

Appendix C

QUAPAW TRIBE OF OKLAHOMA

**Statement of Tribe's Legal Counsel of the Basis for the Tribe's Assertion of
Authority**

[See Attached]

September 10, 2014

Ron Curry, Regional Administrator
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Application of the Quapaw Tribe of Indians for Treatment in the Same
Manner as a State Under the Clean Air Act, 42 U.S.C. §§ 7601(d)(2)
& 7602(r)

Dear Mr. Curry:

This letter serves as a statement of legal counsel for the Quapaw Tribe of Indians of Oklahoma (the O-Gah-Pah) (the "Quapaw Tribe" or the "Tribe"), in support of the Tribe's application for treatment in the same manner as a state under the Clean Air Act, 42 U.S.C. §§ 7601(d)(2) & 7602(r). In particular, for purposes of 40 C.F.R. § 49.7, the Quapaw Tribe (i) is a federally recognized Indian nation, (ii) exercises governmental authority, including civil and criminal jurisdiction, within its Indian country jurisdiction, and in some instances beyond, and (iii) exercises environmental regulatory jurisdiction and powers within its jurisdictional area. The undersigned has served as General Counsel of the Tribe since July 2004, and is familiar with federal law relating to the jurisdiction of American Indian nations, as well as with the laws of the Tribe and the exercise of jurisdiction by the Tribe.

Following addresses the requirements set forth in 40 C.F.R. § 49.7 with respect to the exercise of the Tribe's authority and jurisdiction:

1. Federal Recognition: The Quapaw Tribe is a sovereign American Indian/Native American nation that has been recognized as such for centuries by other sovereign governments, including the United States. The Tribe has had government-to-government relations with the United States since the early 1800s. The Tribe entered into six treaties and agreements with the United States in the 19th century, including (i) the Treaty of August 24, 1818 (Kappler, 1904, vol. 2, p. 160, 7 Stat. 176), (ii) the Treaty of November 15, 1824 (Kappler, 1904, vol. 2, p. 210, 7 Stat. 232), (iii) the Treaty of May 13, 1833 (Kappler, 1904, vol. 2, p. 395, 7 Stat. 424), (iv) the Treaty of August 24, 1835 (Kappler, 1904, vol. 2, p. 425, 7 Stat. 474), (v) the unratified Agreement of September 13, 1865 (Kappler, 1904, vol. 2, p. 1050), and (vi) the Treaty of February 23, 1867 (Kappler, 1904, vol. 2, p. 961, 515 Stat. 513).

Additionally, the Quapaw Tribe has formal recognition by the United States on an ongoing basis. See Bureau of Indian Affairs, *Indian Entities Recognized & Eligible to Receive Services from the United States BIA*, 79 Fed. Reg. 4,748, 4,752 (Jan. 29, 2014)

(annual listing of recognized tribes); *see also* 25 U.S.C. § 479a-1 (authorizing listing of recognized tribes). Federal recognition of an Indian tribe means that it is an Indian nation the United States Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, § 102, 108 Stat. 4791 (1994), which is codified at 25 U.S.C. § 479a. As a federally recognized Indian nation, the Tribe is eligible to receive funding and services from the Bureau of Indian Affairs (the “BIA”) and from other federal agencies by virtue of its status as an Indian tribe.

2. Tribal Governance. Traditionally, the Quapaw Tribe was governed through a system of village chiefs and hereditary and elected tribal chiefs. In 1956, the Tribe abandoned the system of governance by chiefs in favor of an elected government. Since then, the Tribe’s government has been organized pursuant to the “Resolution Delegating Authority to the Quapaw Tribal Business Committee to Speak and Act in Behalf of the Quapaw Tribe of Indians,” which was approved by the General Council of the Tribe on August 19, 1956, and which was approved by the Commissioner for Indian Affairs on September 20, 1957. This document—known as the “Governing Resolution”—has been amended by the General Council of the Tribe several times, and it has been further interpreted and construed through formal General Council actions and resolutions of the Tribal Business Committee. In addition to the Governing Resolution, the Tribe’s treaties with the United States and various enactments of the General Council, as well as the Tribe’s written laws, also comprise key documents establishing the Tribe’s governmental organization.

Governmental functions of the Quapaw Tribe are administered, in part, by a seven-member Business Committee, as established and empowered by the Governing Resolution and subsequent enactments. *See* Governing Resolution § 1(a). The Business Committee is comprised of a Chairman, a Vice-Chairman, a Secretary-Treasurer, and four members. Members of the Business Committee are elected to staggered terms by the registered voting members of the Tribe pursuant to the “Election and Voting Ordinance of 2004.” *See* Quapaw Code tit. 14, §§ 1 *et seq.* (approved by the General Council on Jan. 31, 2004). The Business Committee meets at least once a month on the third Saturday of the month. The Business Committee exercises legislative powers through the adoption of resolutions and the enactment of statutes or ordinances.

The Quapaw Tribe is a self-governance tribe for purposes of Public Law 93-638, the “Indian Self-Determination and Education Assistance Act,” 25 U.S.C. §§ 450 *et seq.* As such it self-administers virtually all of its governmental functions—including certain federal environmental program functions—pursuant to annual funding agreements entered into under 25 U.S.C. § 458cc and other applicable law. Other environmental programs of the Tribe are administered pursuant to cooperative and other agreements between the Tribe and the United States Environmental Protection Agency (the “EPA”).

3. General Tribal Jurisdiction. The Quapaw Tribe exercises its governmental powers and jurisdiction as a full-service government within the boundaries of its 1833 reservation, which includes Indian lands within both the States of Oklahoma and Kansas.

The Tribal Business Committee exercises legislative powers, and the Tribe has a law enforcement agency, the Tribal Marshal Service, and a Tribal court system, as well as a fire and emergency medical services department that responds to emergencies not only within the Tribe's Indian country but that also serves the greater non-Indian community. The Tribe levies taxes and has an advanced regulatory and permitting code. The Tribe also has extensive governmental infrastructure, including roads, a public water system and other utilities.

The Quapaw Tribe has legally recognized jurisdiction over its "Indian country," which consists of the trust and restricted Indian lands within its original reservation boundaries. Indeed, tribal jurisdiction over a tract of land is presumed if it is within the limits of the tribe's "Indian country." See *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 344, 118 S. Ct. 789, 798 (1998). Although land within an Indian reservation is "Indian country," see, e.g., *Williams v. United States*, 327 U.S. 711, 713, 66 S. Ct. 778, 779 (1946); *Donnelly v. United States*, 228 U.S. 243, 33 S. Ct. 449, 457-58 (1913), the term has a broader application, and Congress has defined the term "Indian country" as encompassing broader territory than a formal "reservation," see 18 U.S.C. § 1151. As long as the land at issue is in trust, the courts make no distinction about the types of trust land that can be considered "Indian country." See *United States v. Roberts*, 185 F.3d 1125, 1133 n.4 (10th Cir. 1999). Accordingly, lands held in trust, fee simple restricted status, allotments, and lands within reservations all are considered to be within a tribe's "Indian country." See *United States v. McGowen*, 302 U.S. 535, 538-39, 58 S. Ct. 286, 287-88 (1938) (trust land); *United States v. Pelican*, 232 U.S. 442, 449, 34 S. Ct. 396, 399 (1914) (allotments); *United States v. Sandoval*, 231 U.S. 28, 48-49, 34 S. Ct. 1, 6-7 (1913) (restricted fee land).

For purposes of carrying out its governmental powers and functions, the Quapaw Tribe has a written code of laws, the *Quapaw Code*, and a code of administrative regulations, the *Code of Quapaw Tribal Regulations*. Other law of the Tribe is established by treaties, the Governing Resolution, resolutions of the Tribal Business Committee and the General Council, judicial decisions, and, to some extent, by customary law. The Tribe has enacted ordinances that expressly establish its jurisdiction over the lands within the Tribe's Indian country.¹ In particular, the Tribe has enacted other statutes and ordinances that exercise its sovereignty over its Indian country in areas including but not limited to: (a) regulation of corporations, *Quapaw Code* tit. 10, §§ 101 *et seq.*; (b) regulation of the environment, *id.* tit. 15, §§ 1-A *et seq.* (environmental code, environmental protection commission, solid waste code, toxic and hazardous substance code, and water quality code); (c) gaming regulation, *id.* tit. 17, §§ 1 *et seq.*; (d) liquor regulation and control, *id.* tit. 20, §§ 101 *et seq.*; (e) taxation and revenue, *id.* tit. 30, §§ 1 *et seq.*; and (f) tobacco taxation, *id.* tit. 30, § 201 *et seq.* The Tribe has also enacted a land use planning and zoning ordinance to address land use planning within the boundaries of the Tribe's 1833 reservation. See *id.* tit. 23, §§ 1 *et seq.* In addition, the Tribe has tribal-state compacts in force with the State of

¹ These include the Tribe's general jurisdictional statute, which provides that the "jurisdiction of the government of the Quapaw Tribe shall extend over all of the lands and territories of the Quapaw Reservation." *Quapaw Code* tit. 1, § 4(b).

Oklahoma in the areas of gaming, tobacco taxation, gasoline taxation, and motor vehicle licensing.

In summary, the Quapaw Tribe exercises its jurisdiction and governmental powers in the following primary areas, among others:

(a) *Criminal and Jurisdiction.* The Tribe exercises criminal jurisdiction to the extent permitted under law through a Law and Order Code, *see* Quapaw Bus. Comm. Res. No. 091810-A, as well as through a criminal procedure code, *see id.* No. 031911-A, and other laws.² The Tribe's criminal laws are administered by a tribal law enforcement agency, the Tribal Marshals Service, as established by Tribal law, *see id.* No. 091010-A. The Tribal Marshal provides primary law enforcement within the Tribe's Indian country jurisdiction in Oklahoma and Kansas, as well as support to other non-tribal law enforcement agencies in the area. The Tribal Marshal has deputization agreements with other, non-tribal jurisdictions in Oklahoma and Kansas.

(b) *Civil and Civil-Regulatory Jurisdiction.* As a general rule, tribes retain their inherent civil and civil regulatory and taxation jurisdiction within their Indian country, notwithstanding federal laws limiting their jurisdiction over non-Indians. *See generally Handbook of Federal Indian Law* § 6.04[4][b], at 581-82 (discussing tribes' inherent civil regulatory jurisdiction). As a result, the Quapaw Tribe retains its inherent civil jurisdiction, as well as its inherent jurisdiction over regulatory matters, including certain types of gaming, hunting, fishing, taxation, and land use.

Civil actions, including family law matters, are adjudicated in the Tribal courts, as established and operated by the Tribe and pursuant to Tribal laws. *See* Quapaw Bus. Comm. Res. No. 022109-D (establishing Tribal courts); *see also id.* No. 082709-A (establishing office of Tribal defender). Various civil matters involving non-Indians arising in Quapaw Indian country are heard in the Tribal courts, lawsuits in which a non-Indian party consented to Tribal jurisdiction and tort claims arising at Tribal gaming facilities, which are within the exclusive jurisdiction of the Tribal courts. The Tribe actively asserts its civil-regulatory jurisdiction in a number of areas, including tax collection, land use

² Indian tribes are recognized to possess at least *concurrent* jurisdiction with other sovereigns over all crimes committed by an Indian against the person or property of another Indian within their Indian country. *See United States v. Wheeler*, 435 U.S. 313, 328-30, 98 S. Ct. 1079, 1089 (1978). *See generally Cohen's Handbook of Federal Indian Law* § 9.04, at 756 (2012 ed.) (discussing scope of tribes' inherent criminal jurisdiction). Additionally, tribes ordinarily have *exclusive* jurisdiction over all crimes committed by an Indian within Indian country not otherwise listed as major crimes in the federal Major Crimes Act. As a result, the Quapaw Tribe: (i) retains jurisdiction over minor and other crimes under Tribal law committed by Indians against Indians (both Tribal members and non-Tribal members); and (ii) depending on the specific offense, may have exclusive or concurrent jurisdiction with the federal government and the states with respect to other criminal offenses committed by any person.

regulation, gaming regulation (in which it has exclusive jurisdiction over non-Indians in many areas), building and safety codes, and environmental regulation, among others.

(c) *Cultural Jurisdiction.* The Quapaw Tribe also exercises jurisdiction over its cultural and historic interests within its original reservation boundaries, and also within its aboriginal lands outside the reservation boundaries, as recognized by the federal government through laws including Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*, and the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.* The Tribe has assumed responsibilities for cultural and historic preservation on Tribal trust lands through a Tribal Historic Preservation Officer ("THPO") program.

(d) *General Governmental Services.* As noted, the Quapaw Tribe is a full-service government, which exercises its governmental powers by providing services not only to Tribal members but also, in many instances, to the broader community in the area where the states of Oklahoma, Missouri, and Kansas meet. Among the key governmental services provided by the Tribe and Tribal enterprises, which create jobs and generate governmental revenues for the Tribe to substitute for a tax base, are:

Governmental Programs and Services

- Fire and emergency medical service (Quapaw Fire and EMS Service)
- Law enforcement (Quapaw Marshal Service)
- Courts (Quapaw Tribal Courts, including trial courts and a supreme court, and Indian probate processing)
- Utilities (Quapaw Tribal Utility Authority, including public water and sewage services)
- Housing (Quapaw Tribal Housing Department, including emergency housing services and elder housing)
- Land and resource management (Tribal Realty and Trust Services Department)
- Social services (Social Services Department)
- Child welfare and protection (Indian Child Welfare Department)
- Counseling and substance abuse (Quapaw Counseling Service)
- Health care (health insurance provided to all Tribal members free of charge)
- Nutrition services (elderly nutrition program)
- Nutrition support (Tribal bison herd)
- Wellness (John L. Berrey Wellness Center)
- Education (Tribal Education Department)
- Pre-school learning (O-Gah-Pah Learning Center, including two locations)

- Historic and cultural protection (Quapaw Tribal Historic Preservation Officer Program and Tribal Cultural Committee)
- Quapaw Tribal Library
- Quapaw Tribal Museum

Tribal Regulatory Agencies

- Quapaw Tribal Tax Commission
- Quapaw Tribal Environmental Department
- Quapaw Tribal Housing Authority
- Quapaw Tribal Gaming Agency
- Quapaw Tribal Gaming Commission

Tribal Governmental Enterprises

- Downstream Development Authority of the Quapaw Tribe of Oklahoma (authority operating the Downstream Casino Resort)
- Quapaw Casino Authority of the Quapaw Tribe of Oklahoma (authority operating the Quapaw Casino)
- Eagle Creek Golf Club (18 hole championship golf course located in Loma Linda, Missouri, a short distance from the Downstream Casino Resort)
- Quapaw Services Authority (construction and environmental remediation services)
- Downstream Q-Store (convenience store and travel plaza)
- Downstream RV Park
- Quapaw C-Store (convenience store)
- Quapaw beef cattle herd

4. Tribal Environmental Regulation: The Tribe has had an environmental department for some 20 years, and this department administers a number of Tribal and federal programs. Among others, the Tribal Environmental Department has operated a Water Quality Program under Section 106 of the Clean Water Act since 1999. This and other environmental programs of the Tribe are focused on the stated mission of protecting human health, the environment, and the cultural heritage of the Quapaw people. The Tribe's environmental authority and jurisdiction—and leadership—has been recognized by the EPA and other federal and state agencies.

The Quapaw Tribal Business Committee has legislated extensively, in the field of environmental regulation. The Tribe has an environmental code, including a solid waste code, a toxic and hazardous substances code, and a water quality code. *See Quapaw Code* tit. 15. In addition, the Tribal Business Committee has promulgated surface water quality standards. *See* 15 Code of Quapaw Tribal Regs. § 800.1 *et seq.* The *Quapaw Code* expressly authorizes the Tribal Business Committee to exercise powers that entail regulation of waters within the Tribe's jurisdictional boundaries. *See Quapaw Code* tit. 15, § 802.

In the environmental field, the Quapaw Tribe has worked actively for a number of years to support the efforts of the EPA and the State of Oklahoma with respect to assessment of the contamination at the Tar Creek Superfund Site, as well as with respect to the remediation planned for future years. Because the contamination at Tar Creek resulted from lead and zinc mining on Quapaw Indian lands, the site is within and covers a large portion of the Tribe's historic reservation and jurisdictional area. The Tribe recently became the first Indian nation in the United States to undertake, through a cooperative agreement with EPA, responsibilities for carrying out remedial activities at a Superfund site.

The Tribe has also entered into important agreements with the EPA and other parties with respect to the Tar Creek Superfund Site and the Cherokee County, Superfund Site, which includes the portion of the Tribe's 1833 reservation located in Kansas—known as the “Quapaw Strip”—and which also includes a portion of the Tribe's Indian country. The Tribe has in effect with the U.S. Environmental Protection Agency Region VII a Superfund Memorandum of Agreement dated June 2013. The Tribe also has in effect with EPA and other state and federal agencies a programmatic agreement entered into in November 2011 relating to protection of Quapaw historic and cultural sites within the Cherokee County Superfund Site. The Tribe has a similar programmatic agreement in effect with the EPA, the U.S. Army Corps of Engineers, and other agencies entered into in 2005 with respect to the Tar Creek Superfund Site.

The Quapaw Tribe has also been a leader in other initiatives designed to protect sensitive resources in the area of the two Superfund sites. The Tribe is a co-founding member (with the Commissioners of Cherokee County, Kansas, and the Cities of Baxter Springs, and Galena, Kansas) of a regional waste water treatment authority, the Shoal Creek Basin Regional Waste Water Authority, an entity formed under Kansas law which is planning needed waste water treatment facilities in Cherokee County.

Further, following the relocation of most of the residents from the former communities of Picher and Cardin in Oklahoma, the Tribe worked with EPA to ensure that the areas would not be redeveloped. The Tribe purchased the former municipal water well for Picher, from which is provides drinking water for the remaining residents in the communities. The Tribe also acquired, again at the request of EPA, the public properties in the two towns, including the streets and parks and other public lands, so as to assist in controlling access to the area. The Tribe has a commitment from the Oklahoma Department of Environmental Quality and the Lead-Impacted Communities Relocation and Assistance Trust, which administered federal funds dedicated for the relocation, to take title to the buy-out lands for future conservation activities and also so as to prevent their future use for inappropriate purposes.

Should you have any questions about the Quapaw Tribe's jurisdiction, including its environmental regulatory jurisdiction, as it relates to the application at issue, please do not

Mr. Ron Curry
September 10, 2014
Page 8

hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Stephen R. Ward". The signature is written in a cursive, flowing style.

Stephen R. Ward

SRW/nsf

cc: Tim L. Kent, Director, Quapaw Tribe Environmental Department
Craig A. Kreman, E.I., Environmental Engineer/Assistant Director, Quapaw Tribe
Environmental Department