

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

COMANCHE NATION,)
JIMMY W. ARTERBERRY, JR.,)
Individually and in his official capacity as)
Comanche Tribal Historic Preservation Officer,)
Plaintiffs,)

vs.)

UNITED STATES of AMERICA,)
PETE GEREN, Secretary of the U.S. Army,)
Major General PETER M. VANGJEL,)
Commanding General, U.S. Fires Center of)
Excellence and Fort Sill,)
Colonel ROBERT BRIDGFORD,)
Commander, Fort Sill Army Garrison,)
Defendants.)

Case No. _____

COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel, and request the Court to grant declaratory and injunctive relief, and state for their cause the following:

Parties

1. Plaintiff COMANCHE NATION is a federally-recognized Indian tribe, with a jurisdictional area in southwest Oklahoma whose address is 584 NW Bingo Road, Lawton, Oklahoma 73505.

2. Plaintiff JIMMY W. ARTERBERRY, JR., is a Comanche tribal member residing in Comanche County, Oklahoma, and practitioner of traditional Native American religion and ceremonies.

3. Defendant PETE GEREN, Secretary of Department of the Army, heads an agency of the UNITED STATES with authority over construction projects at the Fort Sill Army Garrison near Lawton, Oklahoma.

4. Defendant Major General PETER M. VANGJEL is the highest-level officer at the Fort Sill Army Garrison with authority over construction projects there.

5. Defendant Colonel ROBERT BRIDGFORD is the Garrison Commander of Fort Sill Army Garrison ("Fort Sill") near Lawton, Oklahoma, and the high-level officer with direct authority over construction projects at Fort Sill.

Jurisdiction and Venue

6. The Religious Freedom and Restoration Act ("RFRA")(42 U.S.C. § 2000bb-1(c)) gives the Court jurisdiction over claims of governmental actions by the United States that impose a substantial burden on the exercise of religion.

7. The National Historic Preservation Act ("NHPA")(16 U.S.C. § 470w-4) gives the Court jurisdiction over claims that the United States Army failed to comply with its duties under NHPA.

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

9. The Court has jurisdiction over these claims arising under the laws of the United States (28 U.S.C. § 1331).

10. Venue is proper because a substantial part of the events or omissions giving rise to the claims occurred at Fort Sill within the Western District of Oklahoma (28 U.S.C. § 1391(b)(2)).

11. Defendant, United States, has waived its sovereign immunity against civil actions alleging that an agency failed to act as required by law and seeking relief other than monetary damages (5 U.S.C. § 702).

General Facts

12. Fort Sill is a U.S. Army military installation located on federal land.

13. The U.S. Army has undertaken a program of construction to add facilities to Fort Sill recommended by the Base Realignment and Closure ("BRAC") Commission in order to accommodate additional personnel slated to be stationed there.

14. The U.S. Army and Fort Sill personnel proposed to build a warehouse on the north side of Randolph Road to the west of Currie and Mascot Roads in the vicinity of Medicine Bluffs.

15. Medicine Bluffs is a prominent, well known landform within Fort Sill which has been on the National Register of Historic Places since 1974. (See Ex. 1, Memo of T. Spivey to Fort Sill Environmental Division dated March 4, 1988).

16. As a part of its preparations for such construction activities, U.S. Army and Fort Sill personnel or contractors had the U.S. Army Corps of Engineers conduct an Environmental Assessment which recognized the cultural significance of Medicine Bluffs to the local Native Americans because "[i]t is the only traditional cultural property that any tribe has formally designated to Fort Sill." (See Ex. 2, Environmental Assessment (August 2006) (Excerpt), Sec. 4.9.1.4, Native American Resources).

Facts Supporting Claim Under Nation Historic Preservation Act

17. U.S. Army and Fort Sill officials knew that Medicine Bluffs was considered a religious or sacred place to Indians long before the arrival of non-Indians to the area. (See Ex. 1, T. Spivey Memo).

18. U.S. Army and Fort Sill officials knew that members of the Comanche, Kiowa, and Wichita tribes have, with great frequency, used Medicine Bluffs for spiritual cleansings,

vision quests, healing ceremonies, and as place of repose for deceased family member bodies or ashes. (See Id.)

19. U.S. Army and Fort Sill officials knew of the cultural and religious significance of Medicine Bluffs to Comanche Nation and its members prior to initiating warehouse construction planning at the Randolph Road site.

20. Defendants failed to provide adequate notice to Comanche Nation and its relevant officials prior to launching preparations for warehouse construction at the Randolph Road site.

21. Defendants failed to initiate meaningful consultation with Comanche Nation and its relevant officials prior to launching preparations for warehouse construction at the Randolph Road site.

22. William Voelker, Chairman of the Comanche NAGPRA and Tribal Historic Preservation Board, provided Fort Sill officials notice over six (6) months ago that the Randolph Road warehouse construction project would adversely impact the view-scape of Medicine Bluffs and spoil the sanctity of the Randolph Road site. (See Ex. 3, Letter from Sia to M.G. Vangjel dated February 15, 2008)

23. Defendants have not halted preparation for construction activities related to the warehouse at the Randolph Road site.

24. Defendants have not consulted with the Plaintiffs regarding the impacts of construction to the view-scape of Medicine Bluffs or the substantial burden on religious ceremonies conducted there.

Facts Supporting Claim Under Religious Freedom and Restoration Act

25. The Medicine Bluffs area is a significant and sacred site to Jimmy Arterberry, a practitioner of traditional Comanche spiritual belief. (See Ex. 4, Declaration of Arterberry, ¶¶ 1-4).

26. Arterberry regularly uses the proposed warehouse construction site, which is located at the base of Medicine Bluffs, for spiritual practices and rituals. (See Ex. 4, ¶ 9).

27. Construction of the proposed warehouse at the Randolph Road site will obliterate and spoil this sacred site for practitioners of Comanche traditional spiritual beliefs. (See Ex. 4, ¶ 6).

28. Construction of the proposed warehouse at the Randolph Road site will prevent Arterberry from performing significant and important religious activities related to the Medicine Bluffs. (See Ex. 4, ¶¶ 7-8).

29. Construction of the proposed warehouse at the Randolph Road site will impose a substantial burden on Arterberry's exercise of his religion.

Complaint for Injunctive Relief

30. Defendants' failure to consult with Comanche Nation and Jimmy Arterberry, Jr., (and others similarly situated) violates Section 106 of NHPA.

31. By reason of Defendants' actions the Plaintiffs have suffered and will continue to suffer irreparable injury because a warehouse constructed at the Randolph Road location will permanently obliterate and blight the sacred view-scape of the NRHP-listed Medicine Bluffs.

32. By reason of Defendants' actions the substantially burden the conduct of Native American religious ceremonies and rituals.

33. Plaintiffs lack an adequate remedy at law for the permanent impairment of historically, culturally and religiously significant Medicine Bluffs and injunctive relief constitutes the Plaintiff's only means for securing necessary relief.

34. Construction of the warehouse on the Randolph Road site is imminent any day.

Prayer for Relief

WHEREFORE, Plaintiffs demand:

1. That the Defendants, their agents and employees, immediately be enjoined during the pendency of this action and permanently from aforesaid warehouse construction at Fort Sill's Randolph Road site;
2. That the Defendants, their agents and employees, be ordered to initiate and conduct good faith consultations with the Plaintiffs and other interested parties in order to consider relocation of said warehouse to a site having no adverse impacts on significant cultural and religious areas;
3. That the Defendants be assessed the costs of this action; and
4. That Plaintiff have such other and further relief as the Court deems just.

Respectfully submitted this 15th day of August 2008.

ATTORNEY FOR PLAINTIFFS

/s/ James M. Burson

William R. Norman, OBA No. 14919

Klint Cowan, OBA No. 20187

James M. Burson, OBA No. 20037

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Facsimile: (405) 601-7768

Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was served this 15th day of August, 2008, via process server, U.S. First Class Mail postage prepaid, or facsimile:

John C. Richter United States Attorney for the Western District of Oklahoma 210 West Park Avenue, Suite 400 Oklahoma City, OK 73102 Fax: (405) 553-8885	Michael B. Mukasey Attorney General U.S. Department of Justice Room 4400 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 Fax: (202) 307-6777
Colonel Bridgeford HQ, U.S. Army Garrison, Fort Sill 909 N.W. Hamilton Rd., Ste 120 Fort Sill, OK 73503-9004 Fax: (580) 442-7971	General Vangjel HQ, U.S. Army Garrison, Fort Sill 7305 McNair Ave., Suite 100 Fort Sill OK, 73503 Fax: (580) 442-4700
Preston Murdoch "Pete" Geren III Secretary of the Army Office of the Secretary of the Army 101 Army Pentagon Washington, DC 20310-0101 Fax: (703) 697-8036	

By: /s/ James M. Burson
James M. Burson



DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY FIELD ARTILLERY CENTER AND FORT SILL
FORT SILL, OKLAHOMA 73503-5100

P. 1



REPLY TO
ATTENTION OF:

ATZR-TM

4 March 1988

MEMORANDUM THRU: DPTM

FOR: DEH, Environmental Division

1. The rappelling site at Medicine Bluffs was recently inspected by DEH and several defects identified (Encl 1). Repairs to the tower, cable bridges, and platform on the cliff face are estimated at \$18,051.44 (Encl 2).
2. The Medicine Bluffs were entered onto the National Register of Historic Places in 1974 due to their historic significance to Fort Sill and the Nation, as well as their religious significance to the Kiowa, Comanche and Wichita tribes. The rappelling training site was established subsequent to that historic designation in violation of AR 420-40, USAFACFS Reg 200-2, Public Law 96-95, and Executive Order 11593, to name a few.
3. Deterioration of the bluff face has resulted from these rappelling activities. The visual impact of large scarred areas, the platform, tower and cables is totally disruptive when viewed close up. Access to the area at the bluff base is restricted when rappelling activities are in progress.
4. It is my understanding that the rappelling activity is not necessarily mandatory and falls into an "adventure" training category. The recommended repairs to the facility will involve drilling new anchor holes for the cable bridges and also enclosing the tower to increase stability. Both of these actions will have an adverse impact on the site.
5. It is my recommendation the rappelling site be moved elsewhere and the scaling of the bluff face be terminated. If necessary, a new rappelling tower can be erected in another location and the bridges and platform demolished. If there is a training requirement to rappell from helicopters, this could be met by use of the tower alone. The tranquility and natural beauty of the Medicine Bluffs would be restored and Fort Sill would be in compliance with referenced ARs and public laws.

TOWANA D. SPIVEY
Director
Fort Sill Museum

ROUTING AND TRANSMITTAL SLIP		Date
TO: (Name, office symbol, room number, building, Agency/Post)		Initials Date
1. DPTM		
2. LTC TOKE		
3.		
4.		
5.		
Action	File	Note and Return
Approval	For Clearance	Per Conversation
<input checked="" type="checkbox"/> As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Here is the paper I did on Medicine Bluffs this spring. I don't really know what else to do with this at this time.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

5041-102

U.S. G.P.O. 1983-414-517

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

Avoidance of Training Impact on
Medicine Bluffs National Historic Site

I. HISTORY:

The Medicine Bluffs have been considered a religious or sacred location by the Indians since long before the arrival of the white man. The steep cliffs were frequently used for fasting and vision quests to heal the sick or resolve problems for the Kiowa, Comanche and Wichita tribes. Numerous legends among these people are related to this site.

With the coming of the first white soldiers in 1834 and later in 1852, this national geological feature was noted and played a key role in determining the location of Fort Sill in 1869. Frequent visits by soldiers to the Bluffs for recreational purposes continued throughout the 19th century and to the present time.

In 1974, the Medicine Bluffs were officially entered onto the National Register of Historic Places due to their historic significance to Fort Sill and the Nation as a whole. The religious significance to the Southern Plains tribes was also a factor in setting aside this area to be preserved.

The army first began using the Bluffs for rappelling activities on a limited basis sometime in the 1960's. This involved actual rappelling down the Bluff and use of one cable bridge across the creek at the base of the Bluff. Subsequent to the 1974 designation, the training area was expanded with erection of another cable bridge and a wooden tower on the north side of the creek.

While rappelling is not a training requirement for any unit on post, the practice is considered a morale and confidence builder for trainees, National Guard and Reserve units, and also for the R.O.T.C. groups.

II. PROBLEMS:

Several regulatory requirements affect the utilization and management of this site, e.g. AR 420-40, USAFACFS Reg 200-2, Public Law 96-95, Executive Order 11593 and the Native American Religious Freedom Act, to name a few. The additional components to the training area which were built after the historic designation in 1974 are definitely in violation of the above codes.

Early in 1987, the facilities were inspected by DEH and again early this year. Recommendations for renovation and upgrading of the tower, cable bridges and platform on the Bluff face were made in order to meet safety requirements and to further enhance utilization of the area. This included replacing planking and enclosing portions of the tower, as well as new cables and anchors on the bridges.

Deterioration of the Bluff face has been evident for some time due to the continued heavy use. This scarring is noticeable from a good distance away. Access to the creek and Bluff base are restricted much of the time.

AR 420-40 requires that military training and construction should avoid or minimize adverse impacts on historic sites and alternatives developed to mitigate known or potential effects.

III. OBJECTIVES:

To meet these requirements it is necessary to cease further development of the area first of all. The facilities should be rendered safe for present use without making additional modifications or in any way expanding the operation. Opportunities to reduce the utilization of the area should be taken advantage of to further minimize damage.

The ultimate answer of course, is to develop an alternate location to

Page 2

satisfy this recreational need. It is suggested that a new tower be erected elsewhere on post to teach the basics of rappelling. Since ATC is one of the primary users of this activity, perhaps that area would be appropriate.

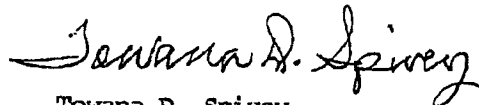
There is no other bluff equivalent to Medicine Bluffs in this area, so an exact substitution would not be possible. There are steep bluffs approved for rappelling located on the Wichita Mountains Wildlife Refuge which would provide a thrilling experience on a limited basis. Obviously, a phased-down rappelling activity would result from any changes to the present program.

A proposed schedule for this change is listed below.

- a. Make necessary repairs to insure safety and begin slowdown of troop utilization - (April 1988).
- b. Eliminate extra cable bridge across creek - (Dec. 1988).
- c. Locate alternate training site and program into Post Masterplan - (Feb. 1989).
- d. Construct new tower at alternate site and resume activities - Oct. 1993).
- e. Eliminate old tower and remaining bridge - (March 1994).

IV. SUMMARY:

In order to protect and preserve this valuable natural and historic site for posterity, an alternative to the present rappelling activities must be developed. Realizing both funding and scheduling changes are involved, a suggested timetable is presented herein. Serious consideration of this problem should result in a satisfactory solution for the betterment of all.



Towana D. Spivey
Director
Fort Sill Museum

district. The three NRHP-eligible districts are also in the cantonment: The Field Artillery District, the Post Field District, and the Concurrent Camp/Officer Training School District. The Landmark District and the three NRHP-eligible districts are in the northern and eastern portions of the cantonment. The NRHP-eligible Special Weapons Historic District dating to the Cold War is in the northwest portion of the cantonment, and the Pershing Complex Historic District is in the eastern portion. Ten acres in the southeast corner of the HPAAF, which comprise the original airfield landing area for the 1st Aero Squadron, are listed on the NRHP. The Comanche Cemetery, southeast of the airfield, is one of four Native American cemeteries that comprise one listing on the NRHP. Three additional areas are known to be historic, though no formal recording and evaluation of NRHP eligibility has occurred. These are the Polo Field and Rucker Park, both in the east and north parts of the cantonment, and the World War I cantonment, which is just outside of the northwest cantonment boundary (Swain 2006b).

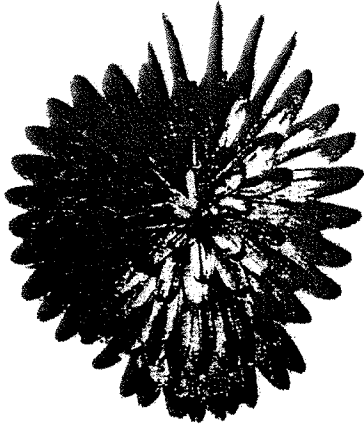
Due to the extent of development in the cantonment, not many archaeological resources are known. These are primarily historic archaeological remains in the Landmark District and sites in the undeveloped areas in the western portion of the cantonment. Although standing architectural resources are the primary concern in the cantonment, there are also important known archaeological sites to be considered. In addition, there is the potential for buried archaeological sites throughout the cantonment. Due to the long use of the installation, it is likely that any buried prehistoric sites have been destroyed. However, it is also likely that buried sites dating to historic use of the installation are still intact and would contain remains such as artifacts or building foundations.

The ranges at Fort Sill contain most of the known archaeological resources at the installation. Historic archaeological sites are generally west of the cantonment and include cultural materials from the 12 POW villages, use of the Apache allotments, and settlers. Prehistoric sites are often near flowing water, and the distribution of known sites indicates a preference for using terraces above drainages. Neither prehistoric nor historic archaeological sites are deeply buried at Fort Sill: They are found at or near the ground surface, making them very susceptible to vehicle traffic and military maneuvers.

4.9.1.4 Native American Resources

Fort Sill has initiated consultation with potentially interested tribes by sending a letter describing the proposed action and asking the tribes for comments or concerns (Swain 2006a) (Appendix C). The letters were sent in early June 2006 to nine tribes: Apache Tribe of Oklahoma, Caddo Indian Nation of Oklahoma, Cheyenne-Arapaho Tribe, Chickasaw Nation, Comanche Tribe, Delaware Tribe of West Oklahoma, Fort Sill Apache Tribe, Kiowa Tribe, and Wichita and Affiliated Tribes. No response has yet been received from any of the tribes.

Medicine Bluffs, north and outside the cantonment boundaries, is a landform listed on the NRHP. In addition to its historical significance for many cultures for navigating the area, it plays an important role in local Native American culture. It is the only traditional cultural property that any tribe has formally designated to Fort Sill. However, it is common knowledge that other places on the installation have been and continue to be used for tribal ceremonies and other important traditional uses. The Wichita Mountains and the vicinity of Rabbit Hill are two areas considered to be highly sensitive for traditional uses.



Sía

The Comanche Nation
Ethno-Ornithological
Initiative

HAND DELIVERED
February 15, 2008

Major General Peter Vangjel
United States Army Headquarters
Fort Sill, Oklahoma 73503-9016

Dear Major General Vangjel:

I am Wahathuweeka, proud member of the Comanche Nation. In the world of mainstream America I am also known as William G. Voelker and contact you this day in my official capacity as Chairman of the Board of Directors of the Comanche Nation NAGPRA and Historic Preservation Office. This letter comes to you as an emergency appeal to avert actions, soon to take place under your watch, that will once again draw blood from our ancestral lands. Medicine Bluff, a well known, unique geological feature of Fort Sill which is a place of immense spiritual and healing "medicine" to the Comanche and other tribes alike has been placed in eminent danger by construction plans which stand to impact this sacred site for all time. Regrettably, there is no time to allow for the process of normal chain of command appeals. In a single unanimous voice of my board of directors and on behalf of the Comanche Nation, as the official body duly appointed to safeguard the historic preservation of culturally essential and sensitive sites, I must ask for your direct and personal assistance to take whatever means necessary to cease and desist with any and all plans for destruction of the unmarred landscape involving the property North of Randolph and West of Currie

and Mascott Roads adjacent to Medicine Bluff.

Personnel in the office of Environmental Quality may well protest that all requirements regarding involvement of the tribes has been met. I caution you not to misinterpret "notification" of the tribes as "consultation" with the tribes. The Office of Environmental Quality has taken advantage of making contact with unauthorized individuals holding temporary positions at the tribe in an effort to avoid contacting the appropriate parties. Additionally, mail sent to the tribe, even that which is addressed to our Chairman, can easily go astray. I do not justify this problem, rather I state it as one familiar with inherent problems relating to communications with the tribe. This brings me to a profound point of a squandered resource Fort Sill has in relating to the tribes, but for unknown reasons, has chosen to ignore in recent months. Few individuals are as astute in regard to the inter relationships, politics and communication nuances of the local tribes as your Museum Director, Towana Spivey. Mr. Spivey has decades of direct experience in working with the historic background as well as the contemporary cultural life ways of all the local tribes. Yet, time and time again Mr. Spivey's expertise is not sought. Whether it is the current situation facing Medicine Bluffs, the fiasco of the area of recent housing construction or the Comanche Mission Cemetery, had Mr. Spivey been involved in the communications there were be no problem. Mr. Spivey "lives" the history of Fort Sill and is regarded as a protector of tribal histories, keeper of sacred artifacts and champion of culturally significant issues. I trust that through these crucial days ahead, Fort Sill will recognize the resource you have in Towana Spivey.

Not since the bloody days of the forced captivity of my ancestors have we faced such an ominous threat. I trust you will understand the real and pending danger to the sacred site you know as Medicine Bluff and truly hear our plea. I await your response and include the best contact information for me below. As you will see, in addition to my NAGPRA responsibilities I am founder and director of Sia: The Comanche Nation Ethno-Ornithological Initiative which oversees our tribal Eagle program. The Golden Eagle history at Medicine Bluff is well known. Let us ask the spirit of the Eagle to bring a sound and amiable resolution to this current problem.

Respectfully,

Wahathuweeka
William G. Voelker
Chairman
Comanche Nation NAGPRA & Historic Preservation Program

c/o Sia: The Comanche Nation
Ethno-Ornithological Initiative
P. O. Box 341
Cyril, Oklahoma 73029

Telephone: 1-877-225-6186
FAX: 1-580-464-2752
email: pridetr@tds.net

cc: Wallace Coffey, Chairman
Comanche Nation
Johnny Wauqua, Tribal Administrator
Comanche Nation
Colonel Robert S. Bridgford
Colonel John Uberti
Mr. Glen Wheat
Mr. Kevin Christopher
Mr. Towana Spivey
KCA Intertribal Land Use Committee
Senator James M. Inhofe
Congressman Tom Cole
SHPO - Oklahoma City
NAGPRA - NPS: Denver, CO
John Plata - Attorney - Comanche Nation✓

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

COMANCHE NATION, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. _____
)	
UNITED STATES, et al.,)	
)	
Defendants)	

DECLARATION OF JIMMY ARTERBERRY, JR.

Jimmy Arterberry, Jr., declares under 28 U.S.C. § 1746 as follows:

1. I am over 18 years of age. I am employed as the Tribal Historic Preservation Officer for the Comanche Nation. I have personal knowledge of the facts stated herein and, if called to do so, could and would competently testify to the facts set forth herein. My name is Jimmy W. Arterberry, Jr., and I reside in Medicine Park, Comanche County, Oklahoma. I am a member of the Comanche Nation. I am providing this Declaration in support of Comanche Nation's application for a temporary restraining order, injunctive and declaratory relief from the federal court.

2. I have lived in the area of Comanche County my entire life, and am a traditional religious practitioner of the Comanche religion.

3. Medicine Bluffs, including the site of the proposed Training Support Center warehouse at the base of the Medicine Bluffs, has an important spiritual significance for me and other Comanche spiritual practitioners. As a Comanche man, Medicine Bluffs is the spiritual center of my religious beliefs and the heart of the current Comanche Nation. The Medicine

Bluffs site is an extremely important sacred place to me as a Comanche man. The proposed warehouse building site is part of that sacred space, and it would inhibit my view of the three peaks, would prevent me from orienting myself to the three peaks of Medicine Bluffs, and prevent me from having a religious experience central to my way of life.

4. My knowledge of the history of Medicine Bluffs adds to the significance of it as a sacred place and traditional cultural site.

5. There are many significant religious events and practices related to Medicine Bluffs that have not been recorded, but exist as part of our oral tradition. These religious stories are important to me as a Comanche man, but are not generally shared with non-Comanches because they are considered sacred and private.

6. The warehouse location proposed by Fort Sill is the last remnant of open viewspace on the north side of Randolph Road that enables me, as a Comanche man, to center myself with Medicine Bluffs and to engage in the exercise of my Comanche religion. The viewscape from the site of the proposed warehouse allows me to identify, as part of my religious practices, where I am in relation to the Medicine Bluffs. The construction of the proposed warehouse would destroy that viewscape and prevent me from practicing my religion. That location is part of the only remaining viewscape that allows me to center myself in relation to the Medicine Bluffs.

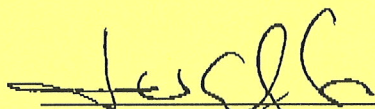
7. The proposed warehouse site is also used by traditional practitioners as an important stopping point to stand and view the sacred peaks of Medicine Bluffs, and to perform ceremonies, before ascending the Bluffs from the south. Though actual ascension of the Bluffs is reserved for special rituals, the most common religious practice is to say prayers at the base of the Bluffs, where the proposed warehouse would be built.

8. The proposed warehouse site is an important part of my spiritual beliefs. It is the location that dictates to me what opportunities are afforded as a Comanche man in the event that I am compelled to use the Medicine Bluffs.

9. My ceremonial use of the Medicine Bluffs includes regularly stopping at the site of the proposed warehouse and saying prayers whenever I am in that area. The open space at the base of Medicine Bluffs allows me to have that experience, and I could not have that experience if the proposed warehouse were constructed. I use the site for that purpose on a regular basis, at the very least, annually. The construction of the proposed warehouse would be an attack on my way of life as a Comanche person.

10. I have been informed and believe that Fort Sill contractors intend to start excavating dirt work on the proposed warehouse on **Monday, August 18, 2008.**

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of August, 2008.


Jimmy Arterberry, Jr.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Comanche Nation, Oklahoma

DEFENDANTS

County of Residence of First Listed Defendant United States(b) County of Residence of First Listed Plaintiff Comanche

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

William R. Norman, Jr., James M. Burson, Clint A. Cowan

Attorneys (If Known)

John C. Richter and Michael B. Mukasey

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 2006bb 16 USC 470a

Brief description of cause:

Failure to consult under NHPA, substantial burden on religious exercise under RFRA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE