

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 2019

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No. 4:08-cv-00278-TCK-PJC

LINDSEY K. SPRINGER, et al.,

Defendants.

APPLICATION FOR RELIEF FROM JUDGMENT AND
BRIEF IN SUPPORT

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☐ C/J ☐ C/MJ ☐ C/Ret'd ☐ No Env
☐ No Cpys ☒ No Env/Cpys ☐ O/J ☐ O/MJ

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No. 4:08-cv-00278-TCK-PJC

LINDSEY K. SPRINGER, et al.,

Defendants.

APPLICATION FOR RELIEF FROM JUDGMENT AND
BRIEF IN SUPPORT

Lindsey K. Springer ("Springer") moves this Court pursuant to Federal Rules of Civil Procedures ("FRCvP") Rule 60(b)(4) to issue an order relieving Springer from the Order and Opinion dated March 3, 2010(Doc. 179), and the Judgment dated March 16, 2010(Doc. 180), finding neither any Defendant, or the subject real property at issue, were situated within the State of Oklahoma, or the United States' Northern Judicial District of Oklahoma, based upon the peculiar provisions in the 1832, 1833, 1856, and 1866 Treaties between the President of the United States and Creek Nation, and the letters patent by the President of the United States dated August 11, 1852. See U.S. v. Buck, 281 F.3d 1336, 1344(10th Cir. 2002)(a judgment is void "if the Court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law."); and See Montana v. U.S., 450 U.S. 544, 555 and n.5(1981)(explaining a "singular exception" involving Treaties where the United States promises and guarantees the reservation land of the Tribes like the Creek Nation would **never** be made a part of, annexed to, or included in, any State of the Union or Federal Territory).

INTRODUCTION

This Application and brief in support is based upon the State of Oklahoma's violation of Article III, Section 1 of its Constitution that allowed

the people of Oklahoma Territory to become a State of the Union where the people therein "**forever disclaim** all right and title...to all lands within said limits owned or held by any...Nation."

In addition, this Application and brief in support is based upon the United States' violation of its **solemn guarantee** to the Creek Nation where, for instance, the Treaty of 1856 promised "[N]o portion of either tracts of **Country**, defined [in the Treaty] shall ever be embraced or included within or annexed to any [Federal] territory or State [of the Union]." Murphy v. Royal, 866 F.3d 1164, 1200(10th Cir. 2017), amended on rehearing denial, 875 F.3d 896(10th Cir. 2017)(Cert. Granted, 138 S.Ct. 2026)(citing Indian Country USA, Inc. v. Oklahoma ex rel., Oklahoma Tax Commission, 829 F.2d 967, 971(10th Cir. 1987)(Cert. Denied, 108 S.Ct. 2870)(quoting from the Treaty of August 7, 1856, available at WL 1856, 11367).

GROUND FOR RELIEF FROM JUDGMENT

1. This Article III district court found it had jurisdiction and venue over the complaint, and amended complaint, based upon 28 U.S.C. §§ 1340, 1345, 26 U.S.C. § 7402, and 28 U.S.C. § 1396. This was so where the district court found Springer, all other Defendants, and the subject real property, were all within the city of Kellyville, Sapulpa, and Tulsa, i.e. Creek and Tulsa Counties belonging to the State of Oklahoma, and thus all were within the United States's Northern Judicial District of Oklahoma. Doc. 179, p.1,2,12. Recently, the Tenth Circuit held the reservation boundaries of the Creek Nation, which include all of the land the State declares as Creek County, and most of what the State declares as Tulsa County, to be within the fee simple letters patent the President gave to the Creek Nation on August 11, 1852. The guarantee and solemn promise made to the Creek Nation, after several dishonored promises, is that the entire block of land to the Creek Nation would **forever** be separate

and held apart, never to be included, or annexed to, any State of the Union or Federal territory. The Supreme Court explained in Montana that this type of circumstance was peculiar and very rare. 450 U.S. at 555 and n.5.

Where the State of Oklahoma and United States are prohibited forever from making any part of the land belonging within the reservation boundaries of the Creek Nation a part of, annexed to, or included in, any State of the Union or Federal Territory, did the district court lack Article III Judicial Power and Jurisdiction, and lack subject matter jurisdiction, as well as a live Article III case or controversy, from the beginning, over the complaint and amended complaint where Springer, all other Defendants, and the subject real property resided and existed only within the Creek Nation Treaty lands?

BACKGROUND

1. Springer, a life long resident of land within the Creek Nation's current reservation boundaries, on or about July 30, 1996, purchased, through S.L.C.A. Family Trust, the 20 acre tract of land, to wit:

"The North Half (N/2) of the Southeast Quarter (SE/4) of the Northwest quarter (NW/4) of Section 2, Township 17 North, Range 10 East of Creek County, State of Oklahoma, **according to the United States Government survey.**"

See Exhibit 1(Warranty Deed); See also Doc. 179, p.10.

2. Though the tract of land identifies being located in "Creek County, State of Oklahoma," the land is clearly within the current reservation boundaries belonging to the Creek Nation. See Exhibit 2 (map of the reservation boundaries of the Creek Nation as they currently exist).

3. On May 9, 2008, Robert D. Metcalfe ("Metcalfe") and James C. Strong ("Strong") filed a complaint on behalf of the United States of America ("U.S.A."), and under the authority vested in the United States naming Springer individually, and as co-trustee of the S.L.C.A. Family Trust,

Regina Carlson, as co-trustee of S.L.C.A. Family Trust, W.T. Moore, Martha F. Moore, W.T. Smith, Janet S. Smith, Albert Mendez, individually and as trustee of the Mendez Family Trust, and Kathy Anglin, in her capacity as Creek County Treasurer. Doc. 179, p.1 (citing Doc. 2).

4. All of the Defendants were within the reservation boundaries of the Creek Nation, including Mendez and his Family Trust with P.O. Box 14330, Tulsa. See Exhibit 3(listing the Mendez address although erroneously placing it in the State of Oklahoma, which is the subject of this Application).

5. Springer moved to dismiss for lack of jurisdiction. Docs. 10,11.

6. On October 10, 2008, Metcalfe and Strong filed an amended complaint, eliminating Defendants Mendez, Anglin, and W.T. Moore, and changing the name Janet S. Smith to Janeth Smith. Doc. 179, p.1.

7. This Court found the amended complaint sought three forms of relief as did the original complaint. Doc. 179, p.1-2.

8. First, the United States sought to reduce to judgment in this District Court the federal tax assessments made against Springer for unpaid taxes from years 1990-1995 and a penalty under 26 U.S.C. § 6673. Doc. 179, p.1.

9. Second, the United States sought in this District Court to obtain a judicial determination that S.L.C.A. Family Trust was Springer's alter ego nominee. Doc. 179, p.1-2.

10. Third, the United States sought to foreclose its tax liens filed in the Creek and Tulsa County Courthouses against the subject real property owned by Springer and S.L.C.A. Family Trust. Doc. 179, p.2.

11. Springer challenged the District Court's jurisdiction and venue over the amended complaint. Doc. 179, p.2.

12. In this Article III District Court's March 3, 2010 order, this Court found "venue in the Northern District of Oklahoma is proper under 28 U.S.C.

§ 1396 because all **the defendants reside in this judicial district, and also because the real property that is the subject of this action is located in Creek County, Oklahoma.**" Doc. 179, p. 2-3.

13. The March 3, 2010 order also found "Springer resides in Kellyville, Oklahoma, within this judicial district." Doc. 179, p.3.

14. The March 3, 2010 order also found the address of S.L.C.A. Family Trust was 5147 S. Harvard, Suite 116, Tulsa, Oklahoma 74135." Doc. 179, p.12.

15. The March 3, 2010 order further found the Internal Revenue Service's ("IRS") tax liens were filed against Springer with the Clerk of Creek County in Sapulpa on April 28, 1999. Doc. 179, p.4.

16. The March 3, 2010 order described the subject real property as follows:

"The North Half (N/2) of the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4) of Section 2, Township 17 North, Range 10 East of Creek County, State of Oklahoma."

Doc. 179, p.9.

17. The March 3, 2010 order found the Article III District Court's jurisdiction was based upon 28 U.S.C. §§ 1340, 1345, and 26 U.S.C. § 7402. Doc. 179, p.2.

18. The Article III District Court denied Springer's Motion to Dismiss for lack of subject matter jurisdiction and venue. Doc. 179, p. 13, 19.

19. The Article III District Court entered Judgment on March 15, 2010. Doc. 180.

20. The Article III District Court confirmed the sale of the subject real property on February 25, 2011.

21. In July, 2011, the United States Court of Appeals for the Tenth Circuit, an Article III appellate court, affirmed the orders and Judgment of this Article III District Court. See U.S. v. Springer, 427 Fed. Appx. 650(10th Cir. 2011)(Cert. Dismissed, 566 U.S. 1032, June 4, 2012).

THE RESERVATION BOUNDARIES OF THE CREEK NATION SINCE 1866

The analysis begins with the treaties the United States forcibly entered into with the Creek Nation exchanging eastern lands for lands in the middle of what is now known as the United States of America. "In the 1830s, the Muscogee (Creek) Nation was forcibly removed from the Southeastern United States to land in what is now Oklahoma." Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1440(D.C. Cir. 1988).

Although "in 1871 Congress ended the practice of entering into treaties with the Indian Tribes," U.S. v. Lara, 541 U.S. 193, 201(2004), Congress did not take any steps to invalidate or impair then existing treaties. *Id.* at 204.

"[t]ribes are 'unique aggregations possessing attributes of sovereignty over...their **territory**.'" Merrion v. Jicarilla Apache Tribe, 617 F.2d 537, 541(10th Cir. 1979)(quoting U.S. v. Mazurie, 419 U.S. 544, 557(1975)). "They retain these powers of self-government not voluntarily relinquished by treaty ..."*Id.*

For instance, "[T]he Bill of Rights does not apply to Indian Tribes." U.S. v. Shavanaux, 647 F.3d 993, 997(10th Cir. 2011)(citing Talton v. Mayes, 163 U.S. 376, 382-85(1896)). "It is presumed federal statutes do not apply outside the United States." Bond v. U.S., 189 LED2D 1, 12(2014). "Thus, rather than being subject to the United States Constitution, the tribal exercise of inherent power is constrained only by 'the Supreme legislative authority of the United States.'" Shavanaux, 647 F.3d at 997. And a law "beyond the power of Congress," for any reason, is "no law at all." Nigro v. U.S., 276 U.S. 332, 341(1928).

"Once the reservation is established 'all tracts included within it remain a part of the reservation until separated there from by Congress.'" U.S. v. Celestine, 215 U.S. 278, 285(1909).

The Creek Nation's reservation boundaries have never been disestablished or diminished beyond the reduced boundaries of the Treaty of 1866. Murphy, 866 F.3d at 1233.

The treaties with the Creek Nation are rare and peculiar in circumstances compared to general decisions and laws governing Indian Tribes.

- (i) The treaties of 1832, 1833, 1856, 1866, and the letters patent dated August 11, 1852 by the President of the United States of America.

The Creek Nation, beginning with the Treaty of 1832, was "solemnly guaranteed" their "Country west of the Mississippi" would never be made part of any State of the Union or Federal Territory of the United States. Indian Country, 829 F.2d at 971(citing Article 14 of the Treaty of 1832, 7 Stat. 366, March 24, 1832, available at WL 1832, 3599); see also Woodward v. De Graffenried, 238 U.S. 284, 293(1915).

The 1832 Treaty gave the Creek Nation a promise of a patent fee simple possession of the lands assigned by this Treaty and guaranteed the right to "perpetual self government." Muscogee (Creek) Nation, 851 F.2d at 1440-41 (citing Treaty of 1832).

The Treaty of 1833 gave the Creek Nation a patent fee simple possession of the lands assigned by this Treaty and that of 1832 guaranteed to remain separate from any State of the Union or Federal Territory "as they shall exist as a Nation and continue to occupy the **Country** assigned them." See Missouri-Kansas-Texas R.R. Co. v. Early, 641 F.2d 856, 857(10th Cir. 1980)(citing Art. 3 of the Treaty of 1833, 7 Stat. 417, 419, February 4, 1833, available at WL 1833, 4533). And they do.

The President of the United States finally gave the promised letters patent to the Creek Nation for their land on August 11, 1852. Woodward, 238 U.S. at 293. The Title to the land the Creek Nation holds is "a fee simple

title, not the usual right of occupancy with the fee in the United States." U.S. v. Creek Nation, 295 U.S. 103, 109(1935); Murphy, 866 F.3d at 1200.

"This grant was to the Creeks as a Nation and **not to the individual members of that tribe.**" U.S. v. Hayes, 20 F.2d 873, 875(8th Cir. 1927).

Although the Treaty of 1856 reduced the existing boundaries of the Creek Nation, the remaining land the "United States guaranteed the 'same title and tenure' as promised and secured under the 1832 and 1833 Treaties." Indian Country, 289 F.2d at 971(citing Treaty of 1856, Art. 3, 11 Stat. 699, 700, August 7, 1856, available at WL 1856, 11367).

The Treaty of 1856 agreed "[N]o State or Territory shall ever pass laws for the government of the Creek or Seminole Tribe of Indians." Murphy, 866 F.3d at 1200(citing Treaty of 1856, Art. 4, 11 Stat. at 700).

Although the Treaty of 1856 agreed the United States may regulate trade with the Indian Tribes, the Creeks were secured "in the **unrestricted right of...full jurisdiction over persons and property, within their respective limits.**" Crabtree v. Madden, 54 F. 426, 429(8th Cir. 1893)(citing Treaty of 1856, Art. 15, 11 Stat. at 704).

The Treaty of 1856 guaranteed:

"[N]o portion of either of the tracts of Country defined in [the Treaty] shall **ever be embraced or included within or annexed to, any territory or State.**"

Murphy, 866 F.3d at 1200(citing Indian Country, 829 F.2d at 971)(citing Treaty of 1856, Art. 4, 11 Stat. 700).

"Following the civil war the United States **forced** the Creeks to cede the Western portion of their [guaranteed] territory as a penalty for the tribe's alliance with the confederacy, but the Tribe's title to the remaining portion of the territory and its right to self government were reaffirmed." Muscogee (Creek) Nation, 851 F.2d at 1441.

The Treaty of 1866 confiscated more of the lands belonging FOREVER to the Creek Nation but left in tact a "reduced...reservation." Indian Country, 829 F.2d at 971(citing Art. 9 of the Treaty of 1866, 14 Stat. 785, 788, June 14, 1866, available at WL 1866, 18777).

The United States promised the reduced reservation land "would be 'forever set apart as a home for said Creek Nation.'" Murphy, 866 F.3d at 1200. Article I of the Treaty of 1866 guaranteed by the United States "their quiet possession of their Country..." Creek Nation v. U.S., 318 U.S. 629, 633(1943).

The Treaty of 1866 also stipulated it was "to enable the Creeks to occupy, restore, and improve their farms, and to make their **Nation independent and self-sustaining.**" Indian Country, 829 F.2d at 971.

- (ii) The Treaties with the Creek Nation are unique and peculiar as an exception to the rules generally applicable to Tribes.

"[o]nce a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise." Solem v. Bartlett, 465 U.S. 463, 470(1984); Murphy, 866 F.3d at 1183.

The Supreme Court has repeatedly maintained that when a treaty includes the promise or guarantee that "no part of the reservation would become part of a State," or a Federal Territory, the United States must vigorously protect that solemn promise. See Choctaw Nation v. Oklahoma, 397 U.S. 620, 627-28 (1970); See also Utah Division of State Lands v. U.S., 482 U.S. 193, 198(1987) (citing Montana, 450 U.S. at 555 (n.5)).

The Supreme Court referred to the Choctaw Treaty, prior to Oklahoma becoming a State of the Union, as placing the bed of the Arkansas River within the peculiar promise that prevented the Court from determining the Arkansas

River bed passed to the State of Oklahoma at Statehood. Montana, 450 U.S. at 555 and n.5.

The Treaties of 1832, 1833, 1856, and 1866 contain the same unique circumstances found existing in the Choctaw Treaties with one **very important difference**, i.e. the Choctaw Tribe disestablished, "terminat[ing] tribal affairs," Choctaw Nation, 397 U.S. at 627-28, but the Creek Nation **did not**. Murphy, 866 F.3d at 1233.

The promise or solemn guarantee by the President of the United States to the Creek Nation is that the reservation land of the Creek Nation would forever remain separate and apart from any State of the Union or Federal Territory, which includes any United States Judicial District.

(iii) The State of Oklahoma's Constitution was contingent upon the land belonging to the Creek Nation remaining separate from and not a part of the State of Oklahoma.

By "irrevocable ordinance" in the Oklahoma Enabling Act ("OEA"), ch. 3335, 34 Stat. 267, June 16, 1906, see U.S. v. Board of Commissioners, 271 F. 747, 749 (E.D. Okla. 1921), the people of Oklahoma Territory (not Indian Territory), agreed the land belonging to the Creek Nation by Treaty would "**forever**" remain according to the Treaties between the Creek Nation and United States entered long before the idea of describing certain land as "Oklahoma" ever existed by hint or otherwise. OEA, § 3, 34 Stat. at 270; See Murphy, 866 F.3d at 1214; See also Indian Country, 829 F.2d at 979.

The State of Oklahoma joined the Union by proclamation of the President of the United States on November 16, 1907. Article I, § 3 of the Constitution in and for the State of Oklahoma bound **forever** the people of the State of Oklahoma "disclaim[ing] all right and title" to the Creek Nation land.

Prior to November 16, 1907, the City of Tulsa, for instance, was legally recognized as "City of Tulsa, Indian Country." See Oklahoma ex rel., Williams

v. Oklahoma Natural Gas Corp., 89 F.2d 416, 418(10th Cir. 1937).

The reason why the United States agreed by Treaty to guarantee the Creek Nation their land in fee simple was because the United States had broken so many previous promises with the land that the President agreed to hold forever in exchange for the land the Creeks were found living on in Alabama and Georgia. Choctaw, 397 U.S. at 625. The Supreme Court found the United States was either "unable or unwilling" to protect the Creek Nation's land and its sovereignty. Id.

- (iv) The land **forever** guaranteed to the Creek Nation that the State of Oklahoma divided up illegally and unconstitutional into several Oklahoma Counties.

The reservation of land by Treaty **forever** for the Creek Nation that the President of the United States, with advice and consent of the United States Senate, promised never to include, annex to, or make part of any State of the Union, including prospectively what is known today as the State of Oklahoma, or Federal Territory, the State of Oklahoma has clearly divided up into (1) all of the land within the Counties of Okmulgee, Creek, and Okfuskee, (2) most of the Counties of Tulsa, Wagoner, Muskogee (Muscogee), McIntosh, Hughes, and Seminole, and (3) a very small portion of the Counties of Rogers and Mayes. See Exhibit 2.

- (v) The Northern Judicial District of Oklahoma does not include the Creek Nation's reservation lands.

28 U.S.C. § 116(a) establishes the Northern Judicial District of Oklahoma to include the State of Oklahoma's "Counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington."

First, the Counties of Creek, most of Tulsa, and small portions of Rogers and Mayes, that cover or include the promised land of the letters patent between the President of the United States and Creek Nation, suffers from the

same violations the State of Oklahoma committed when it divided up the lands belonging to the Creek Nation that Oklahoma's Constitution at Article I, Section 3, **forever promised never to do as a condition of Statehood.**

Even if Congress could include the Treaty land of the Creek Nation in any of the three Judicial Districts of Oklahoma, they have not done so. See 28 U.S.C. § 116(a). The reason Congress could not extend Article III district courts to the reservation lands of the Creek Nation is that Article III inferior courts do not extend inside Treaty lands.

This Court should also find Congress was prohibited from including, annexing to, or making a part of any State of the Union or Federal Territory, the lands **forever** promised to the Creek Nation by Treaty. Had Congress placed the lands of the Creek Nation within the territorial limits of any United States Judicial District, or any other type of district, such inclusion would clearly violate the Treaties with the Creek Nation.

ARGUMENT FOR RELIEF FROM JUDGMENT

1. The Article III United States District Courts, including the Northern Judicial District of Oklahoma, at all times lacked Article III Judicial Power and Jurisdiction, and lacked statutory subject matter jurisdiction and a live Article III case or controversy from the beginning.

All should agree the Creek Nation has "a fee simple title, not the usual right of occupancy with the fee in the United States," to their lands. Creek Nation, 295 U.S. at 109; Murphy, 866 F.3d at 1200. The letters patent were issued by the President of the United States on August 11, 1852 to the Creek Nation. Murphy, 866 F.3d at 1200(citing Woodward, 238 U.S. at 293).

These letters patent "vested in [the Creek Nation] as a tribe, to continue so long as they should exist as a nation and continue to occupy the Country thereby assigned to them." Murphy, 866 F.3d at 1200(quoted Woodward, 238 U.S. at 293). Springer points out here that "occupy" should not be read to

displace the fee simple title aspects unique to the Treaties with the Creek Nation. The Creek Nation holds letters patent to "a vast tract of land in modern Oklahoma." Murphy, 866 F.3d at 1200.

And "no matter what happens to the title of the individual plots within the area, the entire block retains its reservation status." Solem, 465 U.S. at 470.

- A. The Statutes this Article III District Court relied upon for its subject matter jurisdiction and venue do not apply inside the Country of the Creek Nation.

On April 26, 1906, Congress enacted the Five Civilized Tribes Act. Murphy, 866 F.3d at 1202(citing ch. 1876, 34 Stat. 137). This Act provided the Creek Nation "continued in full force and effect." Id.(citing Indian Country, 829 F.2d at 978).

The OEA "provided the federal Article III Courts would succeed the special United States Courts in the Indian Territory with respect to all cases arising under the Constitution, laws, or treaties of the United States." Murphy, 866 F.3d at 1203(citing Indian Country, 829 F.2d at 978).

However, "Congress never dissolved the Creek government; it has enjoyed continuous and uninterrupted existence." Murphy, 866 F.3d at 1202.

Therefore, the Article III Courts did not succeed anything inside the Creek Nation's reservation lands.

- B. The Article III District Courts do not include the reservation boundaries of the Creek Nation.

Article III, § 2 provides that:

"The Judicial Power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made under their authority;-..."

"The United States is entirely a creature of the Constitution. Its power and authority have no other source." Reid v. Covert, 354 U.S. 1, 5-6(1955).

"Only Congress may determine a lower federal court's subject matter jurisdiction." Kontrick v. Ryan, 540 U.S. 443, 452(2004). The Constitution establishes the United States into three separate branches. Those three are (1) Article I Legislative, (2) Article II Executive, and (3) Article III Judicial.

The phrase "subject matter jurisdiction" means "the court's statutory or constitutional power to adjudicate the case." U.S. v. Cotton, 535 U.S. 625, 630(2002)(citing Steel Co. v. Citizens for Better Enviroment, 523 U.S. 83, 89 (1998)).

The Three (3) statutes listed in the Court's March 3, 2010 order and opinion are 28 U.S.C. §§ 1340, 1345, and 26 U.S.C. § 7402. Doc. 179, p.2.

28 U.S.C. § 1340 reads in relevant part:

"The **district courts** shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue,..."

28 U.S.C. § 1345 reads in relevant part:

"Except as otherwise provided by Act of Congress, the **district courts** shall have original jurisdiction of all civil actions, suits or proceedings, commenced by the United States..."

26 U.S.C. § 7402 reads in relevant part:

"The **district courts** of the United States at the insistence of the United States shall have such jurisdiction to make and issue in civil actions...and to render such judgments and decrees...."

These Three (3) statutes require the phrase "**district courts**" to be defined for the purpose of Article III Judicial Power and Jurisdiction, for the issue of statutory subject matter jurisdiction, and for a determination whether an Article III live case or controversy was presented by the United States when the complaint, or amended complaint, was filed.

Congress has defined the phrase "**district courts**" to mean those established at chapter 5 of Title 28, United States Code. Nguyen v. U.S., 539 U.S.

69, 74(2003).

Chapter 5 of Title 28, United States Code, establishes "**district courts**" in each previously established Judicial Districts at 28 U.S.C. § 132. Congress divided up the State of Oklahoma into Three (3) Judicial Districts at 28 U.S.C. § 116. "The term 'District Courts of the United States,'...describes the Constitutional Courts created under Article 3 of the Constitution." Mookini v. U.S., 303 U.S. 201, 205(1938).

"The jurisdiction of each of these District Courts is co-extensive with the boundaries of the judicial district in and for which it is established or created, **and extends no further.**" Primos Chemical Co. v. Fulton Steel Corp., 254 F. 454, 458(2nd Cir. 1918) A district court "sits in and for **that** district; and its jurisdiction as a general rule is bounded by its local limits." Barrett v. U.S., 169 U.S. 218, 221(1898); See also Rollins v. Ingersoll-Rand Co., 240 Fed. Appx. 800, 802(10th Cir. 2007)(unpublished)(finding United States District Court for the Judicial District of Colorado is an Article III Court and not a legislative court of Congress).

On the other hand, Courts of the territories are legislative courts under Article IV of the Constitution and not Article III. In Stephens v. Cherokee Nation, et al., (which includes the Creek Nation), 174 U.S. 445, 476-477 (1899), the Supreme Court explained the "United States court in Indian Territory was not a district court or circuit court of the United States."

Clearly, the only way Congress can establish an Article III Court over the land promised to the Creek Nation is if and when the Creek Nation dis-established and becomes part of the State of Oklahoma.

The Creek Nation is not within any State of the Union, including the State of Oklahoma, nor is the Creek Nation within any Federal Territory.

- C. The Defendants and the subject real property are all within the reservation boundaries of the Creek Nation and not within the State of Oklahoma or the United States' Northern Judicial District of Oklahoma.

This Article III **district court**, when deciding its venue under 28 U.S.C. § 1396, found "all the defendants reside in this judicial district, and also because the real property that is the subject of this action is located in Creek County, Oklahoma." Doc. 179, p.2-3.

These defendants are (1) Springer, "resides in Kellyville, Oklahoma, within this judicial district," Doc. 36, p.2; (2) S.L.C.A. Family Trust and Springer as co-trustee, Id.; (3) Regina Carlson, formerly known as Regina Springer, as co-trustee of the S.L.C.A. Family Trust, "resides in Sapulpa, Oklahoma, within this judicial district," Id.; (4) Martha F. Moore, and as trustee of the W.T. Moore and Martha F. Moore Revocable Trust, "resides in Sapulpa, Oklahoma, within this judicial district," Doc. 36, p.2-3; (5) W.T. Smith, "reside in Sapulpa, Oklahoma, within this judicial district." Doc. 36, p.3; (6) and Janeth S. Smith, "resides in Sapulpa, Oklahoma, within this judicial district." Id.

The May 9, 2008 complaint also named Albert Mendez and his Family Trust, who has an address in Tulsa, and named Kathy Anglin, Creek County Clerk, in Sapulpa. See Exhibit 3. The October 10, 2008 amended complaint removed Mendez, his Family Trust, Kathy Anglin, and W.T. Moore. Doc. 179, p.1.

The land encompassing the County of Creek actually is within the reservation boundaries of the Creek Nation, which then places Kellyville and Sapulpa without the State of Oklahoma, or the County of Creek. Both Mendez, his Family Trust, and S.L.C.A. Family Trust, were also within the reservation boundaries of the Creek Nation with mailing addresses in Tulsa. Doc. 179, p.12; Exhibit 3.

As the Murphy decision clearly holds, the Creek Nation remains intact, in accordance with the the Treaties of 1832, 1833, 1856, and 1866, and the letters patent from the President of the United States of America dated August 11, 1852, and no defendant, or the subject real property, were ever located within the United States' Northern Judicial District of Oklahoma, 866 F.3d at 1233, or within any legally established County of the State of Oklahoma.

The United States, in its appellee brief in the Tenth Circuit argued this Article III district court's subject matter jurisdiction derived from 26 U.S.C. § 7402. See Exhibit 6 (pg. 2 of that brief). This is an abandonment on appeal of any reliance by the United States on 28 U.S.C. §§ 1340, and 1345.

The district court erred as to its subject matter jurisdiction when it applied 28 U.S.C. §§ 1340, 1345, and 26 U.S.C. § 7402, and erred in its finding of venue was within the Northern Judicial District of Oklahoma, 28 U.S.C. § 116(a), where no defendant, nor the subject real property, were legally or factually within the State of Oklahoma's Counties of Creek or Tulsa, and thus not within the territorial jurisdiction of the United States' Northern Judicial District of Oklahoma. Article III district courts do not reach into the reservation boundaries of the Creek Nation.

D. Subject Matter Jurisdiction can never be forfeited or waived and requires correction at any time.

"[W]hen 'Article III limitations are at issue, notions of consent and waiver cannot be dispositive because the limitations serve institutional interests that the parties cannot be expected to protect.'" Wellness Int'l Net. LTD v. Sharif, 191 LED2D 911, 936(2015)(quoting Commodity Futures Trading Comm'n v. Schor, 478 U.S. 833, 851(1986)).

The **district courts** "subject matter jurisdiction, because it involves a Court's power to hear a case, can never be forfeited or waived." Cotton, 535

U.S. at 630.

All district courts "have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party." Arbaugh v. Y & H. Corp., 546 U.S. 500, 514 (2006). "The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the Judicial Power of the United States and is inflexible and without exception." Steel Co., 523 U.S. at 94-95.

It is the duty of every Article III Court to make sure its jurisdiction, "which is defined by statute, is not exceeded." Louisville & N.R. Co. v. Mottley, 211 U.S. 149, 152(1908). "[d]efects in subject matter jurisdiction require correction regardless of whether the error was raised in the district court." Cotton, 535 U.S. at 630.

Springer demonstrates here that the original allegations of subject matter jurisdiction and venue were false legally and factually, as well as the resulting lack of Article III Judicial Power, Jurisdiction, and lack of an Article III live case or controversy. See Rockwell v. Int'l Corp. v. U.S., 549 U.S. 457, 473(2006).

The Rule here is that subject matter jurisdiction "depends on the state of things at the time of the action brought." *Id.* (citing Mollan v. Torrance, 9 Wheat 537, 539(1824)).

E. The United States must be found aware of the Treaties it enters into.

The United States and its attorneys were prevented by the Treaties of 1832, 1833, 1856, and 1866, and the letters patent of August 11, 1852, from ever considering the promised reservation land given to the Creek Nation from being included in, or annexed to, the State of Oklahoma or the Northern Judicial District of Oklahoma. See U.S. v. Langford, 641 F.3d 1195, 1199(10th Cir.

2011)(confirming Article I, Section 3 of the State of Oklahoma's Constitution proclaims the State of Oklahoma **forever** disclaim all right and title to "all lands lying within said limits owned or held by any...Nation...").

The Treaty of 1832 "solemnly guaranteed" the Creek Nation their "Country west of the Mississippi" would never be made part of any State of the Union or Federal Territory of the United States. Indian Country, 829 F.2d at 971.

In the Treaty of 1833 "regarding these lands, the United States agreed to grant 'a patent, in fee simple, to the Creek Nation.'" Murphy, 866 F.3d at 1200. This Title in the land was "fee-simple" and "not the usual Indian right of occupancy with the fee in the United States." Id. (citing Creek Nation, 295 U.S. at 109). The letters patent was issued on August 11, 1852 by the President of the United States. Woodward, 238 U.S. at 293; Murphy, 866 F.3d at 1200. This grant was to the Creeks as a Nation and not to individuals. Hayes, 20 F.2d at 875.

The 1856 Treaty reduced the existing boundaries, though prior to the civil war, but the remaining lands held by the Creek Nation the "United States guaranteed the 'same title and tenure' as promised and secured under the 1832 and 1833 Treaties." Indian Country, 829 F.2d at 971.

The United States agreed in 1856 "[N]o State or Territory shall ever pass laws for the government of the Creek or Seminole Tribes of Indians." Id.(See also Murphy, 866 F.3d at 1200).

The 1856 agreement stipulated that the Creek Nation "shall be secured in the unrestricted right of self government, and full jurisdiction over persons and property within their respective limits..." Crabtree, 54 F. at 429.

The United States guaranteed in 1856:

"[N]o portion or either of the tracts of Country defined in [the treaty] shall ever be embraced or included within or annexed to, any territory or State."

Murphy, 866 F.3d at 1200(citing Indian Country, 829 F.2d at 971).

The United States agreed in the Treaty of 1866 that the Creek Nation "retained title to its 'reduced...reservation.'" Indian Country, 829 F.2d at 971. The guarantee by the United States was the Creeks held "quiet possession of their Country." Creek Nation, 318 U.S. at 633.

"The cannon of construction applied...is that the wording of treaties... with the Indians is not to be construed to their prejudice." Antoine v. Washington, 420 U.S. 194, 199(1974). A treaty is a contract and not a legislative act of Congress. Montoya v. Alvarez, 188 LED2D 200, 212(2014). A treaty is to be read in a manner "consistent with the shared expectations of the contracting parties." *Id.* A treaty is an agreement between independent nations. Medellin v. Texas, 552 U.S. 491, 505(2008)(citing Head Money Cases, 112 U.S. 580, 598(1884)).

Where a "treaty contains stipulations which are self-executing, that is, requires no legislation to make them operative, they have the force and effect of a legislative enactment of Congress" and is "the supreme law of the land." Whitney v. Robertson, 124 U.S. 190, 194(1888); See also Medellin, 552 U.S. at 505-06

A "treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the Nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as before private parties in the Courts of the Country." Head Money Cases, 112 U.S. at 598. It is the language of the treaties that controls. Air France v. Saks, 470 U.S. 392, 396-97(1985).

The United States and its attorneys knew the "Creek Nation was recognized by the United States as a distinct political community, with which it made treaties, and which, within its own territory, administered its internal

affairs." Turner v. U.S., 248 U.S. 354, 357(1919).

The Creek Nation's "authority to fix the terms upon which noncitizens might conduct business within its territorial boundaries, guaranteed by the treaties of 1832, 1856, and 1866, and sustained by **repeated decisions of the courts and opinions of the Attorney General of the United States, remain undisturbed.**" Buster v. Wright, 135 F. 947, 951(8th Cir. 1905)

In Montana, 450 U.S. at 555 and n.5, the Supreme Court explained that treaties that contain a promise never to allow any "part of the land granted to them shall ever be embraced in any Territory or State," were "peculiar circumstances" that arose from the United States' continued betrayal of the prior promises of land that had rendered the meaning of the term "guarantee" no guarantee at all.

The Supreme Court in Choctaw Nation, 397 U.S. at 635, held that "[I]n light of the promise" that "no part of the land granted to them shall ever be embraced in any Territory or State," it is:

"only by the purest of legal fiction that there can be found even a semblance of an understanding (on which Oklahoma necessarily places its principal reliance), that the United States retained title in order to grant it to some future State."

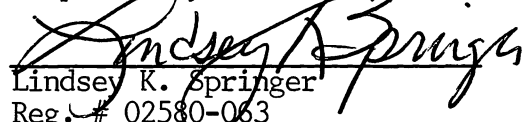
It is no less legal fiction today for the United States, and its attorneys, to have alleged Springer, the other Defendants, and the subject real property, were within the State of Oklahoma and thus within the United States' Northern Judicial District of Oklahoma, when the State of Oklahoma's Constitution, the Treaties with the Creek Nation, and the fact the Creek Nation had never disestablished, all clearly show all Defendants and the subject real property were within the reservation boundaries of Creek Nation.

This Court never had the power or authority to decide this controversy.

CONCLUSION

Springer respectfully requests this Article III District Court, in light of the above, re-examine its Article III Judicial Power and Jurisdiction, statutory subject matter jurisdiction and whether it had a live Article III, § 2 live case or controversy presented to it on May 9, 2008, and as amended on October 10, 2008, and find this Court did not and enter an order relieving Springer from the Order, Doc. 179, dated March 3, 2010, and the Judgment, Doc. 180, dated March 16, 2010, and dismissing both the complaint and amended complaint finding this Court lacked Article III Judicial Power and Jurisdiction, statutory subject matter jurisdiction, nor had a live Article III, § 2 case or controversy before it for the reasons presented above and herein.¹

Respectfully Submitted,


Lindsey K. Springer
Reg. # 02580-063
Federal Satellite Camp
P.O. Box 9000
Seagoville, Texas 75159

1. Springer is unable to say whether or not the United States of America, the party for which the Treaties of 1832, 1833, 1856, 1866, and the letters patent were issued by and in agreement with the Creek Nation, would oppose Springer's Application.

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2019, I sent by U.S. Mail, First Class, Postage Prepaid, the above Application for Relief from Judgment and Brief in Support, to the Clerk of Court, 333 West Fourth Street, Tulsa, Oklahoma 74103;

I further certify that the following party is a registered ECF user and shall receive service of the above referenced Application, with attached Exhibits, through this Court's ECF system:

United States of America


Server

DECLARATION OF MAILING

I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746(1), under the laws of the United States of America, that on February 12, 2019, I placed the above Application and Exhibits in the U.S. Mailbox located inside Seagoville Federal Prison Camp to the Clerk of Court at the address listed above.

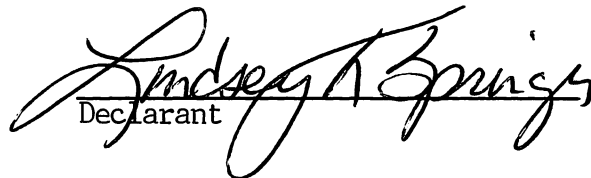

Declarant

EXHIBIT 1

Doc. Stamps: \$ 102.75 (For Filing Fee)

Property: P. O. Box 1166, Kellyville, OK 74039

96 9758

General Warranty Deed

(Oklahoma Statutory Form)

THIS INDENTURE, Made this 30th day of July 19 96

between WILLIAM D. GREENHAW and LINDA F. GREENHAW, husband and wife

of Creek County, in the State of Oklahoma, part ies of the first part, hereinafter called party grantor (whether one or more)

and S.L.C.A. FAMILY TRUST DATED 3/18/94 party of the second part, party grantee,

WITNESSETH: That in consideration of the sum of Ten and No/100 (\$10.00) DOLLARS, receipt of which is hereby acknowledged, said party grantor does, by these presents, grant, bargain, sell and convey unto said party grantee, their heirs and assigns, all of the following described real estate, situated in the County of Creek State of Oklahoma, to-wit:

The North Half (N/2) of the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4) of Section 2, Township 17 North, Range 10 East, of Creek County, State of Oklahoma, according to the United States Government Survey thereof.

All funds denominated in "U.S." obligations.

* A certain first mortgage executed to W.T. Moore & Martha F. Moore, husband and wife, and W.T. Smith & Janath S. Smith, husband and wife in the principal amount of

** \$30,000.00, dated April 15, 1994, filed April 15, 1994, recorded in Book 322 at page 240 of the Creek County Land Records, which parties of the second part hereby agree to assume and pay the balance.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining forever.

And said party grantor parties of the first part, their heirs, executors and administrators does hereby covenant, promise and agree to and with said party grantee, at the delivery of these presents that they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto in some way free, clear, and discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, liens, encumbrances and encumbrances, of whatsoever nature and kind, EXCEPT: Easements and building restrictions of record and special assessments not yet due; EXCEPT *

setback lines, zoning ordinances, and outstanding minerals, if any, of record

and that party grantor will WARRANT AND FOREVER DEFEND the same unto the said party grantee, their heirs and assigns, against said party grantor, their heirs or assigns and all and every person or persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party grantor, by VE hereunto set their hand S. the day and year above written

William D. Greenhaw
William D. Greenhaw

Linda F. Greenhaw
Linda F. Greenhaw

STATE OF OKLAHOMA
County of Tulsa

I, WILLIAM D. GREENHAW and LINDA F. GREENHAW, husband and wife, on this 30th day of July 19 96, personally appeared, known to me, and acknowledged to me that they executed the foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my official signature and affixed my notary seal the day and year last above written.

My commission expires: 7-23-97

Brenda Bain
Notary Public

1517

OKLAHOMA Documentary Tax Commission
TAX 102.75
AUG-1996

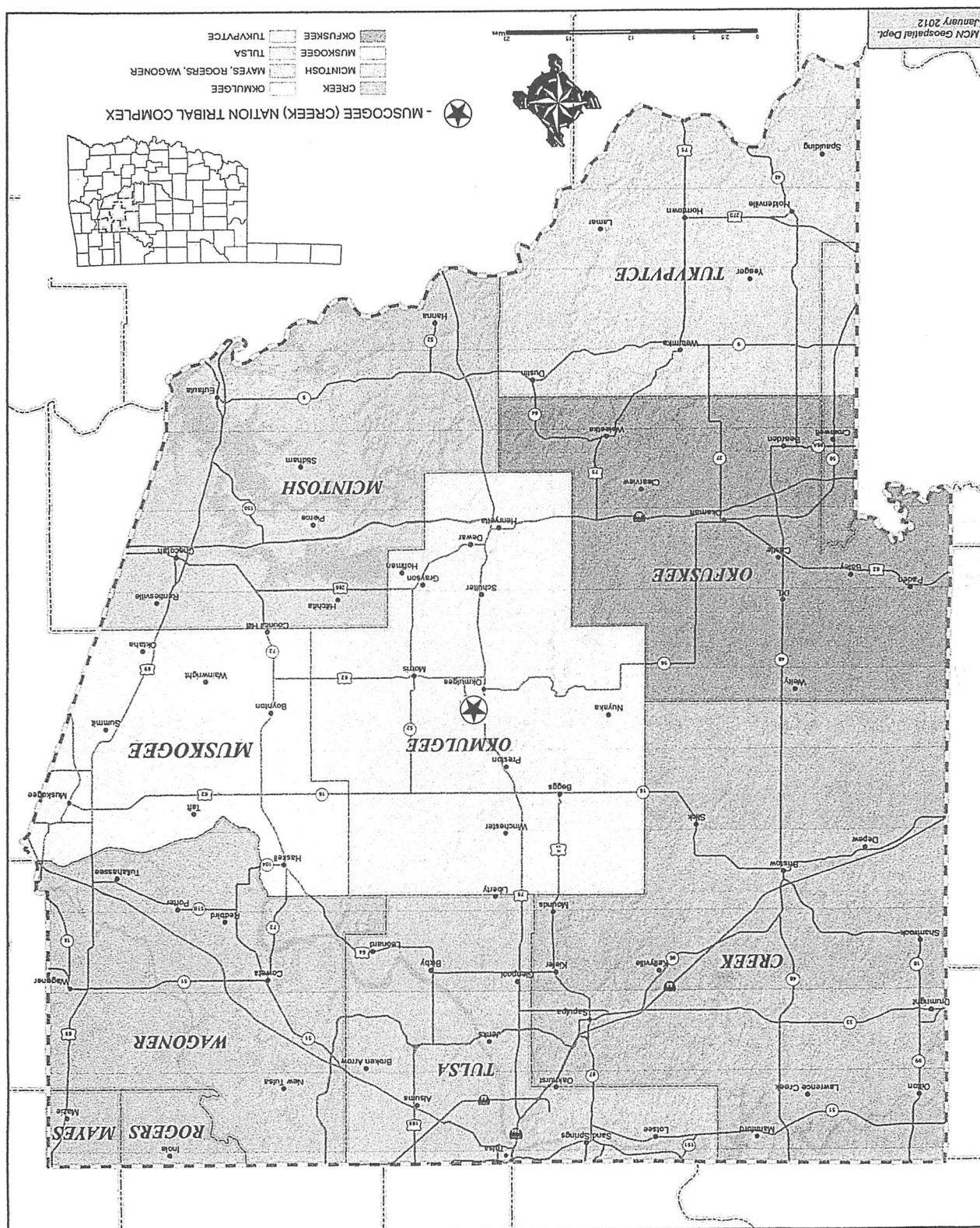
EXHIBIT
20

06-1734 88

CERTIFICATE OF TRUE COPY
STATE OF OKLAHOMA, COUNTY OF CREEK as
I, JANELL DIEHL, County Clerk of Creek County, State of Oklahoma, do
hereby certify that the foregoing instrument is a true and correct copy of
the instrument herein set out as the same appears of record in my office in
Book 325 Page 1817
Witness my hand and seal at Sapulpa, Oklahoma, this 18th day
Of April 2007 Janell Diehl, County Clerk
By J. Long Deputy

Appt App p 143

EXHIBIT 2



Feedback

Feedback

Visual Search Save Share View image Show details More



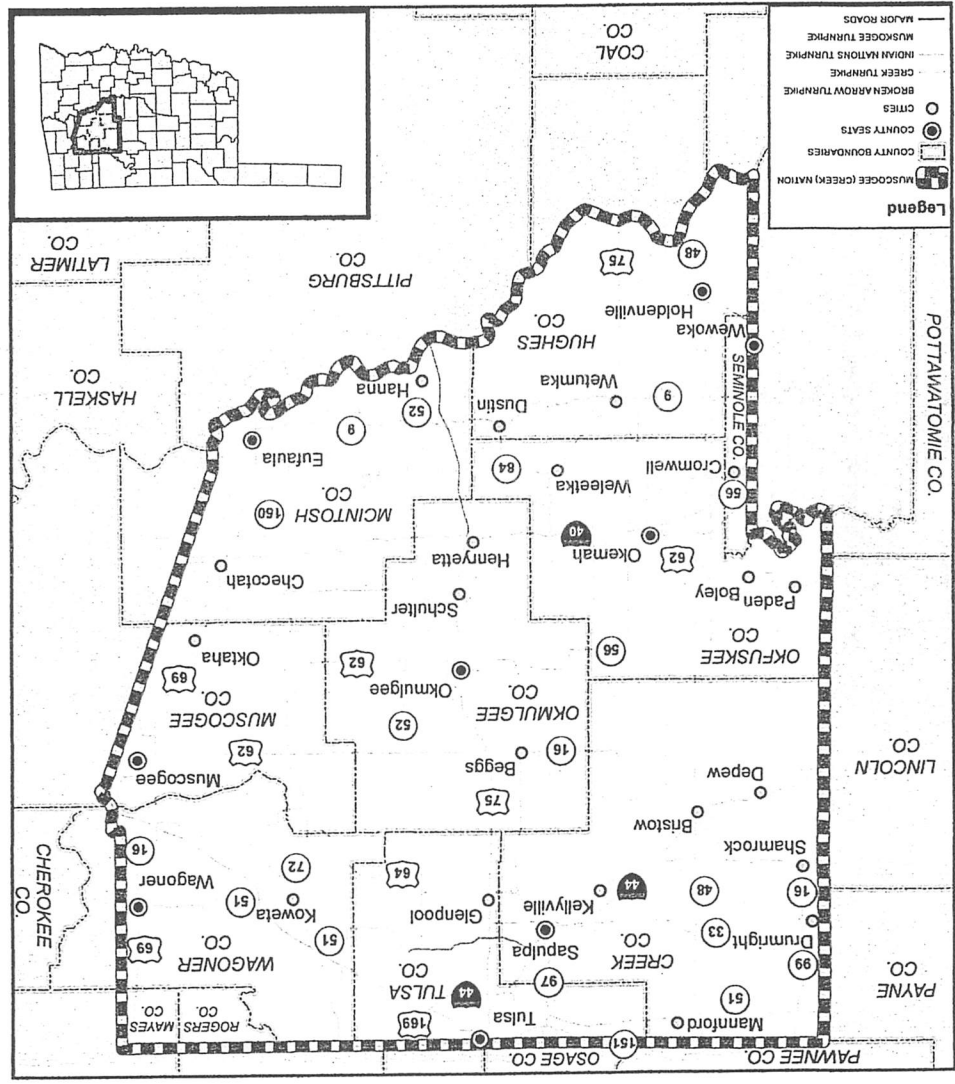
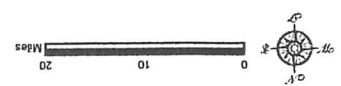
Muscogee (Creek) Nation Geospatial Department

Territory = 4,871.8 square miles

Muscogee (Creek) Nation Geographic Territory

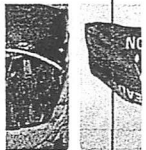


Sources:
MCN Boundary: Digitized from USGS Topo
County Boundary: OUCSA, TIGER



©198 Microsoft

Lenape Nation



Private



Muscogee Nation



People

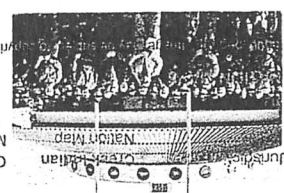
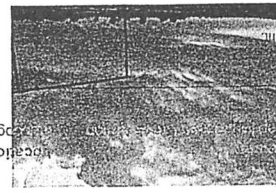
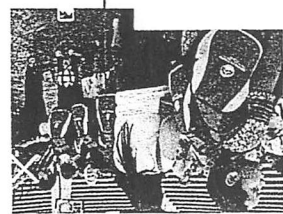


EXHIBIT 3

SA&I No. 118 (1985)

COUNTY TREASURER'S CERTIFICATE OF TAX SALE

State of Oklahoma, CREEK COUNTY

Certificate Number 2006 - 261

Current Owner: S L C A FAMILY TRUST

PID: 000001701002000302

I, KATHY ANGLIN, CREEK COUNTY TREASURER
in the State of Oklahoma, do certify that the following described Real Estate situated in School District No. 31R, City or Town
of _____, said County and State, to wit:

(List separately by Items as Advertised and Sold)

DESCRIPTION	Sec.	Twp or Blk.	Rng. or Lot	Class of Tax	Year Assessed (Delinquent)	Amount Of Tax (as Advertised)	Penalty Accrued (to Sale Date)	Adv. Cost & Fees	Accounted For On Trust Receipt No.	Total Amount Sold For
*** See Bottom for Complete Legal Description ***	02	017	010	R	2005	892.96	120.55	21.64	0	1,035.15
Certificate Holder: MENDEZ FAMILY TRUST PO BOX 14330 TULSA OK 74159										
68 O.S. 1984 Supp. § 24316										
										Add: County Treasurer's Certificate Fee \$10.00
										Add: County Clerk's Fee \$10.00
										Total Cash Received From Certificate Purchaser \$1,055.15

Was on October 2, 2006 duly sold by me in the manner provided by law for the delinquent
taxes for the year or years and class or classes of tax above indicated, and including interest and penalty thereon and cost allowed by law
to MENDEZ FAMILY TRUST for the sum of \$1,055.15
Dollars, he/she being the successful bidder for the same.

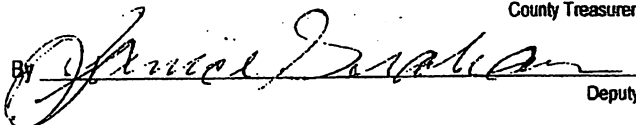
And I further certify that unless redemption is made of said Real Estate in the manner provided by Law, the said
MENDEZ FAMILY TRUST or assigns, having complied with the provisions of 68 O.S. Supp. 1981, § 24323, will be entitled
to a deed therefore on and after October 2, 2008 on surrender of this certificate.

In witness whereof I have hereunto set my hand on October 18, 2006

KATHY ANGLIN

County Treasurer

By

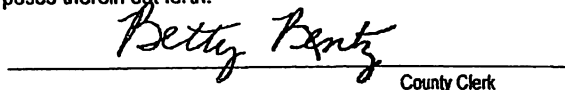


Deputy

STATE OF OKLAHOMA, CREEK COUNTY SSBefore me BETTY RENTZ, County Clerk, in and for said County and State, onOctober 18, 2006, personally appeared KATHY ANGLIN, Treasurer of said County, and to me

known to be the identical person who executed the above and foregoing instrument and acknowledged to me that he executed the same
as his free and voluntary act and deed as such Treasurer and for the uses and purposes therein set forth.

(Seal)



County Clerk

SECTION:02 TWSHP:017 RANGE:010 2-17-10 N SE NW

Office Copy

Run: 10/18/06

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Appt App 163