IN THE DISTRICT COURT IN AND FOR CRAIG COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CF-2015-263**
	)	
TRAVIS JOHN HOGNER	)	
Defendant.	)	

CHEROKEE NATION AMICUS BRIEF

INTRODUCTION

Cherokee Nation is a federally recognized Indian tribe.[1] It is one of five tribes that are often treated as a group for purposes of federal legislation (Cherokee, Muscogee (Creek), Choctaw, Chickasaw, and Seminole Nations, historically referred to as the "Five Civilized Tribes" or "Five Tribes"). The Cherokee Reservation boundaries encompass lands in a fourteen-county area, including all of Adair, Cherokee, Craig, Nowata, Sequoyah, and Washington Counties and portions of Delaware, Mayes, McIntosh, Muskogee, Ottawa, Rogers, Tulsa, and Wagoner Counties, within the borders of the State of Oklahoma.[2] The Nation's government, headquartered in Tahlequah, consists of executive, legislative, and judicial branches, including an active district and appellate court.[3] The Cherokee Nation has a continuing interest in maintaining law and order and the safety of all citizens within its boundaries. It provides law enforcement through its Marshal

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[1] 84 C.F.R. § 1200 (2019).

[2] The following interactive link can be used to determine if a specific address is located on the Cherokee Reservation: http://geodata.cherokee.org/CherokeeNation/

[3] *See* "*Rising Together, 2018 Annual Report to the Cherokee People*" (FY 2018 Rep.) and "*Popular Annual Financial Report for FY 2019, Cherokee Nation*" (FY 2019 Rep.). These reports are available at https://www.cherokee.org/media/lufhr5rp/fy2018-annual-report-_final-online.pdf; https://www.cherokee.org/media/gaahnswb/pafr-fy19-final-v-2.pdf.

Service, and maintains cross-deputation agreements with state, county, and city law enforcement agencies to ensure protection of citizens and non-citizens.[4]

Cherokee Nation maintains a significant and continuous presence in the Cherokee Reservation. There are approximately 139,000 Cherokee citizens residing there. The Nation provides extensive services to communities throughout the reservation, including, among others, health and medical centers, veteran's center, employment, housing, bus transit, waterlines, sewers, water treatment, bridge and road construction, parks, food distribution, child support services, child welfare, youth shelter, victim services, donations to public schools and local fire departments, and charitable contributions. The Nation's activities, including its business operations, resulted in a statewide $2.17 billion favorable economic impact in 2019.[5]

ARGUMENTS AND AUTHORITIES

I. BASIC PRINCIPLES APPLY TO FEDERAL JURISDICTION OVER CRIMES COMMITTED ON INDIAN COUNTRY WITHIN OKLAHOMA.

A. The Supreme Court's Recent Decision in *McGirt v. Oklahoma* Is Controlling as to Reservation Status and Federal Criminal Jurisdiction.

As recognized by this Court more than thirty years ago, Oklahoma failed to assume criminal and civil jurisdiction under Public Law 280 before it was amended to require tribal consent, 25 U.S.C. § 1321; and Oklahoma "does not have jurisdiction over crimes committed by or against an Indian in Indian Country;" *See Cravatt v. State*, 1992 OK. CR. 6, 825 P.2d 277, 279 (citing *State v. Klindt*, 1989 OK CR 75, 782 P.2d 401, 403 (Okla. Crim. App. 1989).[6] This Court

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[4] *See* Appendix ("App."). at 1, Attachment ("Att.") 1 (Cherokee Nation Cross-Deputization Agreements (1992-2019)).

[5] *See* FY 2018 Rep. and FY 2019 Rep., supra n. 1; *see also* App. at 4, Att. 2 (Cherokee Nation Service Area Maps).

[6] In *Klindt*, this Court overruled *Ex parte Nowabbi*, 1936 OK CR 123, 61 P.2d 1139, 1154, which had found that Oklahoma courts had criminal jurisdiction over crimes on restricted Choctaw allotments., *Klindt*, 782 P.2d at 404. *see also Cravatt,* 825 P.2d at 279 (stating the United States

determined in *Klindt* that trust allotments within the boundaries of Cherokee Nation constitute Indian country as defined by 18 U.S.C. § 1151(c), but it has not addressed whether all lands within the boundaries of the Cherokee Nation constitute Indian country as defined by § 1151(a) (Indian reservation).

The United States Supreme Court likewise had not addressed reservation status as to any of the Five Tribes, until July 9, 2020, when it decided *McGirt v Oklahoma*, 591 U.S. __, 140 S. Ct. 2452 (2020). In *McGirt*, the Court ruled that: the Muscogee (Creek) Reservation was established by treaty; Congress never disestablished the reservation; all land, including fee land, within the reservation is Indian country under 18 U.S.C. § 1151(a); federal statutes concerning the Five Tribes near the time of statehood did not grant jurisdiction to Oklahoma over crimes committed by Indians on the reservation; the Major Crimes Act, 18 U.S.C. § 1153 (MCA), applies to certain listed crimes committed by Indians on the reservation; and Oklahoma had no jurisdiction to prosecute a Seminole citizen for crimes committed on fee lands within the reservation under the MCA. *Id.*

On the same date that the Supreme Court issued the *McGirt* decision, it affirmed the Tenth Circuit's ruling in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), *aff'd*, *Sharp v. Murphy*, 591 U.S. __, 140 S.Ct. 2412 (2020) (*Murphy*), determining that Oklahoma had no jurisdiction over the murder of an Indian by another Indian on the Creek Reservation under the MCA. On July 9, 2020, the Supreme Court also remanded four cases pending certiorari in the Supreme Court involving other reservations in Oklahoma, in light of *McGirt*.[7]

"has continuously urged different judicial treatment for incidents involving members of the five civilized tribes notwithstanding the fact that there is no foundation for this position in the statutes and that the idea has been previously rejected by the courts of this State."

[7] *See Bentley v. Oklahoma*, OCCA No. C-2016-699, U.S. Sup. Ct No. 19-5417, Judgment Vacated and Case Remanded, July 9, 2020 (Citizen Band Potawatomi reservation); *Johnson v. Oklahoma*,

B. Certain Crimes in Indian Country in Oklahoma Are Subject to Federal Jurisdiction Under the Major Crimes Act and the General Crimes Act.

Although the applicability of federal and state criminal laws in the exercise of federal or state court jurisdiction in Indian country nationwide is fairly complex, the jurisdictional parameters are clearly defined by federal law as amended from time to time.[8] First, under the MCA,[9] federal courts have exclusive jurisdiction, as to Oklahoma, over prosecutions for certain listed qualifying crimes, including murder, committed by Indians against Indians or non-Indians in Indian country. *See McGirt*, 140 S. Ct. at 2459-60, 2470-71, 2477-78. Second, Oklahoma lacks jurisdiction over prosecutions of crimes defined by federal law committed by or against Indians in Indian country within Oklahoma under the General Crimes Act (also known as Indian Country Crimes Act), 18 U.S.C. § 1152 (GCA); [10] such crimes are subject to federal or tribal jurisdiction. *McGirt*, 140 S. Ct. at 2478. Third, Oklahoma has criminal jurisdiction over all offenses committed by non-Indians against non-Indians in Indian country. *Id.*, citing *United States v. McBratney*, 104 U.S. 621, 624

OCCA No. PC-2018-343, U.S. Sup. Ct. No. 18-6098, Judgment Vacated and Case Remanded, July 9, 2020 (Seminole Reservation); *Terry v. Oklahoma*, OCCA No. PC-2018-1076, U.S. Sup. Ct. No. 18-8801, Judgment Vacated and Case Remanded, July 9, 2020 (Quapaw/Modoc/Ottawa Reservations); and *Davis v. Oklahoma*, OCCA No. PC-2019-451, U.S. Sup. Ct. No. 19-6428 Judgment Vacated and Case Remanded, July 9, 2020 (Choctaw Reservation).

[8] *See* App. at 11, Att. 3 (Indian Country Criminal Jurisdictional Chart).

[9] The MCA provides in pertinent part: "Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter . . . [and] robbery . . . within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States." 18 U.S.C. § 1153(a).

[10] The GCA provides: "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." 18 U.S.C. § 1152.

(1881); *see also United States v. Langford,* 641 F. 3d 1195 (10th Cir. 2011) (holding state possesses exclusive criminal jurisdiction over non-Indians who commit victimless crimes in Indian country).

The *McGirt* decision laid to rest Oklahoma's position that the MCA and the GCA do not apply in Oklahoma. The Court noted that even the dissent declined "to join Oklahoma in its latest twist." *See McGir*t, 140 S. Ct. at 2476. The Court found no validity to Oklahoma's argument that the MCA was rendered inapplicable by three statutes: the Act of June 7, 1897, ch. 3, 30 Stat. 62, 83 (granting federal courts in Indian Territory[11] "exclusive jurisdiction" to try "all criminal causes for the punishment of any offense"); the Act of June 28, 1898, ch. 517, § 28, 30 Stat. 495, 504-505 (Curtis Act) (abolishing Creek Nation courts and transferring pending criminal cases to federal courts in Indian Territory); and the Oklahoma Enabling Act, Act of June 16, 1906, ch.3335, 34 Stat. 267, as amended by the Act of Mar. 4, 1907, ch. 2911, 34 Stat. 1286) (concerning transfer of cases upon statehood).[12] *McGirt,* 140 S. Ct. at 2476-78. The Court noted that Oklahoma was formed from Oklahoma Territory in the west and Indian Territory in the east,[13] and that criminal

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[11] Federal courts in the bordering states of Arkansas and Texas, and later in Muskogee, Indian Territory, were originally authorized to exercise federal jurisdiction in Indian Territory, subject to changes over time. *See* Act of Jan. 31, 1877, ch. 41, 19 Stat. 230 (Arkansas); Act of Jan. 6, 1883, ch. 13, § 3, 22 Stat. 400 (Texas); Act of Mar. 1, 1889, ch. 333, §§ 1, 5, 25 Stat. 783 (Muskogee, Indian Territory); Act of May 2, 1890 ch. 182 §§ 29-44, 26 Stat. 81 (Indian Territory); Act of Mar. 1, 1895, ch. 145, §§ 9, 13, 28 Stat. 693 (repealing laws conferring jurisdiction on the federal courts in Arkansas, Kansas, and Texas over offenses committed in Indian Territory, and authorizing the federal court in Indian Territory to exercise such jurisdiction, including jurisdiction over "all offenses against the laws of the United States."

[12] The Enabling Act required transfer to the new federal courts of prosecutions of "all crimes and offenses" committed within Indian Territory "which, had they been committed within a State, would have been cognizable in the Federal courts." § 16, 34 Stat. 267, 276, as amended by § 1, 34 Stat. 1286. It required transfer of prosecutions of crimes not arising under federal law to the new state courts. §20, 34 Stat. 267, 277, as amended by §3, 34 Stat. 1286.

[13]No territorial government was ever created in the reduced Indian Territory, and it remained directly subject to tribal and federal governance until statehood. *See* App. at 17, Att. 5 (Map of Indian Territory); and App. at 19, Att. 6 (Map of Oklahoma and Indian Territories).

prosecutions in Indian Territory were split between tribal and federal courts, citing Act of May 2, 1890, ch. 182, § 30, 26 Stat. 81, 94.[14] *McGirt,* 140 S. Ct. at 2476**.** The Court held that Congress "abolished that [Creek tribal/federal court split] scheme" with the 1897 act, but "[w]hen Oklahoma won statehood in 1907, the MCA applied immediately according to its plain terms." *Id.* The Enabling Act sent federal-law cases to federal court in Oklahoma, and crimes arising under the federal MCA "belonged in federal court from day one, wherever they arose within the new state." *Id.* at 2477. Crimes arising under the federal GCA, which "applies to a broader range of crimes by or against Indians in Indian country," *McGirt*, *Id.* at 2479, likewise applied immediately upon statehood, and are not subject to state jurisdiction.

C. Indian Country Includes Restricted and Trust Allotments, Tribal Trust Lands, and All Fee Lands Within Cherokee Reservation Boundaries.

The Cherokee Reservation includes individual restricted and trust Cherokee allotments[15] that constitute Indian country under 18 U.S.C. § 1151(c) for purposes of application of the MCA and GCA ("all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same"). *See United States v. Ramsey*, 271 U.S. 467, 469, 472 (1926) (GCA applies to murder of Indian by non-Indian on restricted Osage allotment); *United States v. Sands*, 968 F.2d 1058, 1061-62 (10th Cir. 1992) *cert. denied*, 506 U.S. 1056 (1993) (MCA applies to murder of Indian by Indian on restricted Creek allotment, and allotment era statutes "did not abrogate the federal government's authority and responsibility, nor allow jurisdiction by the

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[14] *See Talton v. Mayes*, 163 U.S. 376, 381 (1896) (finding that Cherokee Nation had exclusive jurisdiction over an 1892 Cherokee murder in Cherokee Nation under its treaties and the 1890 Act). The 1897 act "broadened the jurisdiction of the federal courts, thus divesting the Creek tribal courts of their *exclusive* jurisdiction over cases involving only Creeks." *See Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Oklahoma Tax Commission*, 829 F.2d 967, 978 (10th Cir. 1987) *cert. denied*, 487 U.S. 1218 (1988) (emphasis added).

[15] Restricted Cherokee allotments are subject to federal statutory requirements for conveyances and encumbrances. *See* infra, n. 26.

State of Oklahoma" over those allotments); *Klindt*, 782 P.2d at 403 (no state jurisdiction over assault with dangerous weapon by or against Indian on Cherokee trust allotment).

The Cherokee Reservation also includes tribal lands held in trust by the United States and unallotted tribal lands that constitute Indian country under 18 U.S.C. § 1151(a) for jurisdictional purposes ("all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation"). *See United States v. John*, 437 U.S. 634, 649 (1978) (Mississippi Choctaw tribal trust land); *Ross v. Neff*, 905 F.2d 1349 (10th Cir. 1990) (Cherokee tribal trust land); *Indian Country, U.S.A.*, 829 F.2d 967 (10th Cir. 1987) (unallotted Creek land).

Oklahoma has no jurisdiction over crimes covered by the MCA or the GCA, even when committed on individual fee land within the Cherokee Reservation, rather than on restricted, trust or tribal fee land. Reservations include lands within reservations boundaries owned in fee by non-Indians. "[W]hen Congress has once established a reservation, *all tracts included within it* remain a part of the reservation until separated therefrom by Congress." *United States v. Celestine*, 215 U.S. 278, 285 (1909). (emphasis added). "[T]his Court long ago rejected the notion that the purchase of lands by non-Indians is inconsistent with reservation status." *McGirt*, 140 S. Ct. at 2464, n. 3, citing *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 357-358 (1962). "Once 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." *McGirt*, 140 S. Ct. at 2468, citing *Solem v. Bartlett*, 465 U.S. 463, 470 (1984).

II. THE CHEROKEE RESERVATION WAS ESTABLISHED BY TREATY, AND ITS BOUNDARIES HAVE BEEN ALTERED ONLY BY EXPRESS CESSIONS IN 1866 AND 1891.

A. The Creek Nation Reservation Was Established by Treaty.

In *McGirt,* the Court discussed Creek treaties in detail, before concluding that they established the Creek Reservation. The Court noted that the 1832 and 1833 Creek removal treaties "solemnly guarantied" the land; established boundary lines to secure "a country and permanent home;" stated the United States' desire for Creek removal west of the Mississippi River; included Creek Nation's express cession of their lands in the East; confirmed the treaty obligation of the parties upon ratification; required issuance of a patent, in fee simple, to Creek Nation for the new land, which was formally issued in 1852; and guaranteed Creek rights "so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them." *McGirt*, 140 S. Ct. at 2461, citing Treaty with the Creeks, arts. I, XII, XIV, XV, Mar. 24, 1832, 7 Stat. 366-366-368, and Treaty with the Creeks, preamble, arts. III, IV, IX, Feb. 14, 1833, 7 Stat. 417, 419.

The Court further noted that the 1856 Creek treaty promised that no portion of the reservation "shall ever be embraced or included within, or annexed to, any Territory or State;" and secured to the Creeks "the unrestricted right of self-government," with "full jurisdiction" over enrolled citizens and their property. *McGirt*, 140 S. Ct. at 2461, citing Treaty with Creeks and Seminoles, arts. IV, XV, Aug. 7, 1856, 11 Stat. 699, 700, 704.

The Court recognized that although the 1866 post-civil war Creek treaty reduced the size of the Creek Reservation, it restated a commitment that the remaining land would "be forever set apart as a home for said Creek Nation," referred to as the "reduced Creek reservation." *McGirt*, 140 S. Ct. at 2461, citing Treaty Between the United States and the Creek Indians, arts. III and IX, June 14, 1866, 14 Stat. 785, 786, 788.

In sum, the Court stressed in *McGirt* that the Creek treaties promised a "permanent home" that would be "forever set apart," and assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state. The Court concluded that "[u]nder any definition, this was a reservation." *McGirt*, 140 S. Ct. at 2461.

B. The Cherokee Reservation Was Established by Cherokee Treaties Containing the Same or Similar Provisions as Creek Treaties.

"Each tribe's treaties must be considered on their own terms," in determining reservation status. *McGirt*, 140 S. Ct. at 2479. The approval of Creek and Cherokee treaties during the same period of time, and the similarity of Creek treaties described in *McGirt* and Cherokee treaties, conclusively demonstrate that the Cherokee Reservation was established by treaty.

Cherokee Nation was originally located in what are now the states of Georgia, Alabama, Tennessee, South Carolina, North Carolina, and Kentucky. Wilkins, Thurman, *Cherokee Tragedy: The Ridge Family and the Decimation of a People* 22, 91, 209, 254 (rev. 2d ed. 1986) (*Cherokee Tragedy*). Like the Creeks, the Cherokees exchanged lands in the Southeast for new lands in Indian Territory in the 1830s under pressure of the national removal policy. The Indian Removal Act of 1830, Act of May 28, 1830, ch. 148, 4 Stat. 411, which implemented this policy, authorized the President to divide public domain lands into defined "districts" for tribes removing west of the Mississippi River. *Id.* at § 1. It also provided that the United States would "forever secure and guaranty" such lands to the removed tribes, "and if they prefer it . . . the United States will cause a patent . . . to be made and executed to them for the same[.]" *Id.* at § 3.

In 1831 and 1832, the Supreme Court issued two seminal decisions in cases involving Cherokee Nation resistance to Georgia citizens' trespasses on Cherokee lands. In *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831), the Supreme Court held that Cherokee Nation was a "domestic dependent nation." The following year, the Supreme Court held that Indian tribes were

"'distinct political communities, having territorial boundaries, within which their authority is exclusive . . . which is not only acknowledged, but guarantied by the United States,' a power dependent on and subject to no state authority." *McGirt*, 140 S. Ct. at 2477, citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832). Despite these decisions, President Jackson persisted in efforts to remove Cherokee citizens from Georgia.

The Cherokee Reservation in Indian Territory was finally established by 1833 and 1835 treaties. The 1833 Cherokee treaty "solemnly pledged" a "guarantee" of seven million acres to the Cherokees on new lands in the West "forever." Treaty with the Western Cherokee, Preamble, Feb. 14, 1833, 7 Stat. 414. The 1833 Cherokee treaty used precise geographic terms to describe the boundaries of those lands, and provided that "a patent" would issue as soon as reasonably practical. *Id.* at art. 1. It confirmed the treaty obligation of the parties upon ratification. *Id.* at art. 7.

However, there were internal disputes within Cherokee Nation, and the 1833 treaty failed to achieve removal of the majority of Cherokee citizens. Two Cherokee groups represented divisive viewpoints of what was best for the Cherokee people. The group led by John Ross, who represented a majority of Cherokee citizens, opposed removal. The other group, led by John Ridge, supported removal, fearing that tribal citizens would quickly lose their lands if conveyed to them individually in the southeastern states. *Cherokee Tragedy* at 266-68.

Almost three years after the 1833 treaty, members of the Ridge group signed the treaty at New Echota. Treaty with the Cherokee, Dec. 29, 1835, 7 Stat. 478. Containing language similar to wording in the 1832 and 1833 Creek treaties, the 1835 Cherokee treaty was ratified "with a view to re-unite their people in one body and to secure to them a *permanent home* for themselves and their posterity," in what became known as Indian Territory, "*without the territorial limits of the state sovereignties*," and "*where they could establish and enjoy a government of their* choice,

and perpetuate such a state of society as might be consonant with their views, habits and condition." *Holden v. Joy*, 84 U.S. (17 Wall.) 211, 237-38 (1872) (emphasis added).

Like Creek treaty promises, the United States' treaty promises to Cherokee Nation "weren't made gratuitously." *McGirt*, 140 S. Ct. at 2460. Under the 1835 treaty, Cherokee Nation "cede[d], relinquish[ed], and convey[ed]" all its aboriginal lands east of the Mississippi River to the United States. Arts. 1, 7 Stat. 478. In return, the United States agreed to convey to Cherokee Nation, by fee patent, seven million acres in Indian Territory within the same boundaries as described in the 1833 treaty, plus "a perpetual outlet west." *Id.* at art. 2. Like Creek treaties the 1835 Cherokee treaty described the United States' conveyance to the Cherokee Nation as a cession; required Cherokee removal to the new lands; covenanted that none of the new lands would be "included within the territorial limits or jurisdiction of any State or Territory" without tribal consent; and secured "to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government . . . within their own country," so long as consistent with the Constitution and laws enacted by Congress regulating trade with Indians; and provided that it would be "obligatory on the contracting parties" after ratification by the Senate and the President. *Id.* at arts. 1, 5, 8; art. 19, 7 Stat. 478.

As of January 1838, approximately 2,200 Cherokees had removed to Indian Territory, and around 14,757 remained in the east. *See The Western Cherokee Indians v. United States*, 27 Ct. Cl. 1, 3, 1800 WL 1779 (1891). That spring, the army rounded up most of the remaining Cherokees who had refused to remove within the time allotted. "They were seized as they worked in their farms and fields . . . They remained in captivity for months while hundreds died from inadequate and unaccustomed rations. The debilitation of others contributed to deaths during the removal

march." Rogin, Michael Paul, *Fathers & Children: Andrew Jackson and the Subjugation of the American Indian* 241 (1991).

After removal, on December 31, 1838, President Van Buren executed a fee patent to the Cherokee Nation for the new reservation in Indian Territory. *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 297 (1902). The patent recited the United States' treaty commitments to convey the land to the Nation. *Id.* at 307. The title was held by Cherokee Nation "for the common use and equal benefit of all the members." *Id.* at 307; *see also Cherokee Nation v. Journeycake*, 155 U.S. 196, 207 (1894). A few years later, an 1846 treaty between Cherokee Nation and the United States also required federal issuance of a deed to the Nation for lands it occupied, including the "purchased" 800,000-acre tract in Kansas (known as the Neutral Lands") and the "outlet west." Treaty with the Cherokee, Aug. 6, 1846, art. 1, 9 Stat. 871.

Like Creek Nation, Cherokee Nation negotiated a treaty with the United States after the Civil War. Treaty with the Cherokee, July 19, 1866, art. 4, 14 Stat. 799. The 1866 treaty authorized settlement of other tribes in a portion of the Nation's land west of its current western boundary (within the area known as the Cherokee Outlet), Treaty with the Cherokee, *id.* at art. 16, and required payment for those lands, stating that the Cherokee Nation would "retain the right of possession of and jurisdiction over all of said country . . . until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied." It also expressly ceded the Nation's patented lands in Kansas, consisting of a two-and-one-half mile-wide tract known as the Cherokee Strip and the 800,000-acre Neutral Lands, to the United States. ("The Cherokee Nation hereby cedes . . . to the United States, the tract of land in the State of Kansas which was sold to the Cherokees. . . and also that strip of the land ceded to the nation . . . which is included in the State of Kansas, and the Cherokees consent that said lands

may be included in the limits and jurisdiction of the said State"). *Id.* at art. 17. None of the other provisions of the 1866 treaty affected Cherokee Nation's remaining reservation lands. Instead, the treaty required the United States, at its own expense, to cause the Cherokee boundaries to be marked "by permanent and conspicuous monuments, by two commissioners, one of whom shall be designated by the Cherokee national council." *Id.* at art. 21.

The 1866 treaty recognized the Nation's control of its reservation, by expressly providing: "*Whenever the Cherokee national council shall request it*, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States." *Id.* at art. 20 (emphasis added). It also guaranteed "to the people of the Cherokee Nation the quiet and peaceable possession of their country," and promised federal protection against "intrusion from all unauthorized citizens of the United States" and removal of persons not "lawfully residing or sojourning" in Cherokee Nation. *Id.* at arts. 26, 27. It "*re-affirmed and declared to be in full force*" all previous treaty provisions "not inconsistent with the provisions of" the 1866 treaty, and provided that nothing in the 1866 treaty "shall be construed as an acknowledgment by the United States, or as a relinquishment by Cherokee Nation of any claims or demands under the guarantees of former treaties," except as expressly provided in the 1866 treaty. *Id.* at art. 31 (emphasis added).

Like Creek treaties, Cherokee treaties involved exchange of tribal homelands in the East for a new homeland in Indian Territory deeded to the Nation, and included the promise of a permanent home and the assurance of the right to self-government outside the jurisdiction of a state. These treaties established the Cherokee Reservation.

C. Special Terminology Is Not Required to Establish a Reservation, and Tribal Fee Ownership Is Not Inconsistent with Reservation Status.

In *McGirt*, the Court rejected Oklahoma's argument that Creek treaties did not establish a reservation and instead created a dependent Indian community, as defined by 18 U.S.C. § 1151(b) ("all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state"). *McGirt*, 140 S. Ct. at 2475-76. The "entire point" of this reclassification attempt was "to avoid *Solem's* rule that only Congress may disestablish a reservation."[16] *Id.* at 2474. The Court was not persuaded by Oklahoma's argument that a reservation was not created due to tribal fee ownership of the lands, and the absence of the words "reserved from sale" in the Creek treaties. *Id.* The Creek land was reserved from sale in the "very real sense" that the United States could not give the tribal lands to others or appropriate them to its own purposes, without engaging in "an act of confiscation." *Id.* at 2475, citing *United States v. Creek Nation*, 295 U.S. 103, 110 (1935). Additionally, fee title is not inherently incompatible with reservation status, and establishment of a reservation does not require a "particular form of words." *McGirt*, 140 S. Ct. at 2475, citing *Maxey v. Wright,* 54 S.W. 807, 810 (Indian Terr. 1900) and *Minnesota v. Hitchcock*, 185 U.S. 373, 390 (1902).

The "most authoritative evidence of [a tribe's] relationship to the land" does not lie in scattered references to "stray language from a statute that does not control here, a piece of congressional testimony there, and the scattered opinions of agency officials everywhere in between." *McGirt*, 140 S. Ct. at 2475. "[I]t lies in the treaties and statutes that promised the land to the Tribe in the first place." *Id.* at 2476. As previously noted, the 1830 Indian Removal Act

[16] The United States and the dissent did not make any arguments supporting Oklahoma's novel dependent Indian community theory. *McGirt*, 140 S. Ct. at 2474.

promised issuance of fee patents upon removal of tribes affected by its implementation, which were granted to Creek Nation and Cherokee Nation. The treaties for both tribes contain extensive evidence of their relationships with their respective lands in Indian Territory. The Cherokee Reservation was established by treaty, just as Creek treaties established the Creek Reservation. As with Creek Nation, *McGirt*, 140 S. Ct. at 2461, later federal statutes also recognized the existence of the Cherokee Reservation as a distinct geographic area.[17]

D. The Cherokee Reservation Has Been Diminished Only by Express Cessions of Portions of the Reservation in Its 1866 Treaty and Its 1891 Agreement.

The current boundaries of Cherokee Nation are as established in Indian Territory in the 1833 and 1835 treaties, diminished only by the express cessions in the 1866 treaty described in part II.B of this brief, and by an 1891 agreement ratified by Congress in 1893 (1891 Agreement). Act of Mar. 3, 1893, ch. 209, § 10, 27 Stat. 612, 640-43. The 1891 Agreement provided that Cherokee Nation "shall cede and relinquish all its title, claim, and interest of every kind and character in and to that part of the Indian Territory" encompassing a strip of land bounded by Kansas on the North and Creek Nation on the south, and located between the ninety-sixth degree west longitude and the one hundredth degree west longitude (i.e., the Cherokee Outlet). *See United*

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[17] *See* Act of June 21, 1906, ch. 3504, 34 Stat. 325, 342-43 (drawing recording districts in the Indian Territory, including district 27, with boundaries along the northern and western "boundary line[s] of the Cherokee Nation," and district 28, described as "lying within the boundaries of the Cherokee Nation"); § 6, 34 Stat. 277 (the third district for the House of Representatives must "(with the exception of that part of recording district numbered twelve, which is in the Cherokee and Creek nations) comprise all the territory now constituting the Cherokee, Creek, and Seminole nations and the Indian reservations lying northeast of the Cherokee Nation, within said State"); Act of June 30, 1913, ch. 4, § 18, 38 Stat. 77, 95 ("common schools in the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations"); Act of May 25, 1918, ch. 86, 40 Stat. 561, 581 ("common schools in the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations"); and the Oklahoma Indian Welfare Act, Act of June 26, 1936, ch. 831, 49 Stat. 1967, codified at 25 U.S.C. §§ 5201-5210 (authorizing Secretary of the Interior to acquire land "within or without existing Indian reservations" in Oklahoma).

States v. Cherokee Nation, 202 U.S. 101, 105-06 (1906).[18] The 1893 ratification statute required payment of a sum certain to the Nation and provided that, upon payment, the ceded lands would "become and be taken to be, and treated as, a part of the public domain," except for such lands allotted under the Agreement to certain described Cherokees farming the lands. *Id.* at 112. Cherokee Nation did not cede or restore any other portion of the Cherokee Reservation to the public domain in the 1891 Agreement, and no other cession has occurred since that time.

The original 1839 Cherokee Constitution established the boundaries as described in its 1833 treaty, and the Constitution as amended in 1866 recognized those same boundaries, "subject to such modification as may be made necessary" by the 1866 treaty.[19] Cherokee Nation's most recent Constitution, a 1999 revision of its 1975 Constitution, was ratified by Cherokee citizens in 2003, and provides: "The boundaries of the Cherokee Nation territory shall be those described by the patents of 1838 and 1846 diminished only by the Treaty of July 19, 1866, and the Act of Mar. 3, 1893." 1999 Cherokee Constitution, art. 2.

III. CONGRESS HAS NOT DISESTABLISHED THE CHEROKEE RESERVATION.

A. Only Congress Can Disestablish a Reservation by Explicit Language for the Present and Total Surrender of All Tribal Interests in the Affected Lands.

Congress has not disestablished the Cherokee Reservation as it existed following the last express Cherokee cession in the 1891 Agreement ratified in 1893, and all land within reservation boundaries, including fee land, remains Indian country under 18 U.S.C. § 1151(a). Courts do not lightly infer that Congress has exercised its power to disestablish a reservation. *McGirt*, 140 S. Ct.

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[18] *See* App. at 14, Att. 4 (Goins, Charles Robert, and Goble, Danney, "*Historical Atlas of Oklahoma*" (4th Ed. 2006) at 61), showing the Cherokee Outlet ceded by the 1891 Agreement, as well as the Kansas lands, known as the Neutral Lands, and the Cherokee Strip ceded by the 1866 Treaty.

[19] 1839 Cherokee Constitution, art. I, § 1, and Nov. 26, 1866 amendment to art. I, § 1, *reprinted in* Volume I of West's Cherokee Nation Code Annotated (1993 ed.).

at 2462, citing *Solem,* 465 U.S. at 470. Once a reservation is established, it retains that status "until Congress explicitly indicates otherwise." *McGirt*, 140 S. Ct. at 2468, citing *Solem,* 465 U.S.at 470. Congressional intent to disestablish a reservation "must be clear and plain." *Id.*, citing *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998). Congress must clearly express its intent to disestablish, commonly by "'[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests.'" *McGirt*, 140 S. Ct. at 2463, citing *Nebraska v. Parker*, 577 U.S. 481, __, 136 S.Ct. 1072, 1079 (2016).

A reservation disestablishment analysis focuses on the statutory text that allegedly resulted in reservation disestablishment. The only "step" proper for a court of law is "to ascertain and follow the original meaning of the law" before it. *McGirt*, 140 S. Ct. at 2468. Disestablishment has never required any particular form of words. *McGirt*, 140 S. Ct. at 2463, citing *Hagen v. Utah*, 510 U.S 399, 411 (1994). A statute disestablishing a reservation may provide an "[e]xplicit reference to cession" or an "unconditional commitment . . . to compensate the Indian tribe for its opened land." *McGirt*, 140 S. Ct. at 2462, citing *Solem*, 465 U.S. at 470. It may direct that tribal lands be "'restored to the public domain,'" *McGirt*, 140 S. Ct. at 2462, citing *Hagen,* 510 U.S. at 412, or state that a reservation is "'discontinued,'" "'abolished,'" or "'vacated.'" *McGirt*, 140 S. Ct. at 2463, citing *Mattz v. Arnett*, 412 U.S. 481, 504, n. 22 (1973); *see also DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 439–440, n. 22 (1975).

B. The Allotment of Cherokee Land Did Not Disestablish the Cherokee Reservation.

The General Allotment Act, which authorized allotment of the lands of most tribes nationwide, was expressly inapplicable to the Five Tribes. Act of Feb. 8, 1887, ch. 119, § 8, 24 Stat. 38. In 1893, in the same statute ratifying the 1891 Agreement, Congress established the Dawes Commission to negotiate agreements with the Five Tribes for "the extinguishment of the national or tribal title to any lands" in Indian Territory "either by cession," by allotment or by such

other method as agreed upon. § 16, 27 Stat. 612, 645–646.[20] The Commission reported in 1894 that the Creek Nation "would not, under any circumstances, agree to cede any portion of their lands." *McGirt*, 140 S. Ct. at 2463.[21] The Cherokee Nation resisted allotment for almost a decade longer, but finally ratified an agreement in 1902. Act of July 1, 1902, ch. 1375, 32 Stat. 716 (Cherokee Agreement). Like the Creek Agreement, Act of Mar. 1, 1901, ch. 676, 31 Stat. 861 (Creek Agreement) the Cherokee Agreement contained no cessions of land to the United States, and did not disestablish the Cherokee Reservation, which also "survived allotment." *See McGirt*, 140 S. Ct. at 2464.[22] Where Congress contemplates, but fails to enact, legislation containing express disestablishment language, the statute represents "a clear retreat from previous congressional attempts to vacate the . . . Reservation in express terms[.]" *DeCoteau*, 420 U.S. at 448.

The central purpose of the 1902 Cherokee Agreement, like that of the Creek Agreement, was to facilitate transfer of title from the Nation of "allottable lands" (defined in § 5, 32 Stat. 716,

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[20] As previously noted, Congress clearly knew how to diminish reservations when it enacted the 1893 Act, which also ratified the 1891 Agreement, in which Cherokee Nation agreed to "cede" Cherokee Outlet lands to the United States in exchange for payment.

[21] Although the Court in *McGirt* referenced only Creek Nation in this statement, the 1894 report reflects that each of the Five Tribes refused to cede tribal lands to the United States. App. at 21, Att. 7 (Ann. Rept. of the Comm. Five Civ. Tribes of 1894, 1895, and 1896 (1897) at 14). This refusal is also reflected in the Commission's 1900 annual report: "Had it been possible to secure from the Five Tribes a *cession to the United States of the entire territory at a given price*, . . . the duties of the commission would have been immeasurably simplified . . . When an understanding is had, however, of the great difficulties which have been experienced in inducing the tribes to accept allotment in severalty . . . *it will be seen how impossible it would have been to have adopted a more radical scheme of tribal extinguishment*, no matter how simple its evolutions." App. at 32, Att. 9 (Seventh Ann. Rept. of the Comm. Five Civ. Tribes (1900) at 9). (emphasis added).

[22] Even the dissent did not "purport to find any of the hallmarks of diminishment in the Creek Allotment Agreement." *McGirt*, 140 S. Ct. at 2465, n. 5.

as "all the lands of the Cherokee tribe" not reserved from allotment)[23] to tribal citizens individually. With exceptions for certain pre-existing town sites and other special matters, the Cherokee Agreement established procedures for conveying allotments to individual citizens who could not sell, transfer, or otherwise encumber their allotments for a number of years. (5 years for any portion, 21 years for the designated "homestead" portion). §§ 9-17, 32 Stat. at 717; *see also McGirt*, 140 S. Ct. at 2463, citing Creek Agreement, §§ 3, 7, 31 Stat. 861, 862-864.

The restricted status of the allotments reflects the Nation's understanding that allotments would not be acquired by non-Indians, would remain in the ownership of tribal citizens, and would be subject to federal protection. Tribal citizens were given deeds that conveyed to them "all the right, title, and interest" of the Cherokee Nation. § 58, 32 Stat. at 725; *see also McGirt*, 140 S. Ct. at 2463, citing Creek Agreement, § 23, 31 Stat. at 867-868. As of 1910, 98.3% of the lands of Cherokee Nation (4,348,766 acres out of 4,420,068 acres) had been allotted to tribal citizens, and an additional 21,000 acres were reserved for town sites, schools, churches, and other uses.[24] Only 50,301 acres scattered throughout the nation remained unallotted in 1910 – approximately one percent of the nation's reservation area. *Id.* Later federal statutes, which generally continued restrictions on disposition of allotments, contributed to the loss of individual Indian ownership of allotments over time, based on a variety of factors.[25]

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[23] Lands reserved from allotment included schools, colleges, and town sites "in Cherokee Nation," cemeteries, church grounds, an orphan home, the Nation's capital grounds, its national jail site, and its newspaper office site. §§ 24, 49, 32 Stat. at 719-20, 724; *see also* Creek Agreement, § 24, 31 Stat. at 868-869.

[24] App. at 43, Att. 11 (Ann. Rept. of the Comm. Five Civ. Tribes (1910) at 169, 176).

[25] *See McGirt*, 140 S. Ct. at 2463, citing Act of May 27, 1908, ch. 199, § 1, 35 Stat. 312; s*ee also* Act of Apr. 26, 1906, ch. 1876, §§ 19, 20, 34 Stat. 137 (Five Tribes Act); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731; Act of Aug. 11, 1955, ch. 786, 69 Stat. 666; Act of Dec. 31, 2018, Pub. L. No. 115-399, 132 Stat. 5331; *see "Fatally Flawed:" State Court Approval of Conveyances by Indians*

"Missing in all this, however, is a statute evincing anything like the "'present and total surrender of all tribal interests' in the affected lands" required for disestablishment. *McGirt*, 140 S. Ct. at 2464. Allotment alone does not disestablish a reservation. *Id.*, citing *Mattz*, 412 U.S. at 496-97 (explaining that Congress's expressed policy during the allotment era "was to continue the reservation system," and that allotment can be "completely consistent with continued reservation status"); and *Seymour*, 364 U.S. at 356-58 (allotment act "did no more than open the way for non-Indian settlers to own land on the reservation").

C. Allotment Era Statutes Intruding on Cherokee Nation's Right to Self-Governance Did Not Disestablish the Reservation.

Statutory intrusion during the allotment era were "serious blows" to the promised right to Creek self-governance, but did not prove disestablishment. *McGirt*, 140 S. Ct. at 2466. This conclusion is mandated with respect to the Cherokee Reservation as well, in light of the applicability of relevant statutes to both the Creek and Cherokee Nations, and the similarities in the Cherokee and Creek Agreements.

The Act of June 28, 1898, ch. 517, 30 Stat. 495 (Curtis Act), provided "for forced allotment and termination of tribal land ownership without tribal consent unless the tribe agreed to allotment." *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1441 (D.C. Cir. 1988). "[P]erhaps in an effort to pressure the Tribe to the negotiating table," the Curtis Act included provisions for termination of tribal courts. *McGirt*, 140 S. Ct. at 2465, citing § 28, 30 Stat. 495, 504–505. A few years later, the 1901 Creek Allotment Act expressly recognized the continued applicability of the

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of the Five Civilized Tribes—Time for Legislative Reform," Vollmann, Tim, and Blackwell, M. Sharon, 25 Tulsa Law Journal 1 (1989). Congress has also recognized Cherokee Nation's reversionary interest in restricted lands. *See* Act of May 7, 1970, Pub. L. No. 91-240, 84 Stat. 203 (requiring escheat to Cherokee Nation, as the tribe from which title to the restricted interest derived, to be held in trust for the Nation).

Curtis Act abolishment of Creek courts, by providing that it did not "revive" Creek courts.[26] Nevertheless, the Curtis Act's abolishment of Creek courts did not result in reservation disestablishment. *McGirt*, 140 S. Ct. at 2465-66. Although *McGirt* eliminates a need to determine whether Cherokee courts were abolished (and Cherokee Nation requests no determination on that question),[27] there are ample grounds for the conclusion that the Cherokee Agreement, unlike the Creek Agreement, superseded the Curtis Act's abolishment of Cherokee courts. While earlier unratified versions of the Cherokee Agreement contained provisions like those in the Creek Agreement expressly validating the Curtis Act's abolishment of tribal courts, the final version, ratified in 1902, did not.[28] Instead, section 73 of the Cherokee Agreement recognized that treaty

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[26] The Creek Agreement provided that nothing in that agreement "shall be construed to revive or reestablish the Creek courts which have been abolished" by former laws. 31 Stat. at 873, ¶ 47. The 1936 OIWA, 25 U.S.C. § 5209, impliedly repealed this limitation on Creek courts. *Muscogee (Creek) Nation v. Hodel*, 851 F.2d at 1446-47.

[27] The Cherokee Nation and Creek Nation operated their court systems years before the Department of the Interior's 1992 establishment of Courts of Indian Offenses in eastern Oklahoma for those tribes that had not yet developed tribal courts. "Law and Order on Indian Reservations," 57 Fed. Reg. 3270-01 (Jan. 28, 1992), and continue to do so.

[28] Unratified agreements that predate the Cherokee Agreement demonstrate that Cherokees ensured that tribal court abolishment was not included in the final Agreement. The unratified January 14, 1899 version stated that the Cherokee "consents" to "extinguishment of Cherokee courts, as provided in section 28 of the [1898 Curtis Act]." App. at 26, Att. 8 (Sixth Ann. Rept. of the Comm. Five Civ. Tribes (1899), Appendix No. 2, § 71 at 49, 57). The unratified April 9, 1900 version provided that nothing in the agreement "shall be construed to revive or reestablish the Cherokee courts abolished by said last mentioned act of Congress [the 1898 Curtis Act]." App. at 32, Att. 9 (Seventh Ann. Rept. of the Comm. Five Civ. Tribes (1900) at 13, Appendix No. 1, § 80 at 37,45); *see also* Act of Mar. 1, 1901, ch. 675, pmbl. and § 72, 31 Stat. 848, 859 (version of Cherokee allotment agreement approved by Congress but rejected by Cherokee voters). The Five Tribes Commission's early efforts to conclude an agreement with Cherokee Nation were futile, "owing to the disinclination of the Cherokee commissioners to accede to such propositions as the Government had to offer." App. at 26, Att. 8 (Sixth Ann. Rept. of the Comm. Five Civ. Tribes (1899 at 9-10). The tribal court provisions in the unratified agreements were eliminated from the Cherokee Agreement as finally ratified. The Commission's discussion of the final agreement, before tribal citizen ratification, reflects that allotment was the "paramount aim" of the agreement, App. at 40, Att. 10 (Ninth Ann. Rept. of the Comm. Five Civ. Tribes (1902) at 11), - not erosion of Cherokee government.

provisions not inconsistent with the Agreement remained in force.[29] § 73, 32 Stat. at 727. Treaty protections included the 1866 Treaty's provision that Cherokee courts would "retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty." Art. 13, 14 Stat. 799. It is also noteworthy in considering the effects of the Curtis Act that it recognized continuation of Cherokee Reservation boundaries, by referencing a "permanent settlement in the Cherokee Nation" and "lands in the Cherokee Nation." §§ 21, 25, 30 Stat. at 502, 504.

Another "serious blow" to Creek governmental authority was a provision in the Creek Agreement that conditioned the validity of Creek ordinances "affecting the lands of the Tribe, or of individuals after allotments, or the moneys or other property of the Tribe, or of the citizens" thereof, on approval by the President. *McGirt*, 140 S. Ct. at 2466, citing § 42, 31 Stat. at 872. There is no similar limitation on Cherokee legislative authority in the Cherokee Agreement. Even if there had been, such provision did not result in reservation disestablishment, in light of the absence of any of the hallmarks for disestablishment in the Cherokee Agreement, such as cession and compensation. *See McGirt*, 140 S. Ct. at 2465, n. 5.

Like the Creek Agreement, § 46, 31 Stat. 872, the Cherokee Agreement provided that tribal government would not continue beyond March 4, 1906. § 63, 32 Stat. at 725. Before that date, Congress approved a Joint Resolution continuing Five Tribes governments "in full force and effect" until distribution of tribal property or proceeds thereof to tribal citizens. Act of Mar. 2, 1906, 34 Stat. 822. The following month, Congress enacted the Five Tribes Act, which expressly

[29] Treaty protections also included the Nation's 1835 treaty entitlement "to a Delegate in the House of Representatives when Congress may provide for the same." Art. 7, 7 Stat. 478.

continued the governments of all of the Five Tribes "in full force and effect for all purposes authorized by law, until otherwise provided by law." *McGirt*, 140 S. Ct. at 2466, citing § 28, 34 Stat. at 148. The Five Tribes Act included a few incursions on Five Tribes' autonomy. *McGirt*, 140 S. Ct. at 2466. It authorized the President to remove and replace their principal chiefs, instructed the Secretary of the Interior to assume control of tribal schools, and limited the number of tribal council meetings to no more than 30 days annually. *McGirt*, 140 S. Ct. at 2466, citing §§ 6, 10, 28, 34 Stat. 139–140, 148. The Five Tribes Act also addressed the handling of the Five Tribes' funds, land, and legal liabilities in the event of dissolution. *McGirt*, 140 S. Ct. at 2466, citing §§ 11, 27, 34 Stat. at 141, 148.

"Grave though they were, these congressional intrusions on pre-existing treaty rights fell short of eliminating all tribal interests in the land." *McGirt*, 140 S. Ct. at 2466. Instead, Congress left the Five Tribes "with significant sovereign functions over the lands in question." *Id.* For example, Creek Nation retained the power to collect taxes; to operate schools; and to legislate through tribal ordinances (subject to Presidential approval of certain ordinances as required by the Creek Agreement, § 42, 31 Stat. 872). *Id.*, citing §§ 39, 40, 42, 31 Stat. at 871–872. Like the Creek Agreement, the Cherokee Agreement also recognized continuing tribal government authority. As previously noted, it did not require Presidential approval of any ordinance, did not abolish tribal courts, and confirmed treaty rights. § 73, 32 Stat. at 727. It also required that the Secretary operate schools under rules "in accordance with Cherokee laws;" required that funds for operating tribal schools be appropriated by the Cherokee National Council; and required the Secretary's collection of a grazing tax for the benefit of Cherokee Nation. §§ 32, 34, 72, 32 Stat. at 721. "Congress never

withdrew its recognition of the tribal government, and none of its [later] adjustments[30] would have made any sense if Congress thought it had already completed that job." *McGirt*, 140 S. Ct. at 2466.

Instead, Congress changed course in a shift in policy from assimilation to tribal self-governance. *See McGirt*, 140 S. Ct. at 2467. The 1934 Indian Reorganization Act (IRA) officially ended the allotment era for all tribes. Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified at 25 U.S.C. §§ 5101, *et seq.*)[31] The 1936 OIWA included a section recognizing tribal authority to adopt constitutions and corporate charters, and repealed all acts or parts of acts inconsistent with the OIWA. 25 U.S.C. §§ 5203, 5209. Cherokee Nation's government, like those of other tribes, was strengthened later by the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975. Act of Jan. 4, 1975, Pub. L. No. 93-638, 88 Stat. 2203 *(codified* at 25 U.S.C. §§ 5301, *et seq.*). The ISDEAA enables Cherokee Nation to utilize federal funds in accordance with multi-year funding agreements after government-to-government negotiations with the Department of the Interior. Congress, for the most part, has treated the Five Tribes in a manner consistent with its treatment of tribes across the country.

Notwithstanding the shift in federal policy, the Five Tribes spent the better part of the twentieth century battling the consequences of the "bureaucratic imperialism" of the Bureau of Indian Affairs (BIA), which promoted the erroneous belief that the Five Tribes possessed only

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[30] "Adjustments" included the 1908 requirement that Five Tribes officials turn over all "tribal properties" to the Secretary of the Interior, § 13, 35 Stat. 316; a law seeking Creek National Council's release of certain money claims against the United States, Act of Mar. 3, 1909, ch. 263, 35 Stat. 781, 805; and a law authorizing Creek Nation to file suit in the federal Court of Claims for "any and all legal and equitable claims arising under or growing out of any [Creek] treaty or agreement.." Act of May 24, 1924, ch. 181, 43 Stat. 139. *See McGirt*, 140 S. Ct. at 2466. The Act of Mar. 19, 1924, ch. 70, 43 Stat. 27, similarly authorized Cherokee Nation to file suit in the federal Court of Claims for the same type of claims against the United States.

[31] The IRA excluded Oklahoma tribes from applicability of five IRA sections, 25 U.S.C. §5118, but all other IRA sections applied to Oklahoma tribes, including provisions ending allotment.

limited governmental authority. *Harjo v. Kleppe,* 420 F. Supp. 1110, 1130 (D.D.C.1976), *aff'd sub nom. Harjo v. Andrus,* 581 F.2d 949 (D.C. Cir. 1978) (finding that the evidence "clearly reveals a pattern of action on the part of" the BIA "designed to prevent any tribal resistance to the Department's methods of administering those Indian affairs delegated to it by Congress," as manifested in "deliberate attempts to frustrate, debilitate, and generally prevent from functioning the tribal governments expressly preserved by § 28 of the [Five Tribes] Act."). This treatment, which impeded the Tribes' ability to fully function as governments for decades, cannot overcome lack of statutory text demonstrating disestablishment. *See Parker*, 136 S. Ct. at 1082.

D. The Events Surrounding the Enactment of Cherokee Allotment Legislation and Later Demographic Evidence Cannot, and Did Not, Result in Reservation Disestablishment.

There is no ambiguous language in any of the relevant allotment-era statutes applicable to Creek Nation and Cherokee Nation, including their separate allotment agreements, "that could plausibly be read as an Act of disestablishment." *McGirt*, 140 S. Ct. at 2468. Events contemporaneous with the enactment of relevant statutes, and even later events and demographics, are not alone enough to prove disestablishment. *Id.* A court may not "favor contemporaneous or later practices *instead of* the laws Congress passed." *Id.* There is "no need to consult extratextual sources when the meaning of a statute's terms is clear," and extratextual sources may not overcome those terms. *Id.* The only role that extratextual sources can properly play is to help "clear up ... not create" ambiguity about a statute's original meaning. *Id.*

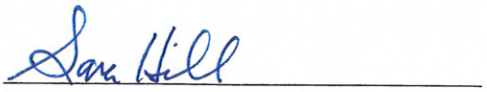
The "perils of substituting stories for statutes" were demonstrated by the "stories" that Oklahoma claimed resulted in disestablishment in *McGirt*. *McGirt*, 140 S. Ct. at 2470. Oklahoma's long historical practice of asserting jurisdiction over Indians in state court, even for serious crimes on reservations, is "a meaningless guide for determining what counted as Indian country." *Id.* at 2471. Historical statements by tribal officials and others supporting an idea that "everyone" in the

late nineteenth and twentieth centuries believed the reservation system and Creek Nation would be disbanded, without reference to any ambiguous statutory direction, were merely prophesies that were not self-fulfilling. *Id.* at 2472. Finally, the "speedy and persistent movement of white settlers" onto Five Tribes land throughout the late nineteenth and early twentieth centuries is not helpful in discerning statutory meaning. *Id.* at 2473. It is possible that some settlers had a good faith belief that Five Tribes lands no longer constituted a reservation, but others may not have cared whether the reservations still existed or even paused to think about the question. *Id.* Others may have been motivated by the discovery of oil in the region during the allotment period, as reflected by Oklahoma court "sham competency and guardianship proceedings that divested" tribal citizens of oil rich allotments. *Id.* Reliance on the "practical advantages of ignoring the written law" would be "the rule of the strong, not the rule of law." *Id.*

CONCLUSION

Congress had no difficulties using clear language to diminish reservation boundaries in the 1866 treaty and the 1891 Agreement provisions for the Cherokee Nation's cessions of land in Indian Territory in exchange for money and promises. There are no other statutes containing any hallmark language altering the Cherokee Reservation boundaries as they existed after the 1891 Agreement's cession of the Cherokee Outlet. Clear language of disestablishment was available to Congress when it enacted laws specifically applicable to the Five Tribes as a group and to Cherokee Nation individually, but it did not use it. The Cherokee Reservation boundaries as established by treaty and as defined in the Cherokee Constitution have not been disestablished. Oklahoma has no jurisdiction over crimes covered by the MCA and GCA when committed on the Reservation.

Respectfully submitted,



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APPENDIX

to

BRIEF OF AMICUS CURIAE CHEROKEE NATION

ATTACHMENT NO. 1

Cherokee Nation Cross-Deputization Agreement List (1992-2019)

CHEROKEE NATION CROSS-DEPUTIZATION AGREEMENTS (1992-2019)

50186 [12/31/2019] - County Addendum - Addition of Cherokee County to Deputation Agreement for Law Enforcement in the Cherokee Nation - Cherokee Nation and (original agreement 1992 - sos file number 27286)
https://www.sos.ok.gov/documents/filelog/93289.pdf

49793 [04/16/2019] - City Addendum addition of the City of Spavinaw deputation agreement for law enforcement in the Cherokee Nation
https://www.sos.ok.gov/documents/filelog/92899.pdf

49794 [04/16/2019] - City of Muskogee Addendum addition of the City of Muskogee to deputation agreement for law enforcement in the Cherokee Nation
https://www.sos.ok.gov/documents/filelog/92900.pdf

49070 [02/02/2019] - County Addendum, Addition of Tulsa County to Deputation Agreement for Law Enforcement in the Cherokee Nation - original agreement Attorney General file number ICA-93-0019-Cross-Deputization Agreement between the Cherokee Nation, the Starte of Oklahoma, and the U.S. Government
https://www.sos.ok.gov/documents/filelog/92187.pdf

[2/2/2018] – Agreement between Cherokee Nation and the City of Tulsa File not yet uploaded to https://www.sos.ok.gov/.

48981 [12/01/2017] – Agreement between Rogers State University and the Cherokee Nation
https://www.sos.ok.gov/documents/filelog/92061.pdf

48982 [12/01/2017] – Agreement between the Town of Gans and the Cherokee Nation
https://www.sos.ok.gov/documents/filelog/92062.pdf

48414 [01/25/2017] – ICA between Cherokee Nation Marshal Service and Okla. Bureau of Narcotics and Dangerous Drugs Control - Agreement and Protocol for Cross-Deputization and Addendum - signed 01/23/2003 https://www.sos.ok.gov/documents/filelog/91480.pdf

48415 [01/25/2017] – ADDENDUM - Okla. Dept. of Agriculture Food and Forestry-Forestry Division joining as members of the foregoing agreement and compact - signed 04/15/2003
https://www.sos.ok.gov/documents/filelog/91481.pdf

48211 [08/11/2016] – Agreement between Cherokee Nation and the City of Chelsea
https://www.sos.ok.gov/documents/filelog/91272.pdf

47316 [01/30/2015] – Agreement between Cherokee Nation of Oklahoma and City of Claremore
https://www.sos.ok.gov/documents/filelog/90347.pdf

47315 [01/30/2015] – Agreement between Cherokee Nation of Oklahoma and City of South Coffeyville https://www.sos.ok.gov/documents/filelog/90346.pdf

47054 [07/16/2014] – Agreement between Cherokee Nation and Nowata County and the City of Nowata https://www.sos.ok.gov/documents/filelog/90081.pdf

46988 [04/09/2014] – Agreement between Cherokee Nation and the City of Tulsa https://www.sos.ok.gov/documents/filelog/90014.pdf

44913 [06/14/2011] – Agreement between Cherokee Nation and Northeastern State University (NSU) https://www.sos.ok.gov/documents/filelog/87845.pdf

44920 [06/14/2011] – Agreement between Cherokee Nation and the City of Big Cabin, Catoosa, Ft. Gibson, Grove, Inola, Jay, Langley, Locust Grove, Marble City, the City of Owasso, Pryor, Salina, Sallisaw, Stilwell, Sprerry, Tahlequah, Vian, Vinita, Westville, Town of Colcord, Town of Ramona, The Kansas Police Department, The Collinsville Police Department, and The Roland Police Department https://www.sos.ok.gov/documents/filelog/87852.pdf

44921 [06/14/2011] – Agreement between Cherokee Nation and the Board of County Commissioners of Cherokee County, Delaware County, Muskogee County, Sequoyah County, Mayes County, McIntosh County, Ottawa County, Wagoner County, the Rogers County Sheriff's Office, the Sequoyah County Sheriff, and the Sheriff of Wagoner County https://www.sos.ok.gov/documents/filelog/87853.pdf

44914 [06/14/2011] – Agreement between Cherokee Nation and The District Attorney of Ottawa and Delaware Counties, and The District Attorney for Craig, Rogers and Mayes Counties https://www.sos.ok.gov/documents/filelog/87846.pdf

41989 [04/18/2007] – Agreement between Cherokee Nation and Bureau of Indian Affairs https://www.sos.ok.gov/documents/filelog/64803.pdf

34841[08/29/1997] – Agreement between Cherokee County, City of Tahlequah, State of OK & Bureau of Indian Affairs https://www.sos.ok.gov/documents/filelog/51268.pdf

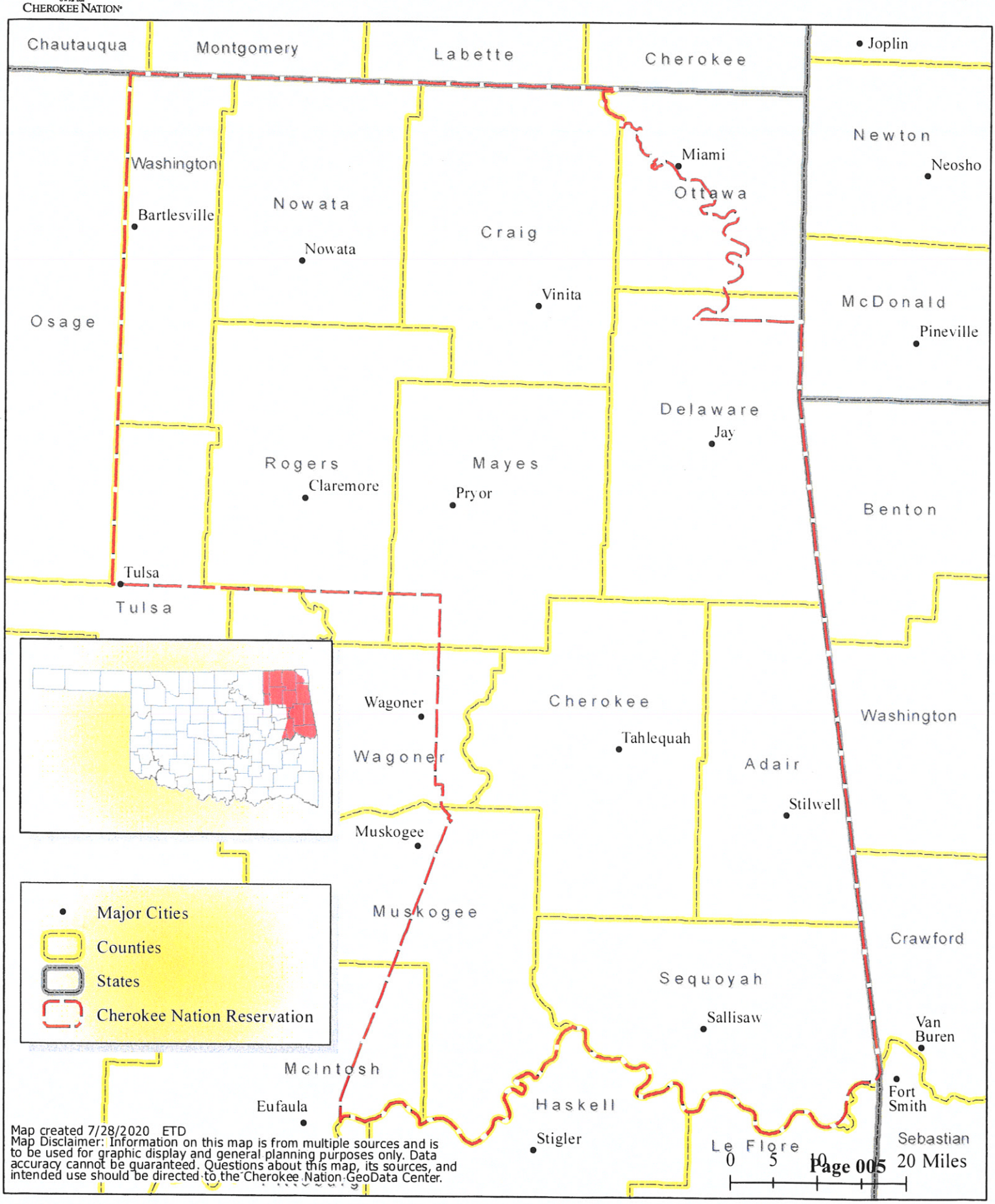
27286 [07/08/1992] – Cherokee Nation /U.S. Department of Interior/Co Comm. Various Law Enf. including by not limited to County Sheriff's Department, Oklahoma State Bureau of Investigation, Oklahoma Highway Patrol, State Fire Marshal, Oklahoma Department of Dangerous Drugs and Narcotics, Department of Corrections, Council on Law Enforcement Education and Training, Oklahoma Game Rangers, Oklahoma Lake Patrol, Oklahoma State Fire Marshal, etc. https://www.sos.ok.gov/documents/filelog/54074.pdf

ATTACHMENT NO. 2

Cherokee Nation Boundaries and Service Area Maps

List of Documents:
Map of Cherokee Nation Reservation Boundaries (2020)
Map of Cherokee Nation Service Sites (2018)
Map of Cherokee Nation Medical Facilities (2018)
Map of Cherokee Nation Tribal Transit Bus Routes (2018)
Map of Cherokee Nation Tribal Transportation Program Construction Projects (2018)
Map of Cherokee Nation Businesses (2018)

Cherokee Nation



Map created 7/28/2020 ETD
Map Disclaimer: Information on this map is from multiple sources and is to be used for graphic display and general planning purposes only. Data accuracy cannot be guaranteed. Questions about this map, its sources, and intended use should be directed to the Cherokee Nation GeoData Center.

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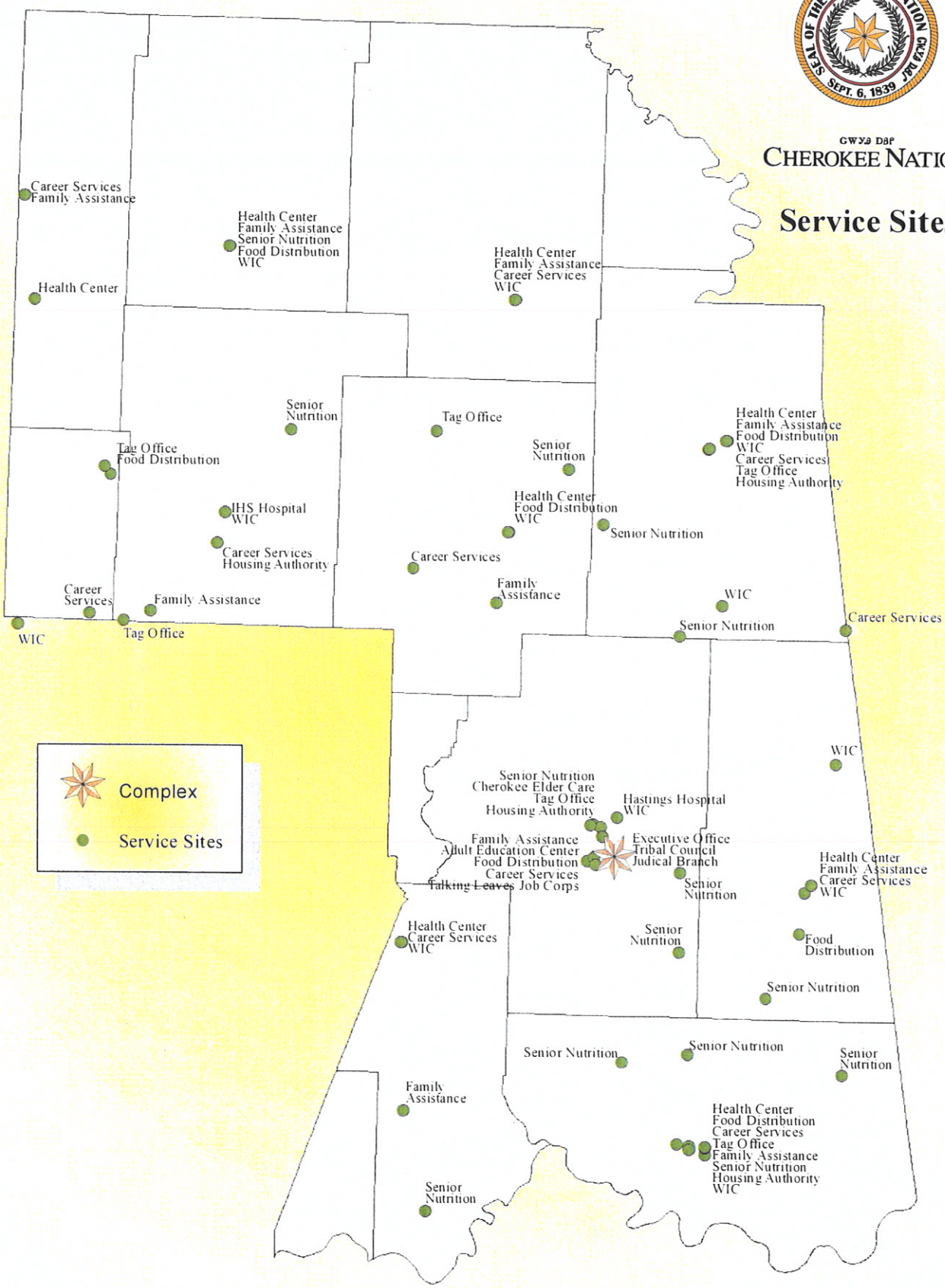
CHEROKEE NATION®

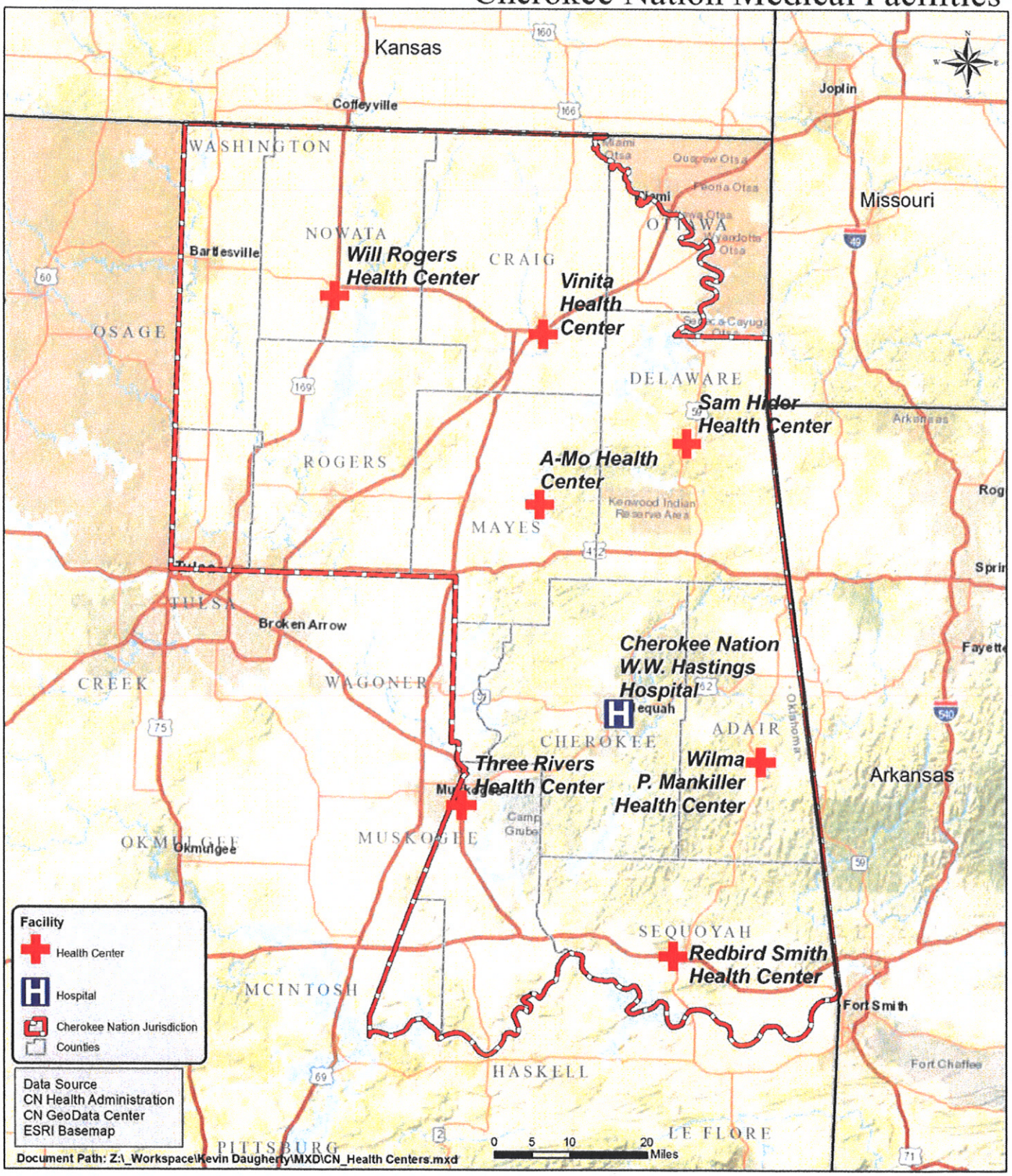
Service Sites



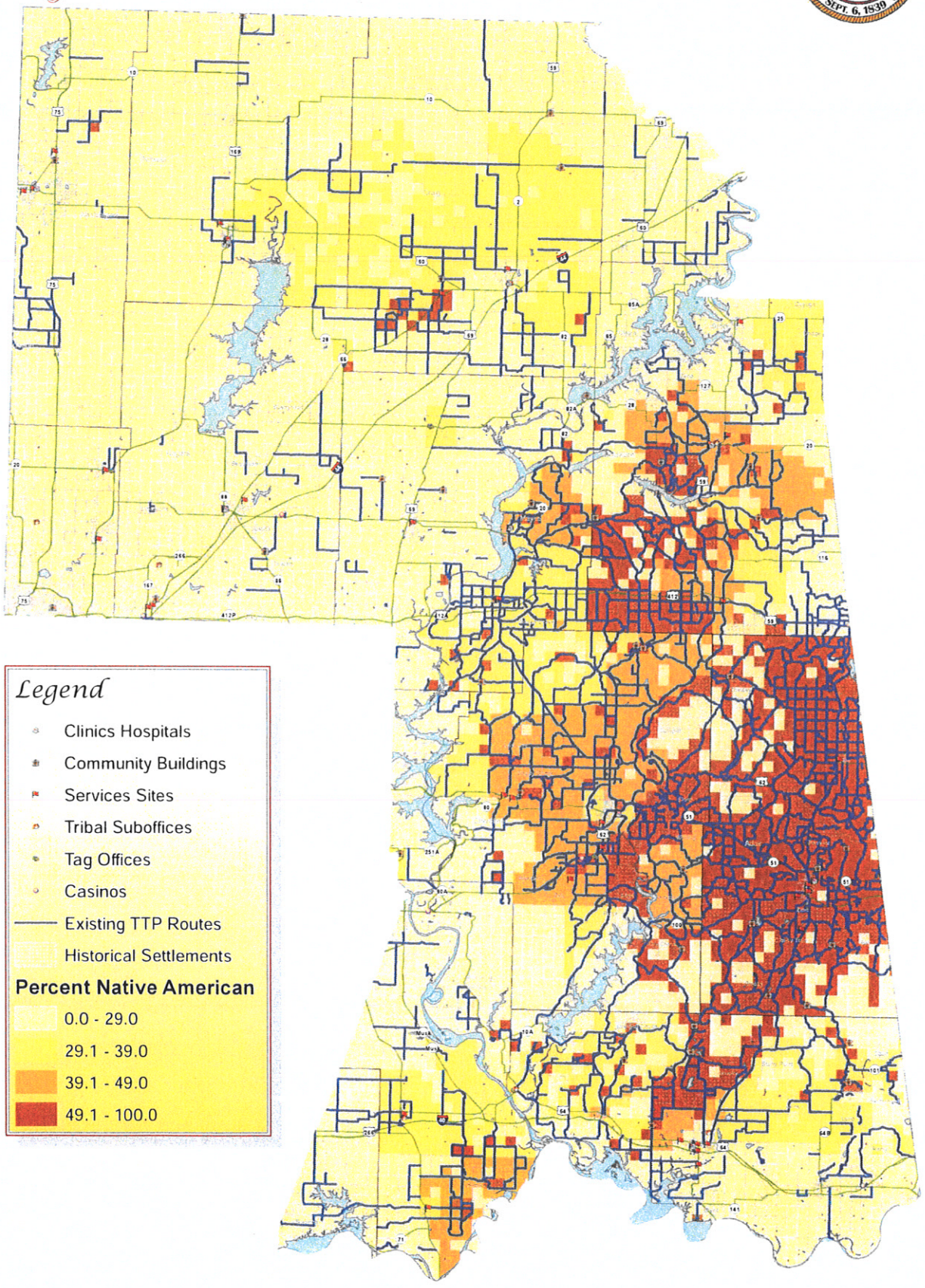
Map created 1/31/2018 ETD
Note: This map is based on multiple sources and was prepared to demonstrate the general locations of the indentified services.

CHEROKEE NATION

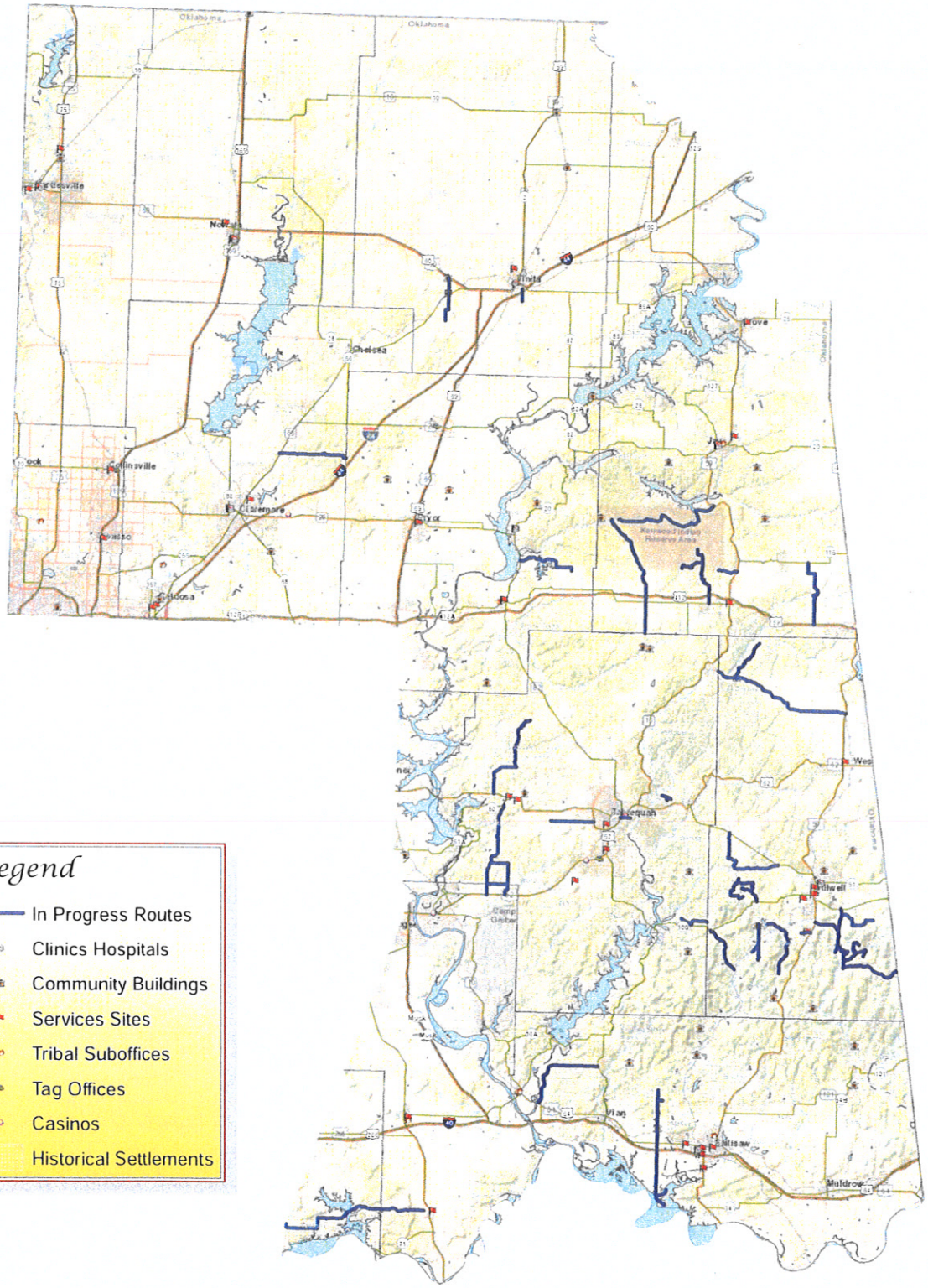
Cherokee Nation Medical Facilities



2017 Cherokee Nation Tribal Transit Bus Routes



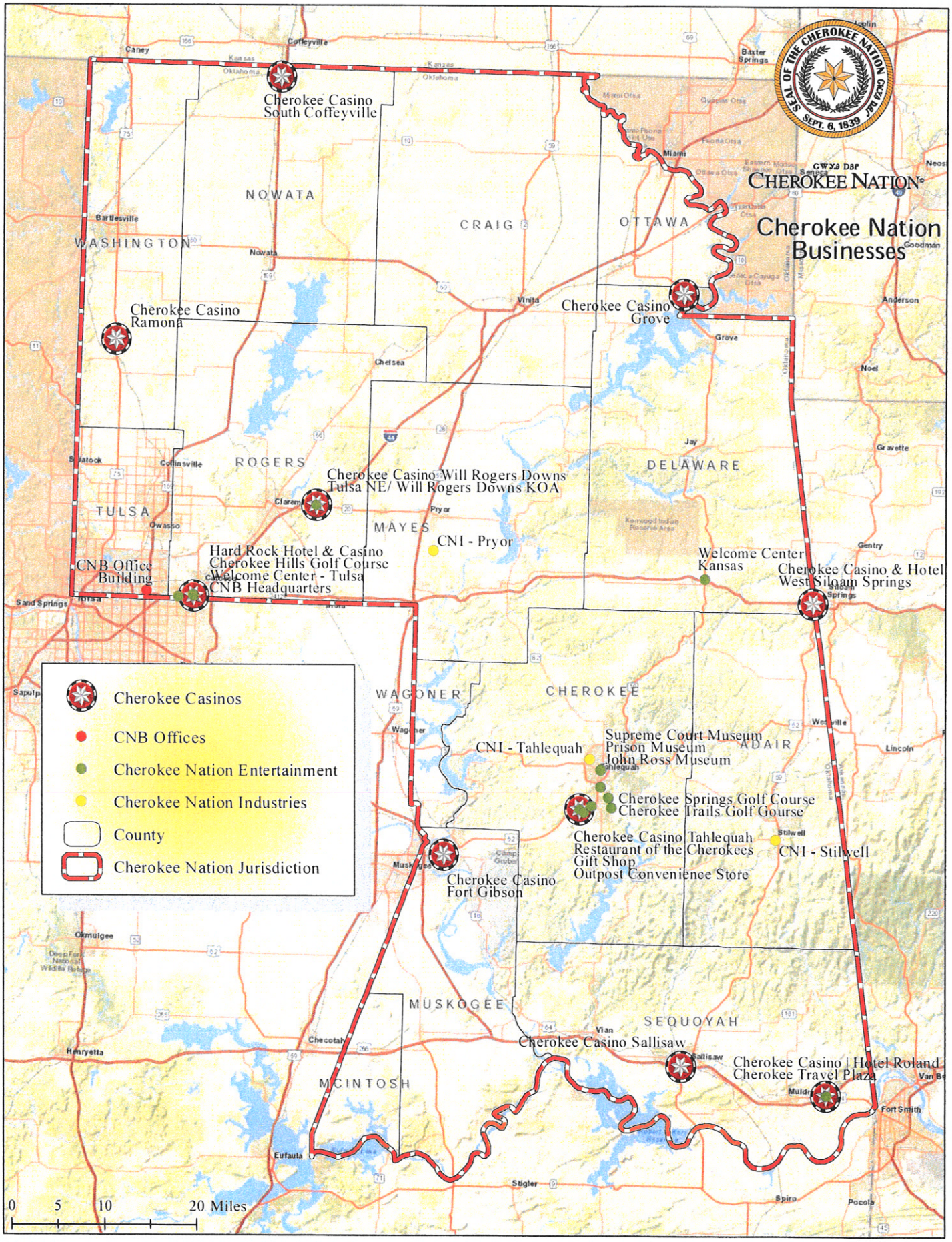
Cherokee Nation
Tribal Transportation Program
Construction Projects



Legend

- In Progress Routes
- Clinics Hospitals
- Community Buildings
- Services Sites
- Tribal Suboffices
- Tag Offices
- Casinos
- Historical Settlements

0 10 20 40 Miles


Cherokee Nation Businesses
Cherokee Casino South Coffeyville
Cherokee Casino Ramona
Cherokee Casino Grove
Cherokee Casino Will Rogers Downs
Tulsa NE/ Will Rogers Downs KOA
CNI - Pryor
Hard Rock Hotel & Casino
Cherokee Hills Golf Course
Welcome Center - Tulsa
CNB Headquarters
CNB Office Building
Welcome Center Kansas
Cherokee Casino & Hotel West Siloam Springs
CNI - Tahlequah
Supreme Court Museum
Prison Museum
John Ross Museum
Cherokee Springs Golf Course
Cherokee Trails Golf Course
Cherokee Casino Tahlequah
Restaurant of the Cherokees
Gift Shop
Outpost Convenience Store
CNI - Stilwell
Cherokee Casino Fort Gibson
Cherokee Casino Sallisaw
Cherokee Casino | Hotel Roland
Cherokee Travel Plaza
NOWATA
CRAIG
OTTAWA
WASHINGTON
ROGERS
MAYES
DELAWARE
TULSA
WAGONER
CHEROKEE
ADAIR
MUSKOGEE
SEQUOYAH
MCINTOSH
Cherokee Casinos
CNB Offices
Cherokee Nation Entertainment
Cherokee Nation Industries
County
Cherokee Nation Jurisdiction
0 5 10 20 Miles

ATTACHMENT NO. 3

Indian Country Criminal Jurisdictional Chart

INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a), (b) & (c) -
(a) formal [recognized treaty boundaries] & informal [tribal trust lands] reservations (including rights-of-way/roads),
(b) dependent Indian communities, & (c) Indian allotments held in trust or restricted status (including rights-of-way/roads).
(where no congressional grant of jurisdiction to state government over the Indian country involved exists)

INDIAN OFFENDER:

1. VICTIM CRIMES: FOR OFFENSES AGAINST A VICTIM'S PERSON OR PROPERTY

WHO IS THE VICTIM?	*WHAT WAS THE CRIME?*	*JURISDICTION*
INDIAN (enrolled or recognized as Indian by a government entity and possessing some degree of Indian blood)	**Major Crimes Act crimes:** Murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; incest; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; felony child abuse or neglect; arson; burglary; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153 & state code where underlined)	**FEDERAL**
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	**TRIBAL** *
NON-INDIAN	**Major Crimes Act crimes:** Murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; incest; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; felony child abuse or neglect; arson; burglary; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153 & state code where underlined)	**FEDERAL**
	Other federal crimes (unless tribe has punished Indian defendant), including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (Authority: General Crimes Act - 18 U.S.C. §§ 1152 and 13)	**FEDERAL**
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	**TRIBAL** *

2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME

(e.g., traffic offenses, disorderly conduct, prostitution, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	**FEDERAL**
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	**TRIBAL** *

* limited to 1 year sentence & $5,000. fine, unless tribe approved under Tribal Law & Order Act for 3 yr. felonies.

3. GENERAL FEDERAL CRIMES: OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY (Affecting Interstate Commerce or a Federal Interest) — FEDERAL

(Federal prosecution based on federal interest, not based on territorial jurisdiction over location of crime) (e.g., drug offenses, firearms offenses, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

NON-INDIAN OFFENDER:

1. VICTIM CRIMES: AN OFFENSE AGAINST A VICTIM'S PERSON OR PROPERTY

WHO IS THE VICTIM?	*WHAT WAS THE CRIME?*	*JURISDICTION*
INDIAN (enrolled or recognized as Indian by a government entity and possessing some degree of Indian blood)	**Indian Country Crimes Act Crimes:** All federal crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: General Crimes Act - 18 U.S.C. § 1152)	**FEDERAL**
	All remaining crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: General Crimes Act - 18 U.S.C. §§ 1152 & 13)	**FEDERAL**
	Domestic Violence, Dating Violence, or Violation of Protection Order offenses [when defendant: 1) resides in Indian country, 2) works in Indian country, or 3) is a spouse or partner of a member of a participating tribe or is an Indian residing in Indian country of a participating tribe] (Authority: tribal code and 25 U.S.C. § 3101)	**TRIBAL** * **
NON-INDIAN	**All crimes contained in state code.** (Authority: *United States v. McBratney, 104 U.S. 621 (1881)*)	**STATE**

* limited to 1 year sentence & $5,000. fine, unless tribe approved under Tribal Law & Order Act for 3 yr. felonies.

** effective after 3/7/15 if the tribe provides U.S. Constitutional protections in tribal court.

2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME — STATE ONLY

(e.g., traffic offenses, disorderly conduct, prostitution, etc.)

3. GENERAL FEDERAL CRIMES: OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY (Affecting Interstate Commerce or a Federal Interest) — FEDERAL

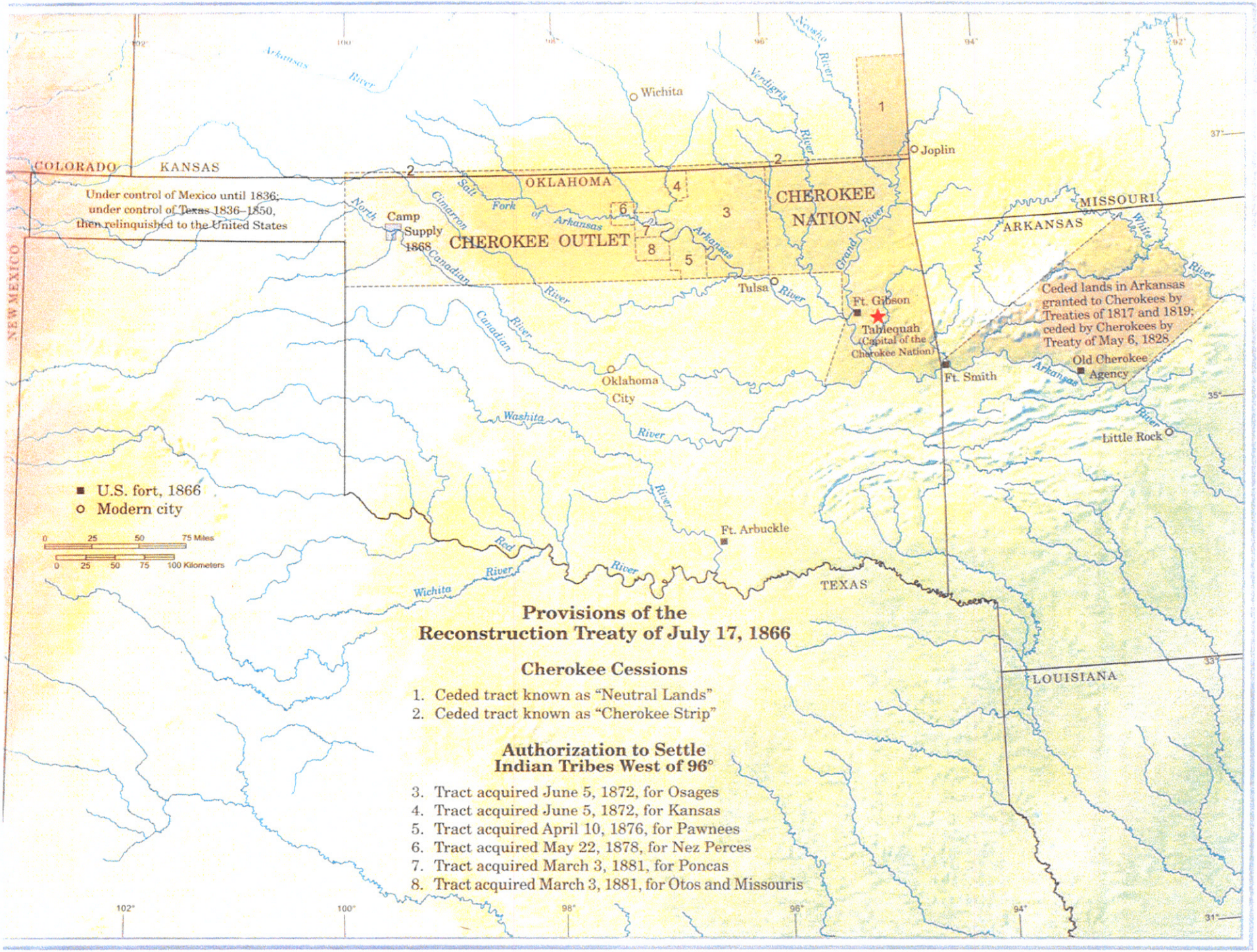
(Federal prosecution based on federal interest, not based on territorial jurisdiction over location of crime) (e.g., drug offenses, firearms offenses, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

created by Arvo Q. Mikkanen, Assistant U.S. Attorney & Tribal Liaison,
U.S. Attorney's Office, Western District of Oklahoma

August 2017 Version

ATTACHMENT NO. 4

Cherokee Cessions Map, Goins and Goble, "Historical Atlas of Oklahoma"



Provisions of the Reconstruction Treaty of July 17, 1866

Cherokee Cessions

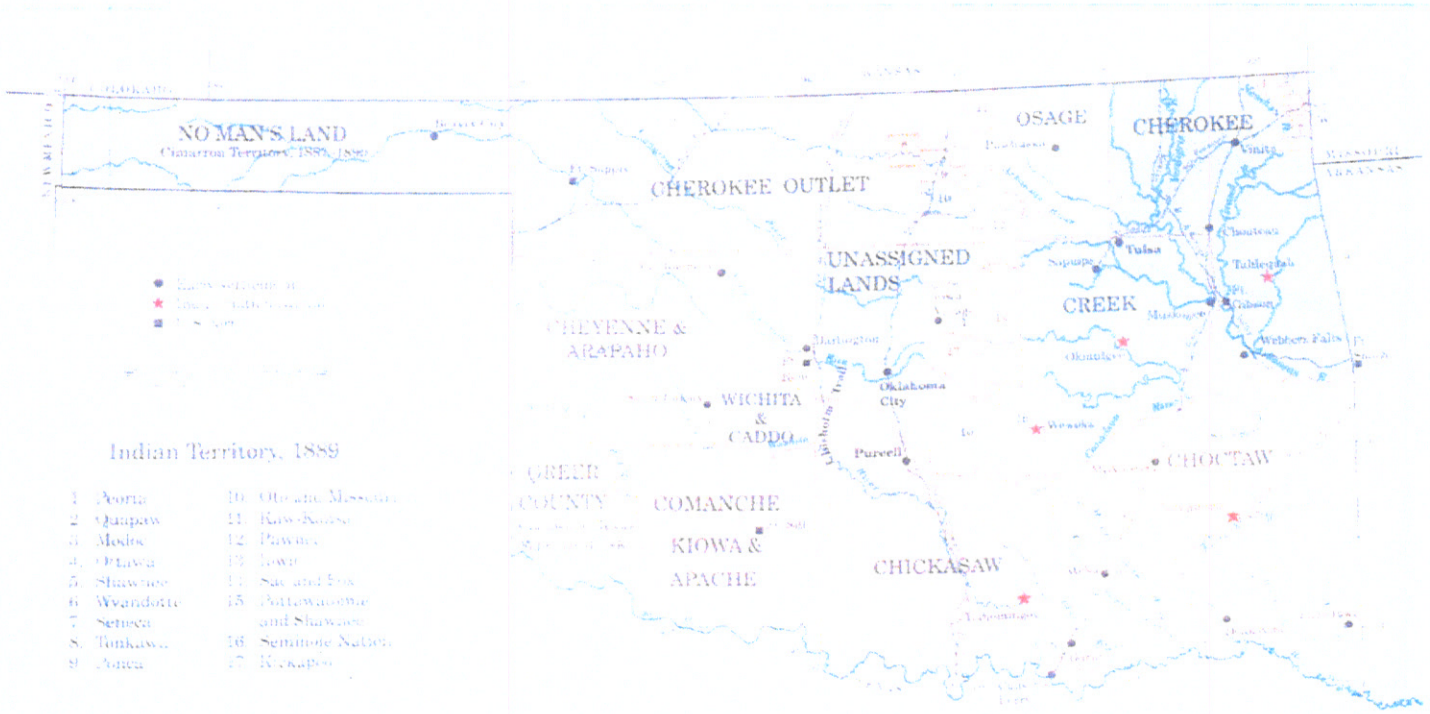
1. Ceded tract known as "Neutral Lands"
2. Ceded tract known as "Cherokee Strip"

Authorization to Settle Indian Tribes West of 96°

3. Tract acquired June 5, 1872, for Osages
4. Tract acquired June 5, 1872, for Kansas
5. Tract acquired April 10, 1876, for Pawnees
6. Tract acquired May 22, 1878, for Nez Perces
7. Tract acquired March 3, 1881, for Poncas
8. Tract acquired March 3, 1881, for Otos and Missouris

ATTACHMENT NO. 5

Map of Indian Territory



Charles Robert Goins and Danney Goble,
Historical Atlas of Oklahoma (4th Ed., OU Press)

fied their demands. While stating the corporations, they agreed that the tribes should be disbanded.

For most tribes in the United States, the Dawes General Allotment Act of 1887 made such sentiments policy. The Dawes Act called for breaking up tribal social and political organizations, distributing reservation lands to individual members of the tribes, and selling the rest of the

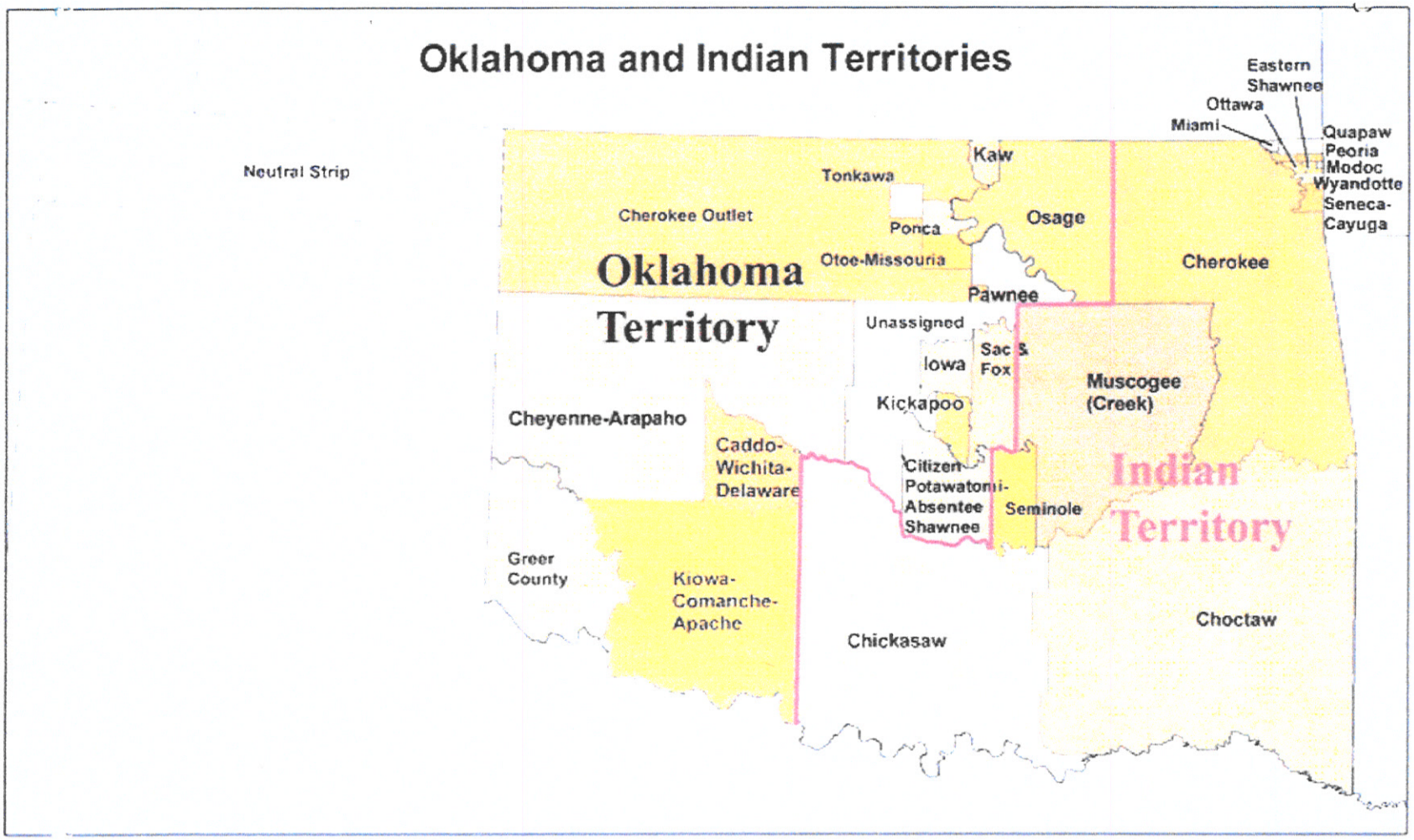
officially ex- Indian Territory and applied to the rest. Legislation in 1893 and 1897 extended the provisions of the Dawes Act to the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles.

Events began to move very rapidly after 1887. The U.S. government opened the Unassigned Lands for settlement in 1889. The next year, fed-

eral officials organized that region, plus "No Man's Land" (the Panhandle), as Oklahoma Territory. Then, in the early 1890s, the United States added to Oklahoma Territory the newly allotted reservations. Oklahoma Territory joined the corporations and white residents of Indian Territory in the call to break up the nations, disband their governments, allot their lands, and unite the two territories into a new state of Oklahoma.

ATTACHMENT NO. 6

Map of Oklahoma and Indian Territories


Oklahoma and Indian Territories
Neutral Strip
Cherokee Outlet
Tonkawa
Kaw
Ponca
Osage
Otoe-Missouria
Oklahoma Territory
Pawnee
Cherokee
Eastern Shawnee
Ottawa
Miami
Quapaw
Peoria
Modoc
Wyandotte
Seneca-Cayuga
Unassigned
Iowa
Sac & Fox
Kickapoo
Muscogee (Creek)
Cheyenne-Arapaho
Caddo-Wichita-Delaware
Citizen Potawatomi-Absentee Shawnee
Seminole
Indian Territory
Greer County
Kiowa-Comanche-Apache
Chickasaw
Choctaw

ATTACHMENT NO. 7

Ann. Rept. of the Comm. Five Civ. Tribes of 1894, 1895, and 1896 (1897)(Excerpts)

U.S. COMMISSION

TO THE

FIVE CIVILIZED TRIBES.

ANNUAL REPORTS OF 1894, 1895 AND 1896.

AND

CORRESPONDENCE WITH THE REPRESENTATIVES OF THE FIVE CIVILIZED TRIBES.

FROM

MARCH 3, 1893, TO JANUARY 1, 1897.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 10, 1894. *Resolved*, That the Report of the Commission appointed to negotiate with the Five Civilized Tribes of Indians, known as the Dawes Commission, which report is attached to the Annual Report of the Secretary of the Interior as Appendix B, be printed as a Senate document.

Attest: WM. R. COX, Secretary.

B.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

WASHINGTON, D. C., November 20, 1894.

SIR: The Commission to the Five Civilized Tribes, appointed under the sixteenth section of an act of Congress making appropriations for the Indian service approved March 3, 1893, report what progress has thus far been made by it.

Immediately upon receiving their instructions they entered upon their work and made their headquarters, on reaching the Territory, at Muskogee, in the Creek Nation, removing it in March to South McAlester, in the Choctaw Nation, where it still remains.

Upon arriving in the Territory the commission immediately sent to the chief or governor of each tribe an official notice of their appointment and of their authority and the objects of their mission in accord with their instructions, and requested an early conference with him, or those who might be authorized to confer with this commission, at such time and place as might be designated by him. Such conferences were held separately with the chief and duly authorized commission of each of the tribes. At each of these conferences the commission explained with great pains the wishes of the Government and their authority to enter into negotiations with them for an allotment of their lands and exchange of their tribal for a Territorial government. They were listened to attentively, and were asked many pertinent questions, which were fully answered so far as their authority justified. No definite action was taken at either of these conferences, though the indications were adverse to a favorable result. They all asked for time to consider, and promised a renewal of the conferences.

Afterwards, at the suggestion of one of the chiefs, an international council, according to their custom on important questions, consisting of delegates appointed for that purpose from each of the tribes, except the Seminoles, who took no part in it, was held to confer upon the purposes of this commission. The commission attended this conference, and on request presented the subject to them more elaborately and fully than had been done before. The conference continued three days, and at first the views of the commission were treated with seriousness, and the impression seemed favorable in the body that a change in their present condition was necessary and was imminent, and that it was wise for them to entertain our propositions. During the deliberations, however, telegraphic dispatches from Washington reached them indicating that the sentiment of the Government, and especially of Congress, from whose action they had most to apprehend, was strongly in favor of what they maintained as "the treaty situation," and that no steps would be taken looking to a change unless they desired it. This put an effectual check upon the disposition to negotiate, and the result at this international conference was the adoption of resolutions strongly condemning any change and advising the several tribes to resist it. Each of the

ernment, with such other facts as may seem pertinent and will enable the government to take such further action as it may deem wise.

Information, alike accessible to all, must convince you of the earnest desire of the United States to effect a change in the condition of the Five Civilized Tribes, and of the many advantages which would accrue to your people if they shall effect such change by agreement.

We have the honor to be respectfully yours,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. JOHN F. BROWN,
Principal Chief, Seminole Nation, Wewoka, Ind. T.

To the above propositions we have not, as yet, received any reply.

SOME EXPLANATIONS.

Early interviews with us by commissioners appointed by the several tribes, and with citizens, satisfied us that the Indians would not, under any circumstances, agree to cede any portion of their lands to the Government, but would insist that if any agreements were made for allotment of their lands it should all be divided equally among them. Among other reasons assigned, it was stated that a cession to the United States would likely make operative and effective the various railroad grants; that they preferred each to sell his share of the lands and receive the money for it, as if ever their lands were converted into money it would go into the hands of the officers of the tribes, who would swindle them out of a large portion of it. Finding this unanimity among the people against the cession of any of their lands to the United States, we abandoned all idea of purchasing any of it and determined to offer them an equal division of all their lands. Hence the first proposition made to each tribe.

An objection very generally urged to allotment of lands was that they would be in possession, when allotted, of non citizens, whom they could not dispossess without interminable lawsuits, and as the Indians, especially the full-bloods, have a settled aversion to go into our courts, we, to remove this difficulty, submitted the second proposition to each tribe.

There are towns in the Territory ranging in population from a few people to 5,000 inhabitants. Nearly all of them are non-citizens. These towns have not been surveyed or platted, and streets exist only by agreement and arrangement among the people who constructed them, and are often bent and irregular. Many large and valuable stone, brick and wooden buildings have been erected by non-citizens of these towns, and the lots on which they stand are worth many thousands of dollars. These town sites are not susceptible of division among the Indians, and the only practicable method of adjusting the equities between the tribes who own the sites and those who have constructed the buildings is to appraise the lots without the improvements and the improvements without the lots, and allow the owners of the improvements to purchase the lots at the appraised value, or to sell lot and improvements and divide the money according to the appraisement. Hence, the third proposition to all the tribes, town sites were reserved for disposition under special agreements.

Complaints are made by the Cherokees that many freedmen are on the rolls made under the direction of the Government, and known as the "Wallace Roll," who are not entitled to be there, and many freedmen complain that they have been improperly omitted. The chief of the Cherokee tribe suggested that they might be willing to submit all these disputes to this commission for decision, but it was believed that if an intelligent Cherokee by blood was one of such board, it would give the Cherokee people a knowledge of the good faith and correctness of the decision, and secure their confidence in the conclusions arrived at. Hence, in the eighth proposition to the Cherokees, we propose such board be composed of two members of this commission and one Cherokee by blood.

The Cherokee tribe is clamorous for the execution of the agreement in regard to intruders contained in the contract heretofore made with that tribe in purchasing the "Outlet," and we have been met by the declaration repeatedly made by those in power, that when that agreement was carried out it would be time to

in the subject they have in charge induces me to write you a few words concerning their work.

As I said to the Commissioners when they were first appointed, I am especially desirous that there shall be no reason, in all time to come, to charge the Commission with any unfair dealing with the Indians, and that, whatever the result of their efforts may be, the Indians will not be led into any action which they do not thoroughly understand or which is not clearly for their benefit.

At the same time I still believe, as I always have believed, that the best interests of the Indians will be found in American citizenship, with all the rights and privileges which belong to that condition. The approach to this relation should be carefully made, and at every step the good and welfare of the Indian should constantly be kept in view, so that when the end is reached, citizenship may be to them a real advantage instead of an empty name.

I hope the Commission will inspire such confidence in those with whom they are to deal that they will be listened to, and that the Indians will see the wisdom and advantage in moving in the direction I have indicated.

If they are unwilling to go immediately so far as we think desirable, whatever steps are taken should be such as point out the way, and the result of which will encourage those people in further progress.

A slow movement of that kind, fully understood and approved by the Indians, is infinitely better than swifter results gained by broken pledges and false promises.

Yours very truly,

(Signed) GROVER CLEVELAND.

Not receiving any replies to these letters the Commission addressed to each of the chiefs of these nations a letter bearing date May 18th, 1895, of which the following is a copy:

MUSCOGEE, INDIAN TERRITORY, May 18, 1895.

To the PRINCIPAL CHIEF OF THE NATION.

SIR: As representing the Commission to the Five Tribes, I took the liberty a few days since to direct to you a copy of a letter from the President of the United States and the Honorable Secretary of the Interior upon the subject of the mission of the Commission to this Territory.

The Commission has also been directed by the President to communicate to you and the chiefs of the other four nations the fact that they have returned to the Territory for the purpose of renewing their negotiations with the authorities of the several nations in reference to the subject-matter committed to them.

They desire to open negotiations with you in accordance with the spirit of the letter of the President heretofore sent to you, and therefore they would be gratified to know at what time and where it will be most agreeable to you to meet and confer with them upon that subject, either yourself, personally, or others appointed by you for that purpose.

It is not necessary to enlarge at this time upon the purposes and object which the Commission has in charge. Those have all been heretofore presented to you. It is sufficient at this time to assure you that the Commission have not come here to interfere at all with the administration of public affairs in these nations, or to undertake to deprive any of your people of their just rights. On the other hand, it is their purpose and desire, and the only authority they have, to confer with you upon lines that will result in promoting the highest good of your people and securing to each and all of them their just rights under the treaty obligations which exist between the United States and your nation.

If you and your authorities are willing to confer with the Commission upon these questions and along these lines please indicate to us here in Muscogee, at an early date, when and where and in what manner it would be most agreeable to you to hold such conference.

I have the honor, with much consideration, to be,

Very truly, yours,

(Signed) HENRY L. DAWES, Chairman.

ATTACHMENT NO. 8

Sixth Ann. Rept. of the Comm. Five Civ. Tribes (1899) (Excerpts)

SIXTH ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES

TO THE

SECRETARY OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1899.

ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES.

LEGISLATION AND AGREEMENTS.

Since the report made by the Commission, October 3, 1898, no legislation affecting its work other than that making appropriations and providing for appeals in citizenship cases from the United States courts in Indian Territory to the Supreme Court of the United States, has been enacted by Congress.

The act of Congress June 28, 1898, ratified, in an amended form, the agreement made by the Commission to the Five Civilized Tribes with the Choctaws and Chickasaws on April 23, 1897, and with the Creeks September 27, 1897, to become effective if ratified by a majority of the voters of those tribes at an election held prior to December 1, 1898. Pursuant thereto a special election was called by the executives of the Choctaw and Chickasaw nations to be held August 24, and the votes cast were counted in the presence of the Commission to the Five Civilized Tribes at Atoka, August 30, resulting in the ratification of the agreement by a majority of seven hundred ninety-eight votes. Proclamation thereof was duly made and the "Atoka agreement," so called, is therefore now in full force and effect in the Choctaw and Chickasaw nations. A copy thereof is hereto appended. (Appendix No. 1, p. 31.)

Chief Isparhecher of the Creeks was slow to call an election, and it was not until November 1, 1898, that the agreement with that tribe (Appendix No. 1, p. 31) was submitted in its amended form for ratification. While no active interest was manifested, the full bloods and many of the freedmen were opposed to the agreement and it failed of ratification by about one hundred and fifty votes. As a result the act of June 28, 1898 (Appendix No. 1, p. 31) known as the Curtis Act, became effective in that nation.

The Cherokees now began to realize the sensations of "a man without a country," and again created a commission at a general session of the national council in November, 1898, clothed with authority to negotiate an agreement with the United States. The earlier efforts of this commission to conclude an agreement with that tribe were futile, owing to the disinclination of the Cherokee commissioners to accede to such propositions as the Government had to offer. The commission now ere-

ated was limited in its power to negotiate to a period of thirty days. The United States Commission had advertised appointments in Mississippi extending from December 19, 1898, to January 7, 1899, for the purpose of identifying the Mississippi Choctaws, a duty imposed upon the commission by the act of June 28, 1898, but on receiving a communication from the chairman of the Cherokee Commission requesting a conference it was deemed desirable to postpone the appointments in Mississippi and meet the Cherokee Commission, which it did on December 19, 1898, continuing negotiations until January 14, 1899, producing the agreement which is appended hereto. (Appendix No. 2, p. 49.)

In the meantime the Creeks had, by act of council, created another commission with authority to negotiate an agreement with the United States, and a conference was accorded it immediately upon conclusion of the negotiations with the Cherokees, continuing to February 1, 1899, when an agreement was concluded. (Appendix No. 3, p. 50.) The agreement with the Cherokees was ratified by the tribe at a special election held January 31, 1899, by a majority of two thousand one hundred six votes, and that with the Creeks on February 18, 1899, by a majority of four hundred eighty five.

While these agreements do not in all respects embody those features which the commission desired, they were the best obtainable, and the result of most serious, patient, and earnest consideration, covering many days of arduous labor. The commissions were many times on the point of suspending negotiations, there having arisen propositions upon the part of one of the commissions which the other was unwilling to accept. Particularly were the tribal commissioners determined to fix a maximum and minimum value for the appraisement of lands, while this commission was equally vigorous in its views that the lands should be appraised at their actual value, excluding improvements, without limitations in order that an equal division might be made. The propositions finally agreed upon were the result of a compromise, without which no agreement could have been reached.

The desirability, if not the absolute necessity, of securing a uniform land tenure among the Five Tribes leads the commission to recommend that these agreements, with such modifications and amendments as may be deemed wise and proper, be ratified by Congress.

ENROLLMENT OF CITIZENS.

A very general impression exists among those unacquainted with conditions in Indian Territory that the work of making rolls of "Indians" is a comparatively simple matter, susceptible of accomplishment in a short space of time. Were Indian Territory merely a reservation peopled only by full blood Indians, that impression would have foundation in fact, but Indian blood, unfortunately, is not the sole qualification for citizenship in Indian Territory, and, indeed, as will be seen later, if other requisites are not lacking, it is not even an element. In other words, certain arbitrary laws and decisions govern the commission in determining who are and who are not eligible to enrollment. For example, were a full blood Cherokee Indian from North Carolina now to present himself for enrollment to the commission, his application would be rejected; whereas, were a white man to now contract marriage with a Choctaw or Chickasaw, conformable to the laws of those nations, he would be entitled to enrollment. When completed the citizenship rolls of the Five Tribes will be found to contain the names of full-blood Indians, negroes, and white men, with every intervening degree of blood.

MISCELLANEOUS.

34. Neither the town lots nor the allotment of land of any citizen of the Muscogee or Creek Nation shall be subjected to any debt contracted by him prior to the date of his patent.

35. All payments herein provided for shall be made, under the direction of the Secretary of the Interior, into the United States Treasury, and shall be for the benefit of the citizens of the Muscogee or Creek Nation. All payments hereafter to be made to the members of the said nation shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to the Secretary.

36. The United States agrees to maintain strict laws in the territory of said nation against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.

37. All citizens of said nation, when the tribal government shall cease, shall become possessed of all the rights and privileges of citizens of the United States.

38. This agreement shall in no wise affect the provisions of existing treaties between the Muscogee or Creek Nation and the United States, except in so far as it is inconsistent therewith.

In witness whereof, the said Commissioners do hereunto affix their names at Muscogee, Indian Territory, this the twenty-seventh day of September, eighteen hundred and ninety-seven.

HENRY L. DAWES,
Chairman.
TAMS BIXBY,
Acting Chairman.
FRANK C. ARMSTRONG,
ARCHIBALD S. MCKENNON,
A. P. MONTGOMERY,
Commission to the Five Civilized Tribes.
ALLISON L. AYLESWORTH,
Acting Secretary.
PLEASANT PORTER,
Chairman.
JOSEPH MINGO,
DAVID M. HODGE,
GEORGE A. ALEXANDER,
ROLAND (his X mark) BROWN,
WILLIAM A. SAPULPA,
CONCHARTY (his X mark) MICCO,
Muscogee or Creek Commission.
J. H. LYNCH,
Secretary.

Approved, June 28, 1898.

APPENDIX NO. 2.

CHEROKEE AGREEMENT, JANUARY 14, 1890.

This agreement by and between the Government of the United States, entered into on its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Cherokee tribe of Indians in Indian Territory, entered into by its commission, Robert B. Ross, Clem V. Rogers, Percy Wyly, Henry C. Lowrey, John E. Gunter, George Sanders, and Wolfe Coon, duly appointed and authorized thereunto.

Witnesseth, that in consideration of the mutual agreements and undertakings herein contained, it is agreed as follows:

GENERAL ALLOTMENT OF LAND.

1. All lands in Indian Territory belonging to the Cherokee tribe of Indians, except such as may be reserved for railroads as provided by treaty, and for townsites, cemeteries, churches, schools, and other public institutions and public buildings, shall be divided among the members of said tribe so as to give to each citizen, as hereinafter provided, an equal share, in value, of all the lands of the tribe.

use as a court-house and a Federal jail, the value of said buildings and grounds to be immediately ascertained by a committee of two, one to be appointed by the Secretary of the Interior and one by the principal chief of the Cherokee Nation; and in case of a disagreement as to the value thereof, then the two members so appointed shall select a third disinterested person, and the decision of a majority of the members of said committee shall be final, and an appropriation of the amount of said appraisements shall be made within two years from the date of the ratification of this agreement: provided, however, that the Cherokee Nation shall be permitted to retain possession of the capitol building and inclosed grounds until final allotment is made, but immediate possession of the national jail shall be given.

69. It is further stipulated and agreed that all of the other public buildings of the Cherokee Nation not otherwise specially provided for shall be disposed of as may hereafter be provided by the national council of the said nation.

CHEROKEE ADVOCATE.

70. That the national newspaper, the Cherokee Advocate, printed in both the Cherokee and English languages, shall continue to be published the present year, under the appropriation already made by the Cherokee Nation, and after which time the same shall be leased, by the principal chief of the Cherokee Nation for a period of two years at a time, to the lowest responsible citizen bidder, at an annual expense to the Cherokee Nation not to exceed one thousand dollars, to be paid out of the annuities belonging to the general fund of the Cherokee Nation: provided that said newspaper plant, including everything connected therewith, together with the building and grounds reserved for said newspaper shall be sold, when final allotment is completed under this agreement, under the direction of the Secretary of the Interior, and the proceeds placed to the credit of the general fund of the Cherokee Nation.

COURTS AND JURISDICTION.

71. The Cherokee Nation consents to the extinguishment of Cherokee courts, as provided in section 28 of the act of Congress of June 28th, 1898, and that the United States courts in Indian Territory have full criminal and civil jurisdiction over all Cherokee citizens and their property, as is now or may hereafter be provided by law.

72. The places of holding courts shall be, in addition to the same as are now designated by law, the town of Claremore.

73. United States commissioners shall be permanently established at Vinita, Claremore, Tahlequah, Sallisaw, Fairland, and Nowata, in the Cherokee Nation, and the United States judge of the northern district of Indian Territory shall make such appointment of commissioners as may be necessary for this purpose.

74. All Cherokee citizens who may be charged with any criminal offense shall be tried within the bounds of the Cherokee Nation and in the court nearest to which the offense is alleged to have been committed, unless the defendant elects to take a change of venue from such court to some other court beyond the limits of the Cherokee Nation. All civil suits brought against Cherokee citizens shall be tried within the bounds of the Cherokee Nation and in the court nearest the defendant's residence.

75. All Cherokee citizens while in confinement awaiting trial, and those serving a jail sentence, shall be held in confinement within the bounds of the Cherokee Nation.

76. All instruments of writing required by law to be recorded shall be filed with the clerk or deputy clerk at the court in Cherokee Nation nearest the property to which such instrument relates, and it shall be the duty of such officer to file or record the same.

77. All Cherokee citizens, possessing the qualifications of grand and petit jurors, as provided in chapter 90 of Mansfield's Digest of the Statutes of Arkansas, shall be competent to sit on juries in the United States courts in Indian Territory.

78. Immediately upon the ratification of this agreement, the principal chief of the Cherokee Nation shall have authority and he is directed to grant absolute and unconditional pardon to all persons who have heretofore been convicted in the courts of the Cherokee Nation of a violation of Cherokee laws.

79. In view of the fact that all courts and laws of the Cherokees have been abolished and they have herein generously assented thereto and placed themselves and their property under the care and protection of the courts and laws of the United States, and since the United States courts within their country are wholly inadequate for the transaction of business and the protection of the people, we urge upon Congress the necessity of so districting Indian Territory, and especially that part embracing the Cherokee Nation, and of providing courts therein, with other facilities, as may be sufficient to fully protect the persons and property of the Cherokee people and all other persons living among them and within their territory,

ATTACHMENT NO. 9

Seventh Ann. Rept. of the Comm. Five Civ. Tribes (1900) (Excerpts)

56TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 5.

ANNUAL REPORTS

OF THE

DEPARTMENT OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1900.

INDIAN AFFAIRS.

COMMISSION TO THE FIVE CIVILIZED TRIBES.
INDIAN INSPECTOR FOR INDIAN TERRITORY.
INDIAN CONTRACTS.
BOARD OF INDIAN COMMISSIONERS.

WASHINGTON: DI
GOVERNMENT PRINTING OFFICE.
1900.

SEVENTH ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES

TO THE

SECRETARY OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1909.

PREFATORY.

The Commission to the Five Civilized Tribes was created by act of Congress March 3, 1893, with instructions to enter into negotiations with the several nations of Indians in Indian Territory for the allotment of land in severalty or to procure the cession to the United States of the lands belonging to the Five Tribes at such price and terms as might be agreed upon, it being the express determination of Congress to bring about such changes as would enable the ultimate creation of a territory of the United States, with the view to the admission of the same as a State of the Union. The ever-changing kaleidoscope of human events has wrought during the past seven years in the personnel of the commission, as well as in the territory with which it had to deal, a full quota of changes, involving, aside from the present membership, the appointment of Messrs. Meredith H. Kidd, of Indiana; Thomas B. Cabaniss, of Georgia; Alexander B. Montgomery, of Kentucky; Frank C. Armstrong, of Washington, D. C.; and A. S. McKennon, of Arkansas, whose retirement has been brought about by the vicissitudes of political life, change in legislation, or the demands of private interests.

The results which have thus far been attained, and the means adopted for their attainment, are fully set forth in this and preceding reports. Had it been possible to secure from the Five Tribes a cession to the United States of the entire territory at a given price, the tribes to receive its equivalent in value, preferably a stipulated amount of the land thus ceded, equalizing values with cash, the duties of the commission would have been immeasurably simplified, and the Government would have been saved incalculable expense. One has but to contemplate the mineral resources, developed and undeveloped, and existing legislation with reference thereto, to realize the advantages which awaited such a course. When an understanding is had, however, of the great difficulties which have been experienced in inducing the tribes to accept allotment in severalty—a direct division of their estate with consequent individual ownership of their homes—it will be seen how impossible it would have been to have adopted a more radical scheme of tribal extinguishment, no matter how simple its evolutions. Nevertheless the plan adopted by the commission for the administration of this vast estate is not without its advantages; and when its labors, and those of the various officers who have been detailed or appointed to aid in closing the history of these nations shall have been completed, there will have been dissipated one of the most vexatious internal questions with which Congress in recent years has had to deal.

Instead of an arid western plain, occupied by the savage of tradition, as many suppose, the commission found a territory not greatly smaller than the State of Maine, rich in mineral and agricultural

resources and in valuable timber; a country which has been occupied and cultivated for over half a century, whose fertile valleys yielded bountiful harvests of southern products, and on whose prairies grazed a quarter of a million cattle yearly; where cities had sprung up; through which railroads had been constructed; and where five distinct modern governments existed, independent of the sovereignty of the United States.

For diversity, the social and political conditions found here were unexampled. Thousands of white children without the meanest of educational advantages, yet no one of the nations without an institution of learning that would have been a credit to a more advanced civilization; men of Indian blood whose genius would have adorned the halls of Congress or challenged admiration in the *fin de siecle* business world—high minded, able, and politic; and within the same tribes, in no small numbers, those who, when in normal condition, had scarcely sufficient intelligence to realize or express the ordinary wants of man. Men and women, to depict whose characters were to introduce the biographies of patron saints, yet among whose neighbors might be counted some of the most notorious criminals that have infested the western borders. Indeed, the phases of life found here were as variegated as the hues of autumn, and the degrees of intelligence and civilization as widely separate as East from West. Nature, were she to have searched the country from end to end, could have found no more appropriate canvas upon which to display her moods.

The commission's duties have at times been found extremely arduous, yet never uninteresting. It has earnestly endeavored in the course of its labors not to lose an opportunity to secure and retain the confidence, not only of those who have received the benefits of education and society, but of the ignorant full-blood and negro as well, and to impress upon their minds the benefits of civilization and education and the beneficent advantages of that Government, which, more than any other in the world, affords liberty, protection, peace, and prosperity to its subjects.

and "Freedmen," entitled to tribal property in different proportions and on different conditions. There is also in the Chickasaw Nation, in addition to the Chickasaw proper, a disputed claim of Freedmen, the validity of which is yet to be determined by a suit in the Court of Claims. The equal value of all allotment in these nations is to be determined in the face of superincumbent leaseholds covering a large portion of the area, carrying the right to mine all coal and other minerals in the same.

The commission encounters every day other work preliminary to final allotment, such as questions of compensation for improvements found on land taken by allottees, claims of a right of occupancy by noncitizens in the way of allottees, and of priority of right to the same allotment. But what has already been called to notice will suffice to bring this work into striking contrast with that of allotting to Indians on reservations, where all that is required is the allotment of a specific number of acres, without regard to comparative value, in such locality as seems best to the allotting commission, to each Indian found on the agency rolls, and then a disposal of what is left of the reservation.

This work, necessarily preceding final allotment, has largely engaged the attention of the commission during the past year, and with a better feeling among the tribes toward the work, bringing to its aid cooperation and valuable assistance, encouraging progress has been made.

LEGISLATION AND AGREEMENTS.

On the third of January, 1900, three members of the commission, Messrs. Dawes, Bixby, and McKennon, at the request of the Secretary, met, at the Department in Washington, the chiefs of the Cherokee and Creek nations for consultation. This conference was held at the solicitation of those chiefs, who represented their respective tribes as very much dissatisfied with prospective allotment under the provisions of the Curtis Act. They were beginning to understand more clearly than ever the great disadvantage they would be subjected to, in contrast with the other tribes, unless their conditions could be brought by agreements more in harmony with those which had been thus secured by them. They were for these reasons very anxious to open new negotiations. The result of this conference was the appointment of a commission by each of these tribes with ample power, and negotiations were at once opened at Washington. These negotiations engaged the attention of these three commissioners at Washington till agreements were concluded with the Creeks on April 8 and with the Cherokees on April 9. These agreements were immediately reported to the Secretary and by him laid before Congress for its action. Final action has not been taken on them by Congress. There is every indication that they are highly satisfactory to the great body of the citizens of both tribes, and that they will be speedily ratified by them at an early day after final action by Congress. When this is done, final allotment will be made in all the tribes upon terms and by a tenure of title to which they have each assented.

The conditions and character of title will be substantially the same in them all, and will be the basis of an ultimate common government, the advantages of which will be common to all. This result will greatly

APPENDIXES.

APPENDIX NO. 1.

AGREEMENT BETWEEN THE UNITED STATES COMMISSION TO THE FIVE CIVILIZED TRIBES AND THE CHEROKEE TRIBE OF INDIANS, APRIL 9, 1900.

AGREEMENT.

This agreement, by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Cherokee tribe of Indians, in the Indian Territory, entered into in behalf of said tribe by Lucien B. Bell, Percy Wyly, Jesse Cochran, and Benjamin J. Hildebrand, duly appointed and authorized thereunto—

Witnesseth: That, in consideration of the mutual undertakings herein contained, it is agreed as follows:

DEFINITIONS.

1. The words "nation" and "tribe" shall each be deemed to refer to the Cherokee Nation or tribe of Indians in the Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of said tribe. The words "Dawes Commission" or "commission" shall be deemed to refer to the United States Commission to the Five Civilized Tribes. The word "secretary" shall be deemed to refer to the Secretary of the Interior.

GENERAL ALLOTMENT.

2. All lands belonging to the Cherokee tribe of Indians in the Indian Territory, except as herein reserved, shall be appraised at their true value, considering location and fertility of soil in each case, excluding improvements placed by allottee on lands selected by him: *Provided, however*, That in cases where a citizen holding lands in excess of his rightful share has failed to sell or remove the buildings and fences from said excessive holding on or before the 1st day of January, 1901, the value of the buildings and the fences shall be added to the value of the land by the appraisement committee.

3. The appraisement shall be made under the direction of the Dawes Commission by such number of committees of appraisement as may be deemed sufficient to expedite the work, one member of each committee to be appointed by said commission and one by the principal chief, and if the members of the committee fail to agree as to the value of any tract of land the value thereof shall be determined by said commission. The committees shall make report of their work to the commission as may be required. The commission shall prepare reports of the same in duplicate and transmit them to the Secretary of the Interior for his approval, and when approved one copy shall be furnished the principal chief and one copy returned to the commission for its use in making allotments, as herein provided.

4. All lands of said tribe, except as herein provided, shall be allotted by said commission among the citizens of the tribe entitled to share therein, so as to give each an equal share of the whole, in value, as near as may be, in manner following: There shall be allotted to each citizen 80 acres of land—boundaries to conform to Government surveys as nearly as may be—which may be selected by him, so as to include improvements which belong to him; 80 acres of land, valued at $6.50 per acre, shall constitute a standard allotment and be the measure for the equalization of values. A citizen selecting lands of less value than such standard may select other lands, not lawfully held or occupied by any other citizen, which at their appraised value will make his allotment equal in value to the standard so fixed.

been granted by the principal chief and approved by the Secretary of the Interior; in which case the Secretary is authorized to collect from the owners of such cattle a reasonable grazing tax for the benefit of the tribe. Section 2117, Revised Statutes of the United States, shall not apply to Cherokee lands, and no penalties or tax already accrued under said section shall be collectible.

78. All deferred payments under the provisions of this agreement shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if default in any annual payment is made, the lien for the payment of all purchase money remaining unpaid may thereupon be enforced in the United States court in the same manner as vendor's liens are enforced, suit therefor to be brought in the name of the principal chief for the benefit of the tribe, or, on his failure for any cause, in the name of some person appointed therefor by the court. All other liens herein created may be in like manner enforced after the expiration of two years from the date when the amount secured thereby becomes a charge upon the property.

79. The provisions of section 13 of the act of Congress approved June 28, 1898, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation except sections 14 and 27 of said last mentioned act, which shall continue in force as if this agreement had not been made.

80. Nothing contained in this agreement, however, shall be construed to revive or reestablish the Cherokee courts abolished by said last mentioned act of Congress, or the authority of any officer at any time in any manner connected with said courts.

81. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of ratification of this agreement which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law after the ratification of this agreement and prior to the dissolution of the tribal government, such payment to be made from any funds in the United States Treasury belonging to said tribe. And all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable, and he shall make all needful rules and regulations to carry this provision into effect.

82. All instruments of writing affecting lands in the Cherokee Nation which lie south of the Spavinaw Creek, east of Grand River and north of the Arkansas River, and all other instruments affecting property within said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Tahlequah; and all instruments of writing affecting lands in said nation lying north of the Arkansas River, north of Spavinaw Creek and west of Grand River, and all other instruments affecting property within said boundaries, required by law to be recorded, shall be recorded in the office of the clerk of the United States court at Vinita: Provided that it shall not include the record of original deeds to allotments and other parcels of land, and of town lots, herein otherwise provided for.

83. No act, ordinance, or resolution of the Cherokee National Council in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof—except appropriations for the necessary incidental and salaried expenses of the Cherokee government—shall be of any validity until approved by the President of the United States. When any such act, ordinance, or resolution shall be passed by said council and approved by the principal chief, a true and correct copy thereof, duly certified, shall be immediately transmitted to the President, who shall, within thirty days after its receipt, approve or disapprove the same. If disapproved, it shall be so endorsed and returned to the principal chief. If approved, the approval thereof shall be indorsed thereon, and shall be published in at least two newspapers having bona fide circulation in the Cherokee Nation.

84. All lands herein reserved from allotment and not sold as provided in this agreement, when they cease to be used for the purpose for which they have been set apart, shall, if that occur prior to the completion of the allotment of lands, or to the dissolution of the tribal government, revert to the tribe, and be sold under the direction of the Secretary of the Interior and the proceeds paid into the United States Treasury and become a part of the general fund of the tribe; but if said lands revert after allotment has been completed, and after dissolution of the tribal government, the same may in like manner be sold, and the proceeds thereof used by the United States for the support of an insane asylum herein provided for: Provided, that the lots of land upon which the churches and schoolhouses outside of towns are located, with improvements thereon, when they cease to be used for the purposes for which they are herein reserved, shall go to the allottees taking the forty-acre tracts from which said reservations were taken.

ATTACHMENT NO. 10

Ninth Ann. Rept. of the Comm. Five Civ. Tribes (1902) (Excerpts)

LETTER OF TRANSMITTAL.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T., July 20, 1902.

SIR: I have the honor to transmit herewith the annual report of the Commission to the Five Civilized Tribes for the fiscal year ended June 30, 1902.

Very respectfully,

TAMS BIXBY,
Acting Chairman.

The SECRETARY OF THE INTERIOR.

ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES.

LEGISLATION AND AGREEMENTS.

Accompanying this report as an appendix (No. 1, p. 53) will be found assembled those laws which have been enacted by Congress affecting the work of the Commission since the creation of this body in 1893. There will also be found such of the agreements negotiated from time to time as have been ratified by Congress and the tribes, together with those concluded in the city of Washington during the past fiscal year, and which at this time await the action of the several tribes.

The first agreement negotiated by the Commission to become effective was that concluded on April 23, 1897, with the Choctaws and Chickasaws, known as the Atoka agreement (30 Stat. L., 495). With respect thereto, the Commission in its eighth annual report used the following language:

> The Atoka agreement (act of June 28, 1898, 30 Stat. L., 495) is inadequate and ambiguous, and affairs within those tribes may not be satisfactorily administered under its provisions. It is essential that a date be fixed for closing the rolls, that some legislation touching upon the rights and benefits of Mississippi Choctaws and upon other matters of somewhat less importance be had if the work of the Government is to proceed satisfactorily.

To remedy these conditions a supplemental agreement was concluded with the Choctaw and Chickasaw representatives during the past fiscal year, and was ratified by act of Congress approved July 1, 1902 (Appendix No. 1, p. 90). This agreement, though somewhat torn and distorted by the contentions of conflicting interests, so common to all legislation affecting the affairs of the Five Tribes, embraces provisions far-reaching in effect, and which, if ratified by the tribes, will practically complete the disintegration of the Choctaw and Chickasaw commonwealths and effect the installment of new political and social conditions and land tenures common to the States and Territories.

The legislation enacted by Congress for the administration of the affairs of the Cherokees (Appendix No. 1, p. 103) is not greatly different in effect from that with the Choctaws and Chickasaws, though interests of much less magnitude are at stake. If ratified by the Cherokees, the greatly desired change of land tenures—the conversion of the fee from tribes to the individual members—will have been effected. This has been the paramount aim of the Commission in all its negotiations.

The supplementary agreement with the Creeks (Appendix No. 1, p. 86) is designed to correct certain imperfections which existed in the

ATTACHMENT NO. 11

Ann. Rept. of the Comm. Five Civ. Tribes (1910) (Excerpts)

REPORTS OF THE

DEPARTMENT OF THE INTERIOR

FOR THE FISCAL YEAR ENDED JUNE 30

1910

ADMINISTRATIVE REPORTS

IN 2 VOLUMES

VOLUME II

INDIAN AFFAIRS
TERRITORIES

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1911

REPORT OF THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

Unallotted land of the Five Civilized Tribes, by counties.

SEMINOLE NATION.

	Acres.
Seminole County	3,448.43

CHOCTAW NATION.

Atoka County	145,155.78
Bryan County	12,353.70
Choctaw County	48,955.09
Coal County	53,642.83
Haskell County	46,866.31
Hughes County	77,864.87
Johnston County	4,354.90
Latimer County	18,243.14
Le Flore County	35,643.71
McCurtain County	80,228.87
Pittsburg County	212,154.41
Pontotoc County	7,677.14
Pushmataha County	75,638.39
	818,079.14

CHICKASAW NATION.

Bryan County	20,912.73
Carter County	120,401.91
Coal County	6,006.40
Garvin County	107,301.53
Grady County	81,490.43
Jefferson County	74,255.40
Johnston County	51,074.94
Love County	96,971.47
Murray County	41,826.61
McClain County	55,761.43
Marshall County	28,945.79
Pontotoc County	68,421.51
Stephens County	126,379.17
	879,749.32

CHEROKEE NATION.

	Acres.
Sequoyah County	12,305.65
Muskogee County	5,298.06
Ottawa County	377.48
Delaware County	5,021.04
McIntosh County	1,277.50
Craig County	2,349.38
Wagoner County	421.83
Tulsa County	10.00
Nowata County	129.29
Rogers County	1,121.50
Washington County	38.28
Cherokee County	11,435.65
Adair County	6,656.01
Mayes County	3,859.83
	50,301.50

CREEK NATION.

Creek County	17,174.86
Hughes County	13,319.11
Mayes County	1.45
Muskogee County	18.50
McIntosh County	16,681.01
Okfuskee County	6,208.69
Okmulgee County	4,594.63
Rogers County	37.69
Seminole County	215.49
Tulsa County	1,867.63
Wagoner County	3,461.77
	63,610.83

Preparations have been made for the early sale and disposition of these remaining surplus unallotted lands. Regulations governing the manner of sale of said lands, beginning in December, 1910, are under consideration by the department. Preparatory to the disposition of these lands lists thereof have been prepared in which they are described in tracts not exceeding 160 acres in extent, together with maps showing the location and area of the unallotted lands in each county, so that any particular tract of land offered for sale may be readily identified by the prospective purchaser.

ENROLLMENT.

In the last annual report reference was made to a field investigation which was under way to determine the date of death of a number of enrolled citizens on whose behalf no application had been made to select allotments or who, from information already secured, appeared to have died prior to the date upon which they must have been living to be entitled to allotments. As a result of this investigation it was found that in the Choctaw, Chickasaw, and Cherokee nations there were about 250 cases of persons who had died prior to

ended June 30, 1909, making a total of 5,877, cover all Seminole allotments. These have been executed by the principal chief of the Seminole Nation and forwarded to the department for approval, where they are now being held at the instance of the Department of Justice.

The following statement shows the status of the allotment of lands in the Seminole Nation on June 30, 1910:

Status of allotments in the Seminole Nation on June 30, 1910.

	Acres.
Total area of Seminole Nation	365,851.67
Total area reserved from allotment for town sites, watersheds, railroad right of way, churches, schools, and cemeteries	2,275.63
Total area which is subject to allotment	363,576.04
Total area of allotted land	360,790.36
Total area of unallotted land	2,785.68

The above statement shows 179.04 acres more of unallotted land than is shown in the annual report for the fiscal year ended June 30, 1909. This is accounted for from the fact that two allotments have been canceled under departmental instructions during the year. In addition, land reserved from allotment for schools, churches, etc., to the amount of 662.75 acres has been abandoned for the purpose for which reserved, making a total of 3,448.43 acres to be disposed of.

The work incident to allotments in this nation remaining to be done consists of the delivery of the new deeds to the allottees when same are approved and returned by the department, the delivery of a considerable number of allotment certificates, which have been returned to the office for various reasons, and the preparation of deeds covering lands reserved for churches.

CHEROKEE NATION.

The matter of the allotment of land occupied a comparatively small share of the attention of the Cherokee division during the past fiscal year, as practically all the desirable land had already been taken up and deeds had been issued in practically all cases except where part of an allotment is involved in contest or similar proceedings and in the case of minors enrolled under the act of April 26, 1906, whose rights are still involved in the Muskrat case, now pending on appeal to the Supreme Court.

The following statements show the progress of the routine work and the status of enrollment and allotment in the Cherokee Nation:

Status of allotments in the Cherokee Nation, June 30, 1910.

	Acres.
Total area of Cherokee Nation	4,420,067.73
Reserved from allotment for town sites, schools, churches, etc. (approximate)	21,000.00
Total area subject to allotment	4,399,067.73
Allotted prior to July 1, 1909	4,343,186.48
Allotted from July 1, 1909, to June 30, 1910	5,579.75
Total allotted	4,348,766.23
Unallotted June 30, 1910	50,301.50