rescinded 2007 Resolutions give the Wichita Tribe the lawful and exclusive right to develop the site of the Riverside Indian Boarding School, ignoring the subsequent binding legislative actions by the Delaware Nation and the Caddo Nation governments suspending or rescinding the resolutions passed by their prior councils.

41. For instance, in response to the Caddo Nation's requests that the Nation be permitted to undertake GPR testing at the site of the original Riverside Indian Boarding School, the Wichita Tribe responded, on April 21, 2016, by stating that the Wichita Tribe did not have to allow such testing because the Wichita Tribe, Delaware Nation, and Caddo Nation "executed a land partition agreement . . . agreeing to grant perpetual and exclusive governmental authority over certain proportionate parcels of jointly-held lands to each individual tribe," and that as a result of the 2007 Resolutions, the Wichita Tribe "has worked to make beneficial use of one of their parcels . . . by building and operating a travel plaza and a history center." Letter from the Wichita Tribe to the Caddo Nation, at 1 (April 21, 2016). *See* April 21, 2016 Wichita Letter to Caddo Nation, attached as Ex. 8.

42. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, acting in their individual capacities, have taken unilateral actions, which have altered the parcel of jointly-owned lands where the History Center is located to a point where the Caddo Nation can no longer derive any use or benefit from it – including accepting the responsibilities as a certified HUD recipient and subsequently failing to comply with the statutory and regulatory requirements, and soliciting and approving development and construction contracts that have completely altered the site of the historic Riverside Indian Boarding School.

43. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, in their individual capacities, stand to directly and unjustly benefit from the development and operation of

the History Center and any other further developments on the disputed site to the detriment of the Caddo Nation.

44. Plaintiff seeks restitution for the unjust enrichment to Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson for any benefit derived from the History Center or any other further developments on the twenty-acre parcel of land.

45. Plaintiff further seeks a declaratory judgment that Defendants have violated the APA, NHPA, and NEPA by failing to consult with the Caddo Nation.

46. Plaintiff further seeks a declaratory judgment that Defendants do not unilaterally maintain lawful title to the jointly-owned WCD lands, and as a result, are prohibited from undertaking any further construction and/or development on the jointly-held lands until or unless the BIA or United States Congress formally effectuates a legal partition of the lands.

47. Plaintiff further asks that Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson be estopped from taking any further action toward the development of the disputed parcel of jointly-owned WCD lands.

48. Plaintiff also seeks all relief listed in the Prayer for Relief below, as well as any relief this Court may deem necessary, proper, or just.

PARTIES

49. Plaintiff Caddo Nation is a federally-recognized Indian tribe, with its headquarters located at 117 Memorial Lane, Binger, Oklahoma, 73009.

50. Defendant Wichita and Affiliated Tribes is a federally-recognized Indian Tribe, with its headquarters located at P.O. Box 729, 1 and 1/14 miles north on Highway 281, Anadarko, Oklahoma, 73005.

51. Defendant Terri Parton, is President of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

52. Defendant Jesse E. Jones is Vice-President of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

53. Defendant Myles Stephenson, Jr. is Secretary of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

54. Defendant Vanessa Vance is Treasurer of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

55. Defendant Shirley Davilla is an Executive Committee Member of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

56. Defendant Nahuseah Mandujano is an Executive Committee Member of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

57. Defendant Matt Roberson is an Executive Committee Member of the Wichita and Affiliated Tribes and, on information and belief, resides in Anadarko, Oklahoma.

JURISDICTION AND VENUE

58. This Court has jurisdiction over Plaintiffs' claims because they arise under and pursuant to the APA, 5 U.S.C. § 701 *et seq.*, NEPA, 42 U.S.C. § 4321 *et seq.*, and the NHPA, 54 U.S.C. § 300101 *et seq.*

59. The Court has jurisdiction over this action because Plaintiffs' claims raise questions of federal law (28 U.S.C. § 1331).

60. Pursuant to 40 C.F.R. § 1500.3, there has been final agency action under NEPA as a result of the Finding of No Significant Impact ("FONSI") issued on May 15, 2015 within the Environmental Assessment completed by the Wichita Tribe. *See* EA, at 3. This final agency action is subject to judicial review under the APA, 5 U.S.C. §§ 702, 704, and 706.

61. The Court has jurisdiction over actions brought by federally-recognized Indian Nations (28 U.S.C. § 1362) for claims arising under the laws of the United States.

62. Defendant Terri Parton, President of the Wichita Tribe, has consented to jurisdiction by becoming a certifying officer for HUD approval. President Parton stated in the EA that "in her capacity as President[, she] consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied." Ex. 1, 10.

63. Pursuant to HUD regulation, 24 C.F.R. § 58.4(a), (c), Defendants Wichita Tribe and President Terri Parton have been assigned, and accepted, "assumption authority."

64. Pursuant to this assigned and accepted assumption authority, Defendants Wichita Tribe and President Parton agreed to “assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law” 24 C.F.R. § 58.4(a).

65. 24 C.F.R. § 58.5(a) further requires that Defendants, as entities granted such assumption authority, must comply with all provisions of the NHPA.

66. Venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in Binger, Oklahoma, or at a construction site located one mile north of Anadarko, Oklahoma and less than a mile north of the Washita River, all within the Western District of Oklahoma (28 U.S.C. § 1391(b)(2)).

67. There is a present and actual controversy between the parties that is ripe for judicial review.

STATEMENT OF FACTS

A. History of WCD Tribes’ Jointly-Owned Land

68. In 1872, Indian Affairs Commissioner F.A. Walker entered into an agreement with a delegation of the predecessors to the Wichita Tribe, the Caddo Nation, and the Delaware Nation (“WCD Tribes”) to set aside 743,610 acres located between the main channels of the Canadian and Washita Rivers, from the 98th Meridian to west longitude 98° 40’.

69. During the allotment period of the late 1800s, the predecessors to the WCD Tribes negotiated an agreement with the Jerome Commission (“Jerome Agreement”) for

each adult member of the Tribes to take allotments and cede the remaining portions of their reservation to the Federal Government.

70. After the Jerome Agreement, and during a twenty-year period ranging from 1963-1983, approximately 2,575 acres of undivided trust lands were restored to the WCD Tribes by the Secretary of the Interior. The majority of these lands were restored by Executive Order 3228 on September 11, 1963. Ex. 3.

71. The intent of Executive Order 3228 was to restore the lands “to tribal ownership for the use and benefit of the Wichita and Affiliated Bands of Indians (Caddo Tribe and the Absentee Band of Delaware Indians of Caddo County, Oklahoma), and are added to and made part of the existing reservation, subject to any existing rights.” *Id.* at 1.

72. The intent of Executive Order 3228 was further to restore the lands in a manner which provides “that each member of the Wichita Band, Caddo Tribe, and Absentee Band of Delaware Indians will share equally in the benefits to be derived therefrom.” *Delaware Tribe of W. Okla. v. Acting Deputy Assistant Sec’y – Indian Affairs*, 10 IBIA 40, 42 (July 30, 1982) (quoting Letter from Assistant Sec’y John A. Carver Jr. to Will J. Petner of the BLM, (May 31, 1963)).

73. In recognition of this executive purpose, the BIA developed an apportionment formula meant to divide income received from the jointly-held lands between the three WCD Tribes, on the basis of each of the WCD Tribes’ current population. *Delaware Tribe of W. Okla.*, 10 IBIA at 56; *see also Wichita & Affiliated Tribes v. Clark*, No. 83-0602 (D.D.C. Jan. 25, 1985), *aff’d*, 788 F.2d 765 (D.C. Cir. 1986). Since the 1980s, and through today, the BIA has consistently and continuously

divided incomes from jointly-held lands between the WCD Tribes based on current population counts, as affirmed by the federal courts.

74. In 2007, the WCD Tribes, wanting to provide “continued growth, progress, and advancement of each tribe,” passed identical resolutions setting aside 600 acres of WCD jointly held lands for the exclusive use of each individual tribe. *Resolution of the Caddo Nation Council*, No. 02-2007-01 (Feb. 2, 2007); *Resolution of the Wichita and Affiliated Tribes*, No. WT-07-09 (Jan. 9, 2007); *Tribal Resolution of the Delaware Nation*, No. 07-019 (Feb. 2, 2007).

75. As stated above in Paragraphs 34-38, both the Caddo Nation and the Delaware Nation councils took action to rescind and/or suspend the 2007 Resolutions that the Wichita Tribe continues to unlawfully rely on to exercise ownership over the WCD lands that are jointly-owned by all three WCD Tribes. By suspending and rescinding their 2007 Resolutions, the Caddo Nation and the Delaware Nation have made clear that any unilateral steps taken to effectuate a partition of the jointly-held WCD lands would be unlawful and without the consent of all three WCD Tribes.

76. The 2013 Caddo Nation Resolution specifically stated the Caddo Nation:

[B]elieves that there are grounds to suspend Resolution 02-2007-01 pending an appraisal of the lands to determine whether the value of the consideration received by the Caddo Nation in the exchange is at least substantially equal to the appraised fair market value of the consideration given by the Nation . . . the Caddo Nation Tribal Council hereby suspends the effectiveness of Resolution 02-2007-01 until further action of the Caddo Nation Tribal Council.

Ex. 6, 3.

77. The 2016 Delaware Resolution stated that the Delaware Nation “determined that the unequal division of the land is not in the best interests of the Citizens of the Delaware Nation” and “the Delaware Executive Committee intends to seek an equal division based on value and partition of lands under the joint jurisdiction of the WCD.” Ex. 7, at 1. The 2016 Delaware Resolution stated “Resolution 07-219 is hereby rescinded, effective immediately, and [the Delaware Executive Committee] does not consent to the partition of the 600 acres as described therein.” *Id.* at 2.

78. The Wichita Tribe has repeatedly asked both the Delaware Nation and the Caddo Nation to acquiesce to a partition of the WCD lands without an appraisal, and both Nations have continuously refused.

79. Because Congress never effectuated a partition of the WCD lands, and because the BIA has stated it will not partition the lands absent congressional authority and an appraisal, all of the lands at issue in this case constitute WCD lands held in trust for the benefit of all three Tribes: the Caddo Nation, the Delaware Nation, and the Wichita Tribe. Legal title to these lands flows to all three Tribes and not one Tribe individually. Consequently, Plaintiff Caddo Nation is a joint-owner of the lands the Wichita Tribe now seeks to continue to unlawfully develop and damage.

80. In fact, Wichita President Terri Parton recently recognized that, because federal partition of the jointly-owned WCD lands has not occurred, the twenty-acre parcel that the Wichita Tribe seeks to develop remains in joint-ownership among the WCD Tribes and title does not flow to the Wichita Tribe alone. That is, in President Parton’s July 15, 2017 President’s Report she stated that the Wichita Tribe “never

received title to the land.” Ex. 4, at 22. And, in the May 2014 President’s Report, “the only land we have title to in our name is the land that we own that Sugar Creek Casino sits on.” Ex. 9, 3.

81. Despite recognizing that title to the twenty-acre parcel where the History Center sits has never been transferred to the Wichita Tribe, President Parton continues to unlawfully assert that the Wichita Tribe has the exclusive right to develop the land.

B. W.C.D. Enterprises Board

82. In 1972, the Wichita Tribe, Caddo Nation and Delaware Nation formed W.C.D. Enterprises, Inc. (“WCD Enterprises”), a non-profit corporation, “for the benefit of and in the interest” of the Tribes. W.C.D. Enterprises, *Articles of Incorporation* 1.

83. The purposes of the WCD Enterprises is to “promote and assist the development of cultural, social, and economic opportunities related to the Wichita, Caddo, and Delaware tribes . . . to enhance the general welfare of its Indian membership.” W.C.D. Enterprises, *Articles of Incorporation*, Art. Four, § 2. And to “[c]onstruct or repair, and maintain manufacturing or industrial buildings, community and commercial buildings, and improvements of every kind incident to the objects and purposes this corporation.” Art. Four, § 4.

84. WCD Enterprises, a corporation that continues to operate today, is composed of nine persons on the Board of Directors, with the Executive Committees of each member Tribe appointing three Directors each. W.C.D. Enterprises, *By-Laws*, Art. III, § 1.

85. Under the WCD Enterprises By-Laws, a quorum consists of two Board of Directors named by each member Tribe, for a total of six Board of Directors. W.C.D. Enterprises, *By-Laws*, Art. III, § 8.

86. Through its Board of Directors, WCD Enterprises maintains responsibility for the management of all jointly-owned WCD lands and is tasked with “undertak[ing] [any and all] [] studies and analyses of the economic needs of the Reservation, to prepare plans to execute the same to operate projects and *to provide for the construction . . . of any project.*” W.C.D. Enterprises, *Articles of Incorporation*, Art. Four, § 6 (emphasis added).

C. Wichita Tribe Undertakes a Major Federal Action to Build the History Center

87. In early 2015, the Wichita Tribe decided to construct its History Center on the jointly held WCD lands.

88. The Wichita Tribe was “approved by the Department of Housing and Urban Development to receive a grant to construct a 4000 sq. ft. CMU building for a museum as part of the Wichita Historical Center.” Ex. 1, 3.

89. The Wichita Tribe’s use of HUD funds to construct its History Center constitutes a “federal undertaking” under NHPA and a “major federal action” under NEPA. *See* 36 C.F.R. § 800.16(y) (defining “undertaking” in NHPA as a “project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency. . . [projects] carried out with Federal financial assistance”); 40 C.F.R. § 1508.18(a) (defining “major federal action” in NEPA as “projects and programs

entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. . . .”).

90. The Wichita Tribe sent identical letters on January 9, 2015, to the Caddo Nation Tribal Historic Preservation Office, the Delaware Nation Tribal Historic Preservation Office, and the BIA Southern Plains Regional Office notifying these parties of the Wichita Tribe’s intention to build its History Center. *See* Letter from Indian Community Development Block Grant Director Gerald Collins to Caddo Nation Tribal Historic Preservation Office (Jan. 9, 2015), attached as Ex. 10.

91. The letter sent by the Wichita Tribe on January 9, 2015 amounted to just half a page and stated in full:

The Wichita and Affiliated Tribal Government has been notified by the Department of Housing and Urban Development (HUD), Office of Native American Programs, Oklahoma City, OK that a grant agreement has been authorized for an Indian Community Development Block Grant for the Tribe. The grant will fund a project for construction of the Wichita Historical Center to include a single story 4000 S.F. building with concrete or asphalt parking spaces and roads. The project is located on trust land one and one-quarter miles north of Anadarko, OK.

The legal description of the property is described as: E ½ NW ¼ Section 10 T7N R10W, Caddo County, Oklahoma.

Please assist us in complying with the Federal Environment Review process by reviewing the project described and providing your comments of any potential impact on the environment within your jurisdiction. Your timely response will be appreciated.

Ex. 10.

92. Notably, the January 9, 2015 letter omitted the specific statutes that governed the Wichita Tribe’s construction of the History Center.

93. The January 9, 2015 letter did not list either NEPA or the NHPA, nor did the letter use the word “consultation.”

94. The letter made no mention of the fact that the History Center would be constructed on the site of the original Riverside Indian Boarding School.

95. The letter did not inform the Caddo Nation that the Caddo Nation only had thirty days to respond to the letter.

96. The January 9, 2015 letter constitutes the only communication the Caddo Nation ever received asking for consultation with regards to Defendants’ plans to construct and build the History Center on the three Tribes’ jointly-held WCD lands.

97. The Caddo Nation never gave its consent or approval for the construction that the Wichita Tribe has now commenced on the jointly-owned lands.

D. The Wichita Tribe Assumes HUD’s Responsibility for Complying with NEPA, NHPA, and Other Applicable Federal Laws

98. Pursuant to NEPA, the Wichita Tribe performed an Environmental Assessment (“EA”), and in doing so, listed itself as the responsible entity with the responsibility of not only completing the EA, but ensuring compliance with all of NEPA’s provisions and regulations. Ex. 1.

99. The Wichita Tribe certified to HUD that the environmental review process, which requires compliance with both NHPA and NEPA, was satisfied by the Wichita Tribe. Ex. 1, 10.

100. Wichita President Terri Parton consented to federal court jurisdiction for the responsibilities of complying with NHPA and NEPA in completing the EA. *Id.* The

EA specifically states: “The Wichita and Affiliated Tribes certifies to HUD that Terri Parton, in her capacity as President consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied.” *Id.* at 10.

101. Under 24 C.F.R. § 58.4, Indian Tribes can agree to take on assumption authority for complying with the environmental review process. This assumption authority also includes taking on the responsibility to comply with NHPA. 24 C.F.R. § 58.5.

E. The Wichita Tribe Overlooks its Own Archeologist’s Findings to Justify its Decision to Not Create an Environmental Impact Statement

102. In assuming HUD’s responsibility to ensure compliance with both NEPA and NHPA, the Wichita Tribe elected to perform an NHPA review within its process for completing the EA.

103. In drafting, authorizing, and signing the EA, President Parton misrepresented that “[t]he project will not affect any historic properties in Accordance with the SHPO letter attached.” Ex. 1, 5.

104. The statement that “[t]he project will not affect any historic properties in Accordance with the SHPO letter attached,” Ex. 1, at 5, directly contradicts the conclusions in the Northcutt Report. President Parton, as well as all the individual Defendants, had the Northcutt Report in their possession and were aware of its contents at the time they made this misrepresentation.

105. Specifically, the Northcutt Report found that the site where Defendants were seeking to build the History Center constitutes the site of the “first location of [the] Riverside Indian School that opened in 1871.” Ex. 2, at 9. At the time of the EA’s drafting, President Parton was well-aware that the Riverside Indian Boarding School holds both cultural and historic significance for the Caddo Nation.

106. The Wichita Tribe’s Finding of No Significant Impact (“FONSI”) cannot be squared with John Northcutt’s finding that the site of the former Riverside Indian Boarding School where the Tribe sought to build— “has some potential to produce more artifacts that relate to an 1870’s/1880’s period Indian school important to Oklahoma’s history.” Ex. 2, at ii.

107. Caddo Nation was not notified that John Northcutt’s investigation was taking place, nor was Plaintiff provided an opportunity to provide comment, participate, or have any involvement with Defendants’ assessment of the cultural resources on the jointly-held WCD lands.

108. Northcutt found numerous items of historic significance and noted that: “In general all of the artifacts: glass, whiteware. bottles, nails, slate, and special types such as the fork and slate stylus fit the period for an Indian school operated in the 1870’s.” Ex. 2, 21.

109. The Northcutt Report further states that “[t]his site is considered possibly eligible for the National Register if future excavations find significant artifacts below the surface.” Ex. 2, at ii.

110. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson misrepresented the eligibility of the site for their planned and now continued construction of the History Center and surrounding business development. This misrepresentation is ongoing as Defendants have continued to assert that the site contains nothing of cultural or historical significance. The May 2015 Environmental Assessment, signed by President Parton, states, “[t]he project will not affect any historic properties ...” Ex. 1, at 5. President Parton’s misrepresentation is demonstrably false based on the findings in the Wichita Tribe’s archaeologist’s own report (*see* Ex. 2, at ii), as well as the understanding that all three WCD Tribes share regarding the significance of the site of the original Riverside Indian Boarding School.

111. To date, the Wichita Tribe has continued to fail to formally notify the Caddo Nation that Northcutt reached the conclusion that the site for the construction of the History Center could be eligible for inclusion on the National Register until January 2016, eleven months after the point in time when President Parton claims the Wichita Tribe’s obligation to consult with the Caddo Nation terminated. Since that point in time, the Wichita Tribe has not taken adequate steps to investigate whether the site of the original Riverside Indian Boarding School should be included on the Register.

112. Under the NHPA’s regulations, the Wichita Tribe was required to contact the Caddo Nation because the Tribe’s expert concluded that historic properties could be affected. The Wichita Tribe did not contact the Caddo Nation with regards to this information and thus violated the NHPA.

113. The governing regulations state that “[i]f the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.” 36 C.F.R. § 800.4(d)(2).

114. The Wichita Tribe was required to consult with the Caddo Nation to develop alternatives or modifications to the undertaking that would protect the property possibly eligible for inclusion on the National Register. The NHPA mandates that “[t]he agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” 36 C.F.R. § 800.6(a).

115. President Parton, however, stated in the EA that “there [were] no plans to conduct additional archaeological testing” at that time. Ex. 1, 2.

116. The betrayal inherent in President Parton’s misrepresentations became clear when the Wichita Tribe sought to commence construction in May 2016, and the Caddo Nation immediately filed suit and moved for injunctive relief. Much harm, however, could not be avoided and remains ongoing as the Wichita Tribe continues its unlawful construction and occupation at the site of the original Riverside Indian Boarding School.

F. EA Fails to Consider Alternatives

117. The Wichita Tribe concluded its EA on May 15, 2015, and on May 22, 2015, the Wichita Tribe published its Finding of No Significant Impact (“FONSI”) in the Anadarko newspaper.

118. The EA’s stated purpose for the History Center declared:

The Tribe has determined there is a need to establish a permanent location to preserve the history of . . .[the Wichita Tribe] . . .The Tribe was approved by the Department of Housing and Urban Development to receive a grant to construct a 4000 sq. ft. CMU building for a museum as part of the Wichita Historical Center. The center will provide sufficient space to receive, store, and display artifacts and other items in documenting the history of the Tribe. Standard and handicap parking will be available for visitors to the museum. The museum will also accommodate a Tribal exhibit which travelled throughout several states in the 1980’s. In addition the project will also construct a traditional grass house, grass arbor and a ceremonial dance ground as part of the history relevant to the Tribe.

Ex. 1, 3.

119. The EA makes clear that the Wichita Tribe did not consider a single alternative. The EA states “[a]t this time the Wichita and Affiliated Tribes has not been able to consider an alternative site because of the site which is limited in area for development due to the trees and the need to continue to develop the existing area to create a destination business site.” Ex. 1, at 8. And, “[t]he Tribe has not considered an alternative site primarily because of the limited frontage property available in the area needed for business development.” *Id.*

120. The Wichita Tribe previously identified alternative sites that the Tribe considered optimal for economic development. Specifically, the Wichita Tribe had previously stated:

[I]f we could successfully block further development of the property along Highway 281 from North of the Washita River to the Chickasha Lake Road then we could concentrate on the ‘next best location’ (M. Auboah property) or the best location west of Randlett Park (D. Pickard property). Both locations are within the tribal jurisdiction and would provide good access to acceptable markets. We might also look to locations near to 1-40 or locations nearer to Oklahoma City with reasonable access to a state highway.

Wichita Tribe, *Briefing Paper*, at 2, attached as Ex. 11.

121. The EA states that the Wichita Tribe’s purpose for the History Center was “the need to continue to develop the existing area to create a destination business site,” Ex. 1, at 8, but the EA makes no mention of the alternative sites that the Wichita Tribe had previously identified as suitable for economic development. The failure to mention and consider the alternative sites that the Wichita Tribe had previously recognized would satisfy the stated purpose behind the construction of the History Center constitutes an arbitrary and capricious action, as well as an abuse of the Tribe’s administrative discretion as the entity assuming HUD’s duties under federal law.

122. Defendants never mailed, emailed, or notified Plaintiffs of Defendants’ EA and FONSI, despite the fact that HUD regulations provide that “[a]s a minimum, the responsible entity] must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies” 24 C.F.R. § 58.43(a).

G. President Terri Parton waited until 2016 to inform Caddo Nation of Northcutt’s 2015 findings and then misrepresented the Tribe’s intention to perform further testing, including GPR

123. With the knowledge that the Wichita Tribe had “no plans to conduct additional archaeological testing” in May 2015, Ex. 1, at 2, President Parton wrote a letter to the Caddo Nation on January 7, 2016, stating that the Tribe would undertake additional testing at the site of the original Riverside Boarding School prior to commencing construction. *See* Letter from Terri Parton, the Wichita Tribe President, to Tamara Francis, Caddo Nation Chairman (Jan. 7, 2016), attached as Ex. 12.

124. In her January 7, 2016 letter, President Parton informed the Caddo Nation that the Wichita Tribe’s archeologist had concluded that the site of the former Riverside Indian Boarding School “may be eligible for the national Register and should be avoided.” Ex. 12, 1.

125. The Caddo Nation detrimentally relied on President Parton’s misrepresentations in the January 7, 2016 letter, and instead of taking action to commence GPR testing on land that was rightfully and lawfully theirs, the Caddo Nation waited from January 2016 to May 2016 for the Wichita Tribe to undertake the testing President Parton had promised the Tribe would perform before the Tribe commenced construction.

126. The January 7, 2016 letter read in full:

The Wichita and Affiliated Tribes has received a grant to conduct an assessment of archaeological sites 34CD-352 and 34CD-353 to determine their eligibility for the National Register of Historic Places. Said sites are located within the NW4 of Section 10, T7N, R10W, Caddo County Oklahoma (See attachment for approximate site locations). The property currently contains the Wichita Travel Plaza and will also be the site for the soon to be constructed Wichita Museum and Cultural Center.

The sites are thought to be associated with the original Riverside Indian School that was established in 1871 for Wichita, Caddo, and Delaware children. We have previously conducted a Phase I archaeological survey, which was conducted by John Northcutt. Northcutt recommended that no further work was warranted at CD-353 but that CD-352 may be eligible for the national Register and should be avoided. The State Historic Preservation Office concurred and a 100 feet avoidance zone has been established around CD-352 to protect it from any ground disturbing, construction activities.

The Tribe now proposes to do geophysical testing of both sites. The testing will be performed by the Oklahoma Archaeological Survey and will consist of gradiometry, electrical resistance, ground penetrating radar, and possibly hand-held magnetic susceptibility. If sub-surface features are detected, a plan will then be created to further assess the sites eligibility for the NRHP. We will keep you informed of the outcomes of each step of the way and seek your input on the nomination of the site(s) if the survey results justify a nomination. If you have any questions or comments please contact Gary McAdams, Cultural Program Planner, at (405) 247-2425. Ext. 169.

Ex. 12.

127. As of the filing of this Amended Complaint, the Wichita Tribe has yet to performing the testing President Parton promised in her January 7, 2016 letter.

128. President Parton has not taken actions to correct the misrepresentations in her January 2016 letter, and thus, the harm resulting from her misrepresentations and Caddo Nation's reliance on those misrepresentations continues and is ongoing.

H. *Caddo Elders Express Concern for Preserving Caddo Burials*

129. Caddo Nation elders are responsible for determining the appropriate method for handling remains that could be potentially removed from their original burial grounds.

130. In February 2016, Caddo elders expressed concern that Defendants' construction on the WCD lands would disturb Caddo remains.

131. Caddo Nation officials informed Defendants on February 18, 2016, that Caddo elders had expressed concerns that Defendants' construction will disturb and harm Caddo remains.

132. Concerned about the proposed construction of the History Center on WCD lands and the lack of consultation with two of the three WCD Tribes, the Caddo Nation and the Delaware Nation met with the Wichita Tribe on February 18, 2016, in Oklahoma City, Oklahoma. At this meeting, Caddo Nation Chairman Tamara Francis told President Parton that Caddo elders have concerns about the disturbance of Caddo burials and Caddo cultural items located on the WCD lands (the site of the former Riverside Indian Boarding School) that the Wichita Tribe seeks to unilaterally develop.

133. At this February 18, 2016 meeting Chairman Francis told President Parton that the Caddo Nation did not have an opportunity to participate in the §106 process and as a result, there has not been adequate consultation with the Caddo Nation to identify historic properties and address the Caddo Nation's concerns regarding Caddo remains and Caddo cultural patrimony.

134. In response, President Parton insisted that the January 9, 2015 letter satisfied Defendants' legal obligations to consult with the Caddo Nation, and as a result, the Wichita Tribe was under no legal obligation to accommodate the Caddo Nation's concerns regarding Caddo remains and Caddo cultural patrimony.

135. President Parton has continued to insist that that the January 2015 letter fulfilled the Wichita Tribe's §106 consultation obligations under the law, despite the fact that the January 2015 letter did not include the subsequent, relevant findings in the April

2015 Northcutt Report—a Report that was not shared with the Caddo Nation until *March 2016*.

136. The Wichita Tribe's January 2015 letter cannot satisfy the Wichita Tribe's obligations under the APA, NEPA, and NHPA §106 because the Wichita Tribe did not inform the Caddo Nation until more than one year later that the Tribe's own archeologist had determined the site to be eligible for inclusion on the National Register of Historic Places.

137. Upon learning of John Northcutt's findings, the Caddo Nation informed the Wichita Tribe that further testing would be necessary to ensure that Caddo remains interred at the site of the former Riverside Indian Boarding School would be protected. The Wichita Tribe refused.

138. The failure of the Wichita Tribe to take up the testing that (1) its archeologist suggested; (2) the Tribe stated in its January 2016 letter it would undertake; and (3) the Caddo Nation requested the Wichita Tribe to undertake, constitutes an arbitrary and capricious action, as well as an abuse of the Tribe's discretion as the entity acting on behalf of HUD under the APA, NEPA, and NHPA.

139. On April 13, 2016, the Caddo Nation sent a demand letter to Defendants insisting that Defendants refrain from commencing construction of the History Center on WCD lands until adequate consultation could take place in compliance with federal law. *See* Letter from Caddo Nation to Wichita Tribe (Apr. 13, 2016), attached herein as Ex. 13. In the April 13, 2016 letter, the Caddo Nation once again expressed its concerns that the Caddo Nation considers the jointly-owned trust lands to be sacred, and many elders

believe the lands hold remains of Caddo ancestors and cultural artifacts. The Caddo Nation further stated that it “does not consent to the Wichita Tribe’s construction of the proposed History Center on the WCD Tribes’ jointly-held lands.” *Id.* at 1.

140. On April 18, 2016, the Wichita Tribe responded with a letter to the Caddo Nation stating that the Wichita Tribe had the “right to the exclusive use and control” of the WCD lands where Defendants seek to construct the History Center. Letter from the Wichita Tribe to the Caddo Nation, at 1 (Apr. 18, 2016), attached as Ex. 14. In this letter, Defendants took the position that they had fully complied with the requirements of both NHPA and NEPA.

141. On April 22, 2016, Caddo Nation and Delaware Nation officials met with Defendants at the Wichita Tribe’s headquarters. At this meeting, the Caddo Nation expressed its continued concerns that the Wichita Tribe’s desire to proceed immediately with construction would result in the destruction of human remains and cultural artifacts at the site of proposed construction.

142. At the April 22, 2016 meeting, Defendants told Caddo Nation and Delaware Nation officials that Defendants would be pouring concrete for the History Center in less than a couple of weeks.

143. On April 28, 2016, the Caddo Nation sent Defendants a letter with a set of proposals agreed to by the parties at the April 22, 2016 meeting. *See* Letter from Caddo Nation to the Wichita Tribe (Apr. 28, 2016), attached as Ex. 15. The April 28, 2016 letter highlighted that at the April 22, 2016 meeting, the “Wichita Tribe [] indicated that

construction [on the history center] has unearthed material from the former Riverside Indian Boarding School.” *Id.* at 1.

144. In its April 28, 2016 letter, the Caddo Nation offered to (1) perform ground-penetrating radar (GPR) on the History Center site at the Caddo Nation’s own cost; (2) hire archeological experts to provide site testing and evaluation of the property at the Caddo Nation’s own cost; (3) be formally noticed if and when construction unearths inadvertent discoveries of any items; and (4) have Caddo Nation historic preservation and other cultural experts monitor the site for avoidance of harm to Caddo objects and sites. Ex. 15, at 2. The Caddo Nation also explained that any GPR testing and archeological work would only take an estimated two weeks, and after that, Defendants’ construction could continue, absent any archeological finding that requires remediation or addressing. *Id.*

145. On May 6, 2016, Defendants rejected the Caddo Nation’s proposal.

I. *The Wichita Tribe Rushes to Construct*

146. On May 20, 2016, Chairman Francis of the Caddo Nation was told by a fellow Caddo Nation official that the Wichita Tribe was digging and preparing to lay the concrete foundation for the History Center.

147. On May 25, 2016, Chairman Francis was informed that the Wichita Tribe began laying rebar at the History Center construction site which showed that the pouring of concrete was imminent.

148. On May 25, 2016, at 12:29 p.m., Pipestem Law Partner Wilson Pipestem called the Wichita Tribe’s attorney William Norman to inform Mr. Norman of the Caddo

Nation's imminent filing of a complaint and a temporary restraining order in federal court. Because Mr. Norman was unavailable, Mr. Pipestem left a message with Mr. Norman's staff informing Mr. Norman that the Caddo Nation would be filing a complaint and motion for temporary restraining order. A short time later, at approximately 1:08 p.m., Mr. Pipestem spoke with Wichita Tribe attorney Mike McMahan and informed him that the Caddo Nation would soon, that day, file a complaint and motion for a temporary restraining order.

149. Approximately 52 minutes after Mr. Pipestem spoke with Mr. McMahan on May 25, 2016, at 2:00 p.m., the Wichita Tribe began pouring concrete for the History Center. *See* Joint Statement of the Caddo Nation and the Wichita Tribes on the Status of Construction of the History Center, ¶ 3, May 27, 2016, attached as Ex. 16. The Wichita Tribe's "construction crew began pouring the perimeter footings . . . a concrete and rebar structure following the perimeter of the History Center." *Id.*

J. Human Remains Detection (HRD) Dog Research Team Detects Remains

150. On June 4, 2016, the Caddo Nation secured a Human Remains Detection ("HRD") dog team to search the area of the original Riverside Indian Boarding School.

151. The HRD dog team had been specifically trained to detect bones older than 115 years.

152. The HRD dog team "showed interest" in the possibility of human remains in three specific areas at the original Riverside Indian Boarding School site.

K. The Wichita Tribe Continues to Construct

153. The Wichita Tribe now plans additional construction around the History Center. The Wichita Tribe's archeological expert has stated the area around the History Center will include "office space, restaurant, hotel, casino, . . . dance grounds, grass hut exhibit, outdoor concert and amphitheater, and parking areas." Ex. 2, at 10. And on November 13, 2017, the Wichita Tribe's attorney William Norman stated "[t]here are plans to further develop the site." Oral Argument at 18:25-35, *Caddo Nation of Oklahoma v. Wichita and Affiliated Tribes*, 877 F.3d 1171 (10th Cir. 2017).

154. The Wichita Tribe's development work continues on and around the History Center. This past fall, on September 25, 2017, a representative from the subcontracting company Alpha Boring, Mr. Gillman, emailed the Administrative Assistant for WCD Enterprises, Ms. Carissa Williams, requesting consent to install fiber optic infrastructure on behalf of AT&T across WCD lands to reach the Wichita History Center.

155. On September 26, 2017, Ms. Williams forwarded Mr. Gillman's email along to the elected leaders on the WCD Enterprises Board of Directors, noting that "[t]hey [Alpha Boring] are requesting permission to cross the land owned by WCD to get to the other side to put equipment on the other side and also to continue the trench across the land. . . ."

156. From September 26, 2017, until October 31, 2017, no meeting of the WCD Enterprises Board of Directors took place. Thus, no meeting occurred within that timeframe wherein the WCD Enterprises Board of Directors discussed Alpha Boring's request for permission.

157. No meetings or votes were held by the WCD Enterprises Board of Directors during the month of October of 2017.

158. Despite the fact that no meeting of the WCD Enterprises Board of Directors took place in the month of October 2017 following Alpha Boring's request, Wichita President Parton stated that installation of the fiber optic line was approved by the WCD Enterprises Board of Directors. In an affidavit submitted to the Tenth Circuit on October 30, 2017, Wichita President Terri Parton stated that "[i]nstallation of the upgraded fiber optic line was approved by a majority of the WCD Enterprises Board of Directors in October, 2017." Terri Parton Affidavit, *Caddo Nation v. Wichita Tribe et al.*, Tenth Circuit Court of Appeals, Case No. 16-6161, ¶ 15 (Oct. 30, 2017), attached as Ex. 17.

159. To date, the Caddo Nation officials that sit on the WCD Enterprises Board of Directors have never been a part of an official meeting or discussion related to the Alpha Boring request for approval.

160. President Parton's statements in her affidavit that the WCD Enterprises Board approved Alpha Boring's request to lay fiber optic line was therefore false and misleading because there was never any WCD Enterprises Board of Directors vote or meeting during the month of October, 2017.

CLAIMS FOR RELIEF

Count I: Violation of the APA and the NHPA: Defendants Failed to Engage in Good Faith and Reasonable Consultation with Plaintiffs

161. Plaintiffs repeat and incorporate by reference the facts and allegations in the above paragraphs 1 through 160 of this Complaint.

162. The APA requires a court to set aside an agency's actions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

163. As described above and in greater detail below, the Wichita Tribe's failure to provide adequate notice and consult with the Caddo Nation constitutes an arbitrary and capricious action that violates the NHPA and, as a result, the APA.

164. Section 106 of the NHPA, 56 U.S.C. § 306108, requires that agencies of the United States, "prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of the license, shall take into account the effect of the undertaking on any historic property."

165. Prior to approval of a federal undertaking, the agency must: (a) identify the "historic properties" within the area of potential effects; (b) evaluate the potential effects that the undertaking may have on historic properties; and (c) resolve the adverse effects through the development of mitigation measures. 36 C.F.R. §§ 800.4; 800.5; 800.6.

166. The regulations implementing NHPA recognize and honor the government-to-government relationship the United States maintains with Indian Nations, and consequently, in implementing NHPA, the regulations establish a framework through which consulting with local Indian Nations is not optional, but instead, is mandatory.

167. Consultation with an Indian Tribe must recognize the government-to-government relationship between the Federal Government and the Tribe, and the consultation should be conducted in a manner "sensitive to the concerns and needs of the Indian Tribe . . ." 36 C.F.R. § 800.2(c)(2)(ii).

168. Consultation should provide the Tribe with “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(2)(ii)(A).

169. Tribal consultation should be conducted concurrently with NEPA analyses, as historic and cultural resources are expressly included among the factors to be considered under NEPA’s own requirements. 36 C.F.R. § 800.8.

170. The regulations acknowledge that Indian Tribes have special expertise in identifying historic properties. *See* 36 C.F.R. § 800.4 (c)(1) (“The agency official shall acknowledge that Indian tribes . . . possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.”)

171. In initiating the § 106 process, Defendants were required to make a “reasonable and good faith effort” to identify Indian Tribes who may attach “religious and cultural significance” to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the § 106 process. 36 C.F.R. § 800.2(c)(2)(ii) (A)-(D); § 800.3(f)(2).

172. Defendants were also required to consult with interested parties, including Indian Tribes, in the identification of potentially affected historic properties. To satisfy the requirement of reasonable, good faith efforts to determine potential adverse effects, Defendants were required to gather information from a variety of sources, including a

review of “existing information on historic properties within the area of potential effects.” 36 C.F.R. § 800.4(a)(2).

173. Defendants were required to “[s]eek information” from “consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area and identify issues relating to the undertaking’s potential effects on historic properties.” 36 C.F.R. § 800.4(a)(3).

174. In addition, the governing regulations required Defendants to “[g]ather information from any Indian tribe . . . to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them . . . recognizing that an Indian tribe . . . may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.” 36 C.F.R. § 800.4(a)(4).

175. Defendants’ obligation to make a reasonable and good faith effort may include “background research, consultation, oral history interviews, sample field investigation, and field survey.” 36 C.F.R. § 800.4(b)(1).

176. Defendants must “take into account” “the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects.” 36 C.F.R. § 800.4(b)(1). The area of potential effects is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.” 36 C.F.R. § 800.16(d).

177. The NHPA regulations also establish criteria for determining an adverse effect on a historical site:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feelings, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

36 C.F.R. § 800.5(a)(1).

178. After applying these and other considerations, if and when Defendants made a finding of no adverse effect, Defendants were required to notify the consulting parties of that finding and provide them with specific documentation sufficient to review the finding. 36 C.F.R. § 800.5(b) and (c).

179. Despite the aforementioned laws and governing regulations, Defendants did not make reasonable efforts to consult with the Caddo Nation in good faith during the environmental review process encompassing the historic preservation analysis.

180. Defendants failed to consult with Plaintiff in good faith during the environmental review process, and as a result, Defendants' actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

181. The only effort Defendants made to engage in consultation was the mailing of a letter on January 9, 2015. Caddo Nation's Tribal Historic Preservation Officer ("THPO") never received this letter.

182. Following the January 9, 2015 letter ("January 2015 letter"), the Wichita Tribe never followed up to inquire as to whether the Caddo Nation had even received the letter.

183. Following the January 9, 2015 letter, the Wichita Tribe never called an elected leader or employee at the Caddo Nation to inquire as to whether the Caddo Nation received the January 2015 letter.

184. Following the January 9, 2015 letter, the Wichita Tribe never sent a representative to the tribal headquarters of the Caddo Nation to inquire as to whether the Caddo Nation received the January 2015 letter.

185. Following the January 9, 2015 letter, the Wichita Tribe's President Parton never spoke of the Tribe's intention to build and construct its History Center on the site of the original Riverside Indian Boarding School at any WCD Enterprises Board of Directors meeting (when Caddo Nation officials were present) prior to January 2016.

186. The mailing of one single letter does not, alone, satisfy Defendants' obligation to engage in good faith consultation, and thus Defendants' failure to engage in good faith consultation constitutes an arbitrary and capricious abuse of discretion, one that is not in accordance with law in violation of the APA.

187. The Caddo Nation reached out numerous times in good faith to voice its concerns about Defendants' planned construction on the three WCD Tribes' jointly-held trust lands.

188. As a result of the allegations in Paragraphs 162 through 187 of this Complaint, Defendants have violated NHPA (56 U.S.C. § 306108) and the APA (5 U.S.C. § 706(2)(A)).

Count II: Violation of the NEPA & APA: *Defendants considered no reasonable alternatives and failed to provide meaningful public notice of the EA and FONSI*

189. Plaintiffs repeat and incorporate by reference the facts and allegations in the above Paragraphs 1 through 188 of this Complaint.

190. The APA requires a court to set aside an agency's actions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

191. NEPA's procedural requirements are triggered where a federal agency engages in a "major Federal action[] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C).

192. Pursuant to the Council on Environmental Quality's implementing regulations, federal agencies may comply with NEPA by preparing either an environmental impact statement ("EIS") or an environmental assessment ("EA"). 40 C.F.R. § 1501.4.

193. An EA is a public document containing information relating to the need for the proposed action being considered, other alternatives, the environmental impact of the

proposal and its alternatives, and a listing of agencies and persons consulted. 40 C.F.R. § 1508.9(b).

194. Although an EA is less burdensome than an EIS, it still represents a meaningful analysis of the potential environmental impacts of a proposed action.

195. In determining whether an EIS is necessary, or whether a “Finding of No Significant Impact” is appropriate, Defendants were required to consider both the context and the intensity of the proposed action. 40 C.F.R. § 1508.27. Defendants considered neither.

196. Context refers to the scope of the proposed action, including the interests affected. 40 C.F.R. § 1508.27(a).

197. Intensity refers to the severity of impact, and must be evaluated with a host of factors in mind, including “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas” and “[t]he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. § 1508.27(b).

198. Defendants’ EA contains inadequate analysis of the historic and cultural resources on the WCD Tribes’ jointly-held trust lands because Defendants failed to consult with the Caddo Nation. Defendants’ EA further fails to satisfy NEPA’s regulatory requirements because Defendants failed to consider both the context and the intensity of the proposed action, as required under 40 C.F.R. § 1508.27(b). In a cultural survey on

April 5, 2015, a Phase I archeological survey was completed and it was determined that the site of the original Riverside Indian Boarding School may be eligible for inclusion on the National Register. Ex. 2, at ii.

199. Defendants' EA does not satisfy Defendants' obligations under NEPA because the EA lists no agency or person with whom Defendants consulted, in violation of 40 C.F.R. § 1508.9(b).

200. Defendants' failure to consult with the Caddo Nation in preparing the EA is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

201. Defendants' ten-page EA fails to comply with the mandate that NEPA documentation present the public and the decision maker with a "hard look" at the impacts of the federal action.

202. NEPA and its implementing regulations require that federal agencies take a "hard look" at environmental impacts of proposed projects and measures to mitigate these environmental impacts. Agencies are required to develop, discuss in detail, and identify the likely environmental consequences of proposed mitigation measures. 40 C.F.R. § 1508.25(b); 40 C.F.R. § 1502.14(f); 40 C.F.R. § 1502.16(h); 40 C.F.R. § 1505.2(c).

203. Defendants issued an EA that contained *no* alternative courses of action and even overlooked alternatives the Wichita Tribe had previously considered. The omission of these alternatives from the EA failed to comply with the mandate that NEPA analysis and documentation be based on a reasonable range of alternatives. 42 U.S.C. §§4332(C)(iii) & (E).

204. NEPA requires that agencies consider, evaluate and disclose to the public “alternatives” to the proposed action and “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of resources.” 42 U.S.C. §§ 4332(C)(iii), (E). NEPA’s implementing regulations require federal agencies to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. 40 C.F.R. §1502.14. Additionally, the evaluation of alternatives must constitute a “substantial treatment,” presenting the impacts of the alternatives in comparative form “sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and public.” *Id.*

205. The “alternatives” section is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14.

206. Defendants’ EA openly admits they considered *no* alternatives. Ex. 1, 8.

207. Defendants’ decision to consider *no* alternatives in preparing their EA is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

208. NEPA regulations require that a Finding of No Significant Impact be made “available to the affected public” and that the public and other affected agencies shall be involved in NEPA procedures. 40 C.F.R. §§ 1501.4(e)(1), 1506.6.

209. Adequate notice requires a meaningful effort to provide information to the public affected by Defendants’ actions. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions

are made and before actions are taken.” 40 C.F.R. §§1500.1(b), 1506.6(b)(1) (“In all cases the agency shall mail notice to those who have requested it on an individual action.”). NEPA implementing regulations additionally provide extensive public involvement requirements. *Id.* at §1506.6.

210. Defendants’ Finding of No Significant Impact (“FONSI”) and accompanying ten-page Environmental Assessment (“EA”) were authorized in violation of NEPA’s requirement that Defendants provide adequate public notice.

211. NEPA’s regulations require the Wichita Tribe to “send the FONSI notice . . . to the appropriate tribal, local, State and Federal agencies” 24 C.F.R. § 58.43(a) (emphasis added). This regulation required the Wichita Tribe to send the FONSI to the Caddo Nation, which the Wichita Tribe did not do. The Caddo Nation Chairman and Caddo THPO never received the FONSI. The Wichita Tribe’s mere publication of the FONSI in one single, non-tribal, newspaper, therefore, is not sufficient to reach the interested Indian Tribes and tribal citizens the Wichita Tribe was required to notify.

212. Defendants’ publication of the FONSI in a single, non-tribal newspaper, is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

213. As a result of the allegations in Paragraphs 190 through 212 of this Complaint, Defendants violated NEPA and its implementing regulations, acted arbitrarily and capriciously, abused their discretion, failed to act in accordance with law and therefore violated the APA, 5 U.S.C. § 706(2)(A).

Count III: Unjust Enrichment: *Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, have been and will continue to be unjustly enriched by the development of the site of the Riverside Indian Boarding School*

214. Plaintiff repeats and incorporates by reference the facts and allegations in the above Paragraphs 1 through 213 of this Complaint.

215. Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, acting in their individual capacities, have unilaterally failed to comply with the statutory and regulatory requirements of HUD fund recipients.

216. Despite the ongoing violation of the APA, NHPA, and NEPA, Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, acting in their individual capacities, continue to undertake actions to ensure construction continues on the site of the Riverside Indian Boarding School.

217. To support and carry out the unlawful construction of the History Center, and additional buildings, on jointly-owned WCD lands, Defendants have made repeated misrepresentations and false statements regarding the status of the land upon which the Wichita Tribe sought—and now continues to construct—its History Center and surrounding business developments. Examples of such misrepresentations include, but are not limited to:

- Any and all representations regarding ownership and status of the WCD lands at issue made to HUD in support of the Wichita Tribe's application for the grant secured to fund the construction of the History Center;
- The April 18, 2016 letter stating that the Wichita Tribe had the "right to the exclusive use and control" of the WCD lands where Defendants seek to construct the History Center. Ex. 14.
- The *Appellees' Answer Brief*, filed in the Tenth Circuit on June 2, 2017, stating, "[i]n 2007, Caddo and Delaware Nation ceded exclusive governmental control over this Division to the Wichita Tribe in the Partition Agreement," while failing to recognize the subsequent, public government acts rescinding the partition. *See Wichita Tribe, Appellees' Answer Brief*, Case No. 16-6161, at 21 n. 7, Tenth Circuit Court of Appeals ECF No. 01019819590 (June 2, 2017).

218. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made repeated misrepresentations and false statements regarding the eligibility of these WCD lands for inclusion on the National Register, as well as its status as the site of the original Riverside Indian Boarding School. Examples of such misrepresentations include, but are not limited to:

- The EA, signed by Defendant Terri Parton, wherein President Parton states that "[t]he project will not affect any historic properties in Accordance with SHPO letter attached." Ex. 1, 5.

- The *Appellees' Reply Brief in Support of Motion to Dismiss for Mootness*, filed June 23, 2017, stating that the Caddo Nation “has never provided any evidence, to wit: cultural artifacts and graves underlie the History Center site.” See *Wichita Tribe, Appellees' Reply Brief in Support of Motion to Dismiss for Mootness*, Case No. 16-6161, at 2, Tenth Circuit Court of Appeals ECF No. 01019830647 (June 23, 2017).
- The *Appellees' Response to Motion to File a Supplemental Appendix*, filed October 30, 2017, stating, “no evidence ... has been presented to demonstrate that any culturally significant items are located at the same site as the History Center.” See *Wichita Tribe, Appellees' Response to Motion to File a Supplemental Appendix*, Case No. 16-6161, at 6, Tenth Circuit Court of Appeals ECF No. 01019893423 (Oct. 30, 2017).

219. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made repeated misrepresentations and false statements regarding the Wichita Tribe's intentions and plans to undertake geophysical testing, including, but not limited to GPR testing. Examples of such misrepresentations include, but are not limited to:

- The January 7, 2016 letter stating, “[t]he [Wichita] Tribe now proposes to do geophysical testing of both sites. The testing will be performed by the Oklahoma Archaeological Survey and will consist of gradiometry, electrical resistance, ground penetrating radar, and possibly hand-held magnetic susceptibility.” Ex. 12, 1.

220. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made repeated misrepresentations and false statements regarding the purpose of the History Center. Although the true purpose behind the individual Defendants' efforts to secure the construction of the History Center is to increase economic revenue and business development opportunities, Defendants falsely stated, and continue to state, that the exclusive purpose behind the History Center is preserving Wichita culture. Examples of such misrepresentations include, but are not limited to:

- The September 2014 President's Report, which states that "[t]he center will provide the Tribe an opportunity to enhance the cultural preservation aspects with a museum which will provide educational and historical information of the Tribe..." President Terri Parton, *President's Report*, Wichita Newsletter, at 2 (September 2014), attached as Ex. 18.
- The August 2015 Wichita Newsletter, which states that "[t]he project is entitled the Wichita Historical center and includes a 4060 s.f. building which can be used as a museum and a teaching facility for Native American History with arts and crafts..." Wichita Tribe, *Wichita Tribal News*, at 7 (August 2015), attached as Ex. 19.
- The EA wherein President Parton represents that the "[t]he Tribe has determined there is a need to establish a permanent location to preserve the history of . . . [the Wichita Tribe] . . . Ex. 1, 3.

221. Significant construction on the History Center and surrounding buildings has now been completed on the jointly-owned WCD lands for which the Caddo Nation remains a joint-owner. This construction has brought harm to the property and cultural rights the Caddo Nation is entitled to as a joint-owner of the land comprising the site of the History Center while unjustly enriching the Wichita Tribe and the individual Defendants who have received an increase in revenue and business enterprises.

222. The construction made possible by the Defendants' APA, NEPA, and NHPA violations and the misrepresentations identified in Paragraphs 27, 40-41, 98-99, 103-111, 116, 123-128, 140, 153-160, and 217-220 (as well as other misrepresentations yet to be identified) has so completely altered the jointly-owned WCD lands for the benefit of the named Defendants that Plaintiff can no longer derive any of its lawful benefits from the land it owns.

223. As such, Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson, have been and will continue to be unjustly enriched by the further development of the site and by the operation of the History Center.

Count IV: Equitable Estoppel: *Defendant Terri Parton made material misrepresentations, which the Caddo Nation relied on to its detriment.*

224. Plaintiff repeats and incorporates by reference the facts and allegations in the above Paragraphs 1 through 223 of this Complaint.

225. At least as early as January 9, 2015, Defendant Terri Parton began unilaterally taking steps to develop the site of the Riverside Indian Boarding School. *See* Ex. 10.

226. On April 6, 2015, the final Northcutt Report was issued revealing that the proposed site of the History Center and other developments was in fact the location of the historic Riverside Indian Boarding School and was eligible for the National Register. Ex. 2, at ii.

227. Despite the findings in the Northcutt Report, which clearly affect significant cultural and historical areas for the Caddo Nation, Defendant Parton did not notify Plaintiff of John Northcutt's findings until almost a year later in the January 7, 2016 letter signed by Defendant Parton.

228. Defendant Parton did not actually provide Plaintiff with the Northcutt Report until three months later in March, 2016, with the intent that the Caddo Nation would not request the consultation it was entitled to under federal law, or the protections that the burials and cultural resources are afforded under federal law.

229. The Defendants intended to conceal and misrepresent important facts to the Caddo Nation in order to prevent the Nation from asserting its rights as a joint-title holder and as an interested Tribe under the federal law governing the Wichita Tribe's administering of the HUD grant.

230. Defendants also misrepresented their intention to perform the proper testing they said they would perform in their January 7, 2016 letter which stated that the testing

would consist of “gradiometry, electrical resistance, ground penetrating radar, and possibly hand-held magnetic susceptibility.” *See* Ex. 12, 1.

231. As a direct result of the Caddo Nation’s reliance on these misrepresentations, the Caddo Nation did not immediately assert its rights under NEPA, NHPA, or as joint land holders under federal law. In May of 2016, it became apparent that the Wichita Tribe would not undertake the testing it had promised to undertake, and the Caddo Nation immediately filed suit; the Wichita Tribe, however, commenced pouring concrete within 52 minutes of learning that Caddo Nation planned to file this lawsuit in federal court.

232. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made and continue to make repeated misrepresentations and false statements regarding the status of the land upon which the Wichita Tribe sought—and now continues to construct—its History Center and surrounding business developments. Examples of such misrepresentations include, but are not limited to, those outlined in Paragraphs 27-41, 140, 153-160, and 217.

233. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made and continue to make repeated misrepresentations and false statements regarding the eligibility of these WCD lands for inclusion on the National Register, as well as its status as the site of the original Riverside Indian Boarding School. Examples of such misrepresentations include, but are not limited to, those outlined in Paragraphs 103-111, and 218.

234. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made and continue to make repeated misrepresentations and false statements regarding the Wichita Tribe's intentions and plans to undertake geophysical testing, including, but not limited to GPR testing. Examples of such misrepresentations include, but are not limited to, the January 7, 2016 letter. *See Ex. 12.*

235. President Parton's statement in the January 7, 2016 letter was made with the intent that the Caddo Nation would rely on this representation and forego asserting its own rights to conduct testing on the site while waiting for the Wichita Tribe's testing to commence.

236. None of the Defendants named herein have conducted the testing that President Parton promised in her January 2016 letter.

237. Plaintiff in fact did rely on this misrepresentation and did not file suit until May of 2016 when it was clear that President Parton's promise in her January 2016 letter had been false.

238. To support and carry out the unlawful construction of the History Center on jointly-owned WCD lands, Defendants have made and continue to make repeated misrepresentations and false statements regarding the purpose of the History Center. Although the true purpose behind the individual Defendants' efforts to secure the construction of the History Center was to increase economic revenue and business development opportunities, Defendants falsely stated, and continue to state, that the

exclusive purpose behind the History Center is preserving Wichita culture. Examples of such misrepresentations include, but are not limited to, those outlined in Paragraph 220.

239. The Caddo Nation detrimentally relied on the above misrepresentations and agreed to meet, confer, and negotiate for protections for Caddo remains, burials, and cultural resources with the Wichita Tribe from January 2016 to May 2016.

240. In direct reliance on these misrepresentations, Plaintiff eventually attempted, in good faith, to arrange for geophysical testing of the site of the original Riverside Boarding School and forego its right to file suit to protect its sovereign rights to protect the lands the Nation owned and on which its citizens have been buried until the Caddo Nation realized the complete absence of truth in President Parton's misrepresentations in May 2016 and immediately took action to file suit; within 52 minutes of informing President Parton's counsel that the Caddo Nation would file a lawsuit, President Parton ordered that the pouring of cement over the former Riverside Indian Boarding School site commence.

241. As a result of these continuing misrepresentations made by the Defendants, Plaintiff has suffered irreparable harm and was completely prohibited from asserting its legal rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

1. The Court declare that Defendants violated the NHPA §106 consultation process by failing to engage in good faith consultation with the Caddo Nation and that these actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A);

2. The Court declare that Defendants violated NEPA and its implementing regulations by failing to consult with the Caddo Nation, failing to consider reasonable alternatives, and failing to provide proper notice of the FONSI and that these actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A);
3. The Defendants, their agents and employees, be enjoined during the pendency of this action and permanently from any further construction and development on the twenty acre tract located 1.5 miles north of Anadarko, Oklahoma described as being E/2 NW & SW Sec. 10 Township 7 Range 10 West, Caddo County, Oklahoma;
4. The Defendants, their agents and employees, be ordered to initiate and conduct good faith consultations with the Plaintiff and other interested parties in order to consider relocation of said History Center to a site having no adverse impacts on significant cultural and religious areas;
5. The Defendants, their agents and employees, be ordered not to continue construction or other development on the jointly-owned WCD lands absent consent of the Caddo Nation and Delaware Nation or partition by the United States Federal Government;
6. Plaintiff be awarded restitution damages for the unjust enrichment of Defendants Terri Parton, Jesse E. Jones, Myles Stephenson, Jr., Vanessa Vance, Shirley Davilla, Nahuseah Mandujano, and Matt Roberson;
7. Defendant Terri Parton be estopped from taking any further individual action toward the development or operation of any facilities located on the disputed parcel of jointly-owned WCD lands;
8. The Defendants be assessed the costs of this action;
9. That attorneys' fees be awarded to Plaintiff as authorized under 54 U.S.C. § 307105 for claims brought under the NHPA through the APA; and
10. The Plaintiff have such other and further relief as the Court deems just.

Respectfully submitted this 21st day of March, 2018.

By: _____ *Mary Kathryn Nagle* _____

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CERTIFICATE OF SERVICE

I, Mary Kathryn Nagle, certify that a true and correct copy of the above and foregoing was served this 21st day of March, 2018, via process server, U.S. First Class Mail postage prepaid, or facsimile:

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By: _____ *Mary Kathryn Nagle* _____

Mary Kathryn Nagle