

SETTLEMENT AGREEMENT BETWEEN

THE QUAPAW TRIBE OF OKLAHOMA (O-GAH-PAH),

and

**THE UNITED STATES DEPARTMENT OF INTERIOR,
GALE NORTON, SECRETARY OF THE INTERIOR,
THE BUREAU OF INDIAN AFFAIRS,
AUREEN MARTIN, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS,
THE OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS,
ROSS O. SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS,
THE OFFICE OF TRUST FUNDS MANAGEMENT,
CHARLENE TOLEDO, ACTING DIRECTOR OF THE OFFICE OF
TRUST FUNDS MANAGEMENT,
THE BUREAU OF LAND MANAGEMENT,
KATHLEEN CLARKE, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT,
THE MINERALS MANAGEMENT SERVICE,
and REJANE M. BURTON, DIRECTOR OF THE MINERALS
MANAGEMENT SERVICE**

The Quapaw Tribe of Oklahoma (O-Gah-Pah) (hereinafter referred to as the "Tribe") and the United States Department of the Interior ("DOI"), Gale Norton, Secretary of the Interior, the Bureau of Indian Affairs, Aureen Martin, Acting Assistant Secretary for Indian Affairs, the Office of the Special Trustee for American Indians, Ross O. Swimmer, Special Trustee for American Indians, the Office of Trust Funds Management, Charlene Toledo, Acting Director of the Office of Trust Funds Management, the Bureau of Land Management, Kathleen Clarke, Director of the Bureau of Land Management, the Minerals Management Service, and Rejane M. Burton, Director of the Minerals Management Service (hereinafter collectively referred to as the "Defendants"), hereby agree as follows:

Recitations

WHEREAS, the Tribe filed a complaint in the United States District Court for the Northern District of Oklahoma (the "Court"), which is captioned and styled as *Quapaw Tribe of Oklahoma versus Department of the Interior et al.*, No. 02-CV-129-H(M) (hereinafter the "Complaint"), in which it asserted claims for declaratory and other relief, including but not limited to claims for an accounting of its Tribal Trust Accounts (the "TTAs"), claims for an asset management history of Tribally owned properties, and other similar relief;

WHEREAS, through this settlement agreement, the Defendants do not admit any allegation of fact or law set forth in the Tribe's Complaint;

WHEREAS, to prevent future conflict and litigation, the Tribe and Defendants (hereinafter individually referred to as a "Party," or collectively referred to as the "Parties") now seek a full and final resolution of all claims raised in the Complaint and seek to release and dispose of all claims and allegations raised in the Complaint by means of this agreement (hereinafter referred to as the Settlement Agreement).

NOW THEREFORE, all Parties hereby stipulate and agree as follows:

Summary of Proposed Agreement with the Office of Historical Trust Accounting

Following is a summary of the major terms of the proposed agreement between the Quapaw Tribe and the Office of Historical Trust Accounting (OHTA) related to the proposed settlement of the Tribe's trust accounting case against the federal government.

- 1) The DOI will provide the Quapaw Tribe with access to Ottawa County mining and Miami Agency documents that are required to perform:

- A) A financial analysis of the funds (money) held in trust for the Tribe; ✓
- B) An analysis of the federal government's management of lands held in trust or managed for the Tribe by the federal government, including the management of leases; and
- C) An analysis of the federal government's management of lands and natural resources (but not IIM accounts) held in trust or managed for the eight individual tribal members.

After those documents are examined, the Tribe will identify information gaps that need to be filled in order to prepare the analysis. The Tribe will then work with OHTA to identify likely locations in which to find that information. The specific allotments, resources and time frames that will be included in the analysis will be determined through a collaborative effort with DOI/OHTA.

- 2) In addition, the Department of Interior (DOI) will provide the Tribe, with the funds necessary to:

- A) Collect relevant documents;
- B) Organize the documents that are collected into a searchable database;
- C) Analyze the documents to determine if the Tribe or the individual Tribal members were damaged.

Contract administration expenses incurred by the Tribe, will be included in an initial payment of \$1.1 million as an up-front disbursement and will likewise be included in any additional payments of \$3.50 per relevant image, up to a total contract cap of \$3.25 million.

- 3) After the analysis is completed, the DOI has agreed to mediate/negotiate regarding damages.

- 4) Current Status

- At this time, the Tribe has submitted a proposal to OHTA, and OHTA, the DOI and the Department of Justice (DOJ) are reviewing the Tribe's proposal, and will submit suggested revisions shortly.
- When the proposal is amended and completed, OHTA will prepare a federal contract with the Tribe.

Article I.
Settlement Terms

1. The Defendants, through the Office of Historical Trust Accounting (hereinafter "OHTA"), agree to enter into a contract with the Tribe (hereinafter referred to as the "OHTA Contract") that provides, in general, for the Tribe to identify, select, and analyze documents, and to prepare an analysis (the "Analysis"), which shall constitute the Tribe's accounting of its TTAs along with an asset management history of properties owned or formerly owned by the Tribe. The Analysis shall also include asset management histories for certain individual members of the Tribe (hereinafter collectively referred to as the "Individuals"), pursuant to an agreement between DOI and the Individuals (hereinafter referred to as the "Individuals' Agreement," a copy of which is attached hereto as "Exhibit A"). The OHTA Contract (in form substantially as set forth in "Exhibit B," attached hereto), is incorporated by reference as if fully set forth herein.

2. In exchange for the OHTA Contract, the Tribe waives any rights it has to obtain from Defendants an accounting of its TTAs and for an asset management history of its properties, for all time periods up to and including the effective date of this Settlement Agreement. In further consideration for the terms and agreements herein, the Tribe agrees to dismiss the Complaint, with prejudice to refile, except as otherwise provided herein.

3. In agreeing to dismiss the Complaint, the Tribe specifically reserves and does not waive or dismiss: (a) any claims for damages arising from or related to the accounting of the Tribe's TTAs and the asset management history of the Tribe to be completed pursuant to the OHTA Contract; (b) any claims for damages arising from or related to environmental conditions, including but not limited to any claims for damages to natural resources under any environmental statute or law.

4. All Parties to this Settlement Agreement shall agree to a stipulation of dismissal (hereinafter the "Agreed Stipulation of Dismissal"), which shall request that the Court dismiss the Complaint with prejudice. A copy of the Agreed Stipulation of Dismissal in final form is attached hereto as "Exhibit C."

5. Within ten (10) business days after full execution of this Settlement Agreement, the Tribe shall file with the Court the Agreed Stipulation of Dismissal. Within ten (10) business days following the Court's entry of a final dismissal of the Complaint with prejudice, the Tribe and the Defendants, through OHTA, shall execute the OHTA Contract.

6. In the event the Court does not dismiss this matter as provided under the Agreed Stipulation of Dismissal, this Settlement shall become null and void.

7. The Tribe hereby withdraws its pending requests made pursuant to the federal Freedom of Information Act, 5 U.S.C. § _____, that are related to and that seek information to support the Tribe's requests for an accounting of its TTAs and for any asset management history.

Article II.

ADR and Related Matters

1. Within sixty (60) days following full performance of the OHTA Contract, as determined by OHTA, or unless otherwise agreed to by the Parties, the Parties shall meet and confer to plan a process for attempting to resolve, through alternative dispute resolution (hereinafter "ADR"), any claims that might be inferred from the Analysis prepared pursuant to the OHTA Contract. The Parties shall use their best efforts to prepare and engage in an ADR process within one hundred and twenty (120) days after their initial planning meeting. All individuals shall be notified of and invited to participate in the ADR process to the extent such process relates to each Individual's assertion of a claim.

2. Within one hundred and eighty (180) days after full performance of the OHTA Contract, as determined by OHTA, or within sixty days after the conclusion of any ADR process undertaken pursuant to paragraph 1 of Article II, above, whichever event occurs later in time, the Tribe shall return to DOI all non-public or confidential documents and confidential materials, as defined by the protective orders entered by the Court. In the alternative, the Parties may enter into a written agreement concerning the disposition of such nonpublic or confidential documents and other materials.

3. All Parties agree that all protective orders entered by the Court shall survive the dismissal of the Lawsuit and shall remain in full force and effect for all purposes, including any ADR process referred to in this Article.

4. If either the Tribe or Defendants believe that any term contained in this Settlement Agreement has not been satisfied, such Party shall provide the other Party with a written notice of the dispute and a request for negotiations, sent via overnight mail, and addressed to the Party's undersigned representative(s). The Parties shall meet and confer in order to attempt to resolve the dispute within thirty (30) days after the receipt of such written notice, or within such time thereafter as mutually agreed to by all Parties. The Parties agree that contempt of court is not an available remedy under this Settlement Agreement.

Article III.

Sovereign Immunity

1. Nothing in this Settlement Agreement shall cause or be interpreted to cause a waiver, either express or implied, of the sovereign immunity of the Quapaw Tribe of Oklahoma (O-Gah-Pah) from suit or otherwise by any person or entity.

2. Nothing in this Settlement Agreement shall cause or be interpreted to cause a waiver, either express or implied, of the sovereign immunity of the United States of America or of any of the Federal Defendants from suit or otherwise by any person or entity.

Article IV.

General Provisions

1. This Settlement Agreement embodies the entire agreement of the Parties concerning settlement of the matters described herein.

2. Nothing in this Settlement Agreement shall constitute an admission of law or fact by any Party.

3. No provision of this Settlement Agreement shall be interpreted as or to constitute a commitment or requirement that the Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

4. The Parties hereto shall bear their own costs and attorney fees incurred in the Lawsuit, in the settlement of all pending disputes, and in the negotiation and execution of this Settlement Agreement.

5. The Parties acknowledge that they were represented by counsel throughout all negotiations that preceded and culminated in the execution of this Settlement Agreement. Each Party hereto further warrants that it has read this Settlement Agreement, has discussed it with its respective attorneys, and fully understands it. The Parties agree that the undersigned have the legal authority to sign this Settlement Agreement on their behalf.

6. Each Party agrees that the other Parties are in no way admitting liability for any claims against them pursuant to the Lawsuit, but rather that all Parties are willingly and knowingly entering into this Settlement Agreement as a means of avoiding further litigation and to dispose of this Lawsuit.

7. This Settlement Agreement may not be altered, amended, modified or otherwise changed except by a writing duly executed by all Parties hereto.

8. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction, such provision shall immediately become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

9. The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.

10. This Settlement Agreement may be executed in one or more original counterparts, each of which shall be considered an original for all purposes.

11. Unless otherwise provided herein, this Settlement Agreement shall become effective immediately, and without further actions, upon its execution by the last of the named parties.

THIS SETTLEMENT AGREEMENT IS APPROVED AND SIGNED BY EACH PARTY OR DULY AUTHORIZED REPRESENTATIVES OF EACH PARTY, AS FOLLOWS:

Quapaw Tribe of Oklahoma (O-Gah-Pah)
By John L. Berrey, Chairman, Business Committee

Date

Caroline M. Blanco
John H. Martin
Trial Attorneys
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section

Date

Attorneys for Defendants