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 THE ALABAMA-COUSHATTA TRIBE OF
 14 TEXAS

15 UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF TEXAS

17 THE ALABAMA-COUSHATTA TRIBE
 18 OF TEXAS,

CASE NO.
 COMPLAINT

19 Plaintiff,

20 vs.

21 UNITED STATES OF AMERICA;
 22 KENNETH LEE SALAZAR, in his
 capacity as Secretary of the United States
 23 Department of the Interior;
 24 THOMAS J. VILSACK, in his capacity as
 Secretary of the United States Department
 25 of Agriculture;

26 Defendants.

1 Plaintiff Alabama-Coushatta Tribe of Texas (“the Tribe” or “Alabama-Coushatta”), for its
2 Complaint, alleges the following facts:

3 I. INTRODUCTION

4 1. For centuries, the Tribe has called the Big Thicket region in southeastern Texas
5 home. In the early 19th century, the Tribe enjoyed unquestioned dominion over millions of acres
6 of land in this area and all of its abundant natural resources. By virtue of its exclusive and
7 continuous possession of its land, the Tribe established what is known as “aboriginal title.” To
8 date, two separate federal tribunals—the Indian Claims Commission and the Court of Federal
9 Claims—have recognized the Tribe’s aboriginal title to the Big Thicket region.

10 2. Aboriginal title is the right of a native tribe to the use and possession of its
11 aboriginal land, including the land’s natural resources. Federal law recognizes and protects
12 aboriginal title. Most notably, under the Indian Trade and Intercourse Act (“Nonintercourse
13 Act”), 25 U.S.C. § 177, the Federal Government has a fiduciary duty to protect aboriginal lands
14 from third party intrusions and trespasses.

15 3. The Federal Government has failed to discharge its fiduciary duty to the Tribe.
16 After Texas joined the Union in 1845, the Federal Government stood idly by as white settlers
17 arrived en masse in the Big Thicket and began expelling the Tribe from its ancestral lands.
18 Unable to resist the onslaught of such settlers, the Tribe—once the masters of a region nearly the
19 size of Rhode Island—was reduced to living on a reservation of little more than a thousand acres.
20 At one point, the Tribe’s population dropped below 200 members.

21 4. The Federal Government’s egregious failure to protect the Tribe’s land in no way
22 diminished the Tribe’s aboriginal title to that land. Aboriginal title can be extinguished only by
23 Congress and as the Court of Federal Claims recognized in 2000, Congress has never
24 extinguished the Tribe’s aboriginal title. *See Alabama-Coushatta Tribe of Texas v. United States*,
25 No. 3-83, 2000 WL 1013532 (Fed. Cl. June 19, 2000) (“CFC Opinion”).

26 5. The Court of Federal Claims’ decision was rendered in the context of a
27 Congressional reference proceeding, which allowed the Tribe to assert claims against the United
28 States Government for its breaches of fiduciary duty before 1946. A Congressional reference was

1 necessary because the Federal Government failed to give the Tribe notice, as required by the
2 Indian Claims Commission Act (“ICCA”), of the need to file a claim for pre-1946 wrongs by
3 1951. After more than 16 years of litigation, the Court of Federal Claims affirmed the Tribe’s
4 aboriginal title to over approximately 5.5 million acres of land in the Big Thicket region. The
5 Court of Federal Claims further held that the Federal Government was liable for trespasses and
6 for the removal of natural resources from approximately 2.85 million acres of that land. The
7 Tribe and the Federal Government stipulated that, based on the Court of Federal Claims’ liability
8 finding, the Federal Government owed the Tribe more than \$270 million in damages.

9 6. The Federal Government has never paid the Tribe a single dollar of compensation
10 for its pre-1946 damages. Instead, the Federal Government has continued to breach its fiduciary
11 duties not only by ignoring the Tribe’s rights to its aboriginal land but by actively facilitating
12 third party trespasses on the Tribe’s land, including the ongoing exploitation of timber, oil, and
13 natural gas resources that are subject to the Tribe’s aboriginal title. Adding insult to injury, the
14 Federal Government is profiting from such conduct through royalties and rental payments it earns
15 from selling and leasing resources on, and allowing access to, the Tribe’s ancestral land.

16 7. Although the Federal Government’s breaches of fiduciary duty have inflicted and
17 continue to inflict terrible harm on the Tribe, the relief sought by the Tribe in this action is quite
18 modest. The Tribe is not seeking in this lawsuit to recover for the losses it suffered from the
19 Federal Government’s pre-1946 wrongdoing. The Tribe does not seek here to recover possession
20 of its ancestral lands, or to remove anyone from their homes. Nor does this lawsuit seek to
21 disturb any private parties in their current uses of the Tribe’s aboriginal land. Rather, this action
22 seeks only declaratory and equitable relief with respect to current breaches of fiduciary duty by
23 the Federal Government in those portions of the Tribe’s aboriginal land that fall within the Big
24 Thicket National Preserve, the Davy Crockett National Forest, and the Sam Houston National
25 Forest (the “Claim Area”).¹ In particular, this action seeks to compel the United States to
26 consider and accommodate the Tribe’s aboriginal title and incidental rights before issuing

27
28 ¹ The “Claim Area” that is subject to this Action is a subset of the Claim Area and Modified
Claim Area addressed in the CFC Opinion.

1 permits, approving leases, and taking other federal actions that facilitate activities on or under the
2 Tribe's aboriginal land within the Claim Area.

3 8. The Claim Area contains extensive natural resources: timber, oil, and natural gas.
4 The Federal Government—through agencies that include Department of Agriculture and the
5 Department of the Interior—currently sells, leases, or issues permits for the exploitation of these
6 resources by private third parties. Such actions violate the Federal Government's fiduciary duty
7 to protect the Tribe's aboriginal land from third party trespasses. By this action, the Tribe seeks a
8 declaratory judgment as to its rights in the Claim Area and an equitable accounting for the
9 revenues the Federal Government has derived from its breaches of fiduciary duty.

10 9. There is no way to right the historical wrongs that have been inflicted on the
11 Alabama-Coushatta. But the Federal Government's continuing disregard of its duties under
12 Federal law can be stopped. That is all the Tribe asks in this action.

13 **II. JURISDICTION AND VENUE**

14 10. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§
15 1331 and 1362. This is a civil action brought by an Indian Tribe and arises under the
16 Constitution, federal common law, and federal statutes, including 25 U.S.C. § 177. The Court
17 also has jurisdiction under 28 U.S.C. § 1361, and 5 U.S.C. §§ 702, 704 and 706, as this is an
18 action seeking non-monetary relief against the United States and federal officials. Further, this
19 Court has jurisdiction under 28 U.S.C. §§ 1346 and 1491 as the United States is the Defendant in
20 this claim for which the Tribe seeks declaratory and injunctive relief.

21 11. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and (e)(2) because
22 this is an action in which the Defendants are officers and employees of the United States acting in
23 an official capacity, a substantial part of the property that is the subject of this action is situated
24 within this judicial district, and a substantial part of the events or omissions giving rise to the
25 claim occurred within this judicial district.

26 **III. PARTIES**

27 12. Plaintiff, the Alabama-Coushatta Tribe of Texas, is a federally-recognized Indian
28 tribe whose approximately 9,700 acre current reservation is largely located in Polk and Tyler

1 Counties in Texas. The Tribe governs itself through its constitution and bylaws, approved by the
2 Secretary of the Interior on August 19, 1938 pursuant to the Indian Reorganization Act of 1934,
3 25 U.S.C. § 477.

4 13. Defendant United States of America is a sovereign state that includes the U.S.
5 Department of the Interior and the U.S. Department of Agriculture.

6 14. The Department of Agriculture is statutorily charged with administration of the
7 National Forest System. *See* 16 U.S.C. § 1604(a). The Department has, in turn, delegated this
8 responsibility to the Forest Service. *See* 36 C.F.R. § 200.3(b)(2).

9 15. Defendant Thomas James Vilsack is the present Secretary of the Department of
10 Agriculture.

11 16. The National Park Service, which is part of the Department of the Interior,
12 administers national parks, including the Big Thicket National Preserve. 16 U.S.C. § 1.
13 Defendant Kenneth Lee Salazar is the present Secretary of the United States Department of the
14 Interior and in this capacity administers the Big Thicket National Preserve pursuant to 16 U.S.C.
15 §§ 698a-e. As Secretary, Defendant Salazar also supervises the activities of the Bureau of Land
16 Management (“BLM”), an agency within the Department of the Interior. The BLM oversees the
17 leasing of oil, natural gas, and other minerals on federal land.

18 **IV. FACTUAL BACKGROUND**

19 **A. The Alabama-Coushatta Establishes Aboriginal Title to the Claim Area**

20 17. The Alabama-Coushatta is a proud, self-sufficient tribe whose history as a people
21 stretches back into antiquity. The Tribe’s first recorded contact with Europeans was in the 1540s,
22 when conquistador Hernando de Soto encountered the Alabama and the Coushatta, which were
23 then separate tribes living around present-day Alabama. Seeking plunder, De Soto attacked and
24 killed the Alabama and the Coushatta, killing many of their members. Although the tribes fought
25 back, they were no match for the better-armed Spaniards. This was a portent of things to come.

26 18. Over the ensuing years, European expansion displaced the Alabama and Coushatta
27 from their ancient homeland in what is now the southeastern United States. In the late 18th
28 century, the tribes began settling in southeastern Texas. The Alabama and Coushatta tribes—both

1 members of the Upper Creek Confederacy and sharing similar Muskogean dialects—were
2 longtime allies. As they jointly migrated to the Big Thicket area, their ties grew stronger and,
3 eventually, they became a single tribe.

4 19. The Tribe ultimately found refuge in the Big Thicket region. The Big Thicket’s
5 relative inaccessibility insulated the Tribe from other, competing tribes as well as from European
6 settlers. The Tribe therefore was spared the extermination or expulsion that befell virtually all
7 other Native Americans in Texas.

8 20. For a period, the Tribe prospered. The Alabama-Coushatta established villages
9 throughout the region, including along the Sabine, Trinity, San Jacinto and Neches Rivers, in the
10 area between the Neches and the Trinity Rivers, on the Attoyac Bayou, and along the Opelousas
11 Road. The Tribe farmed extensively on or near its village sites, raising corn, squash and potatoes,
12 among other crops. The Tribe also hunted throughout its lands, both for meat and to collect
13 animal pelts for trading. Over the years, the Tribe built a system of trails throughout the densely
14 forested portions of the Big Thicket. The Tribe’s use and possession of its aboriginal lands,
15 including the Claim Area, was continuous and exclusive for many decades.

16 **B. The United States Breaches Its Fiduciary Duty to Protect the Tribe’s Aboriginal**
17 **Land and Refuses to Compensate the Tribe.**

18 21. When Texas joined the Union in 1845, the Federal Government assumed a
19 fiduciary duty to protect the Tribe’s aboriginal lands. Specifically, the Nonintercourse Act and
20 federal common law imposed on the United States a fiduciary duty to protect the Alabama-
21 Coushatta’s right to possess and use its aboriginal lands.

22 22. Rather than discharging this duty, however, the Federal Government stood by
23 while the Alabama-Coushatta was illegally driven from its lands. In time, the Tribe that had once
24 ruled millions of acres was physically confined to a small reservation. It is on that reservation
25 (supplemented by additional lands purchased by the United States in the early 20th century) that
26 more than 500 of the Alabama-Coushatta live to this day.

27 23. In 1946, Congress, recognizing the historical injustices inflicted on Native
28 Americans, enacted the ICCA, Pub. L. No. 79-726, 60 Stat. 1049 (1946). The ICCA created the

1 Indian Claims Commission to hear Indian claims against the United States that had accrued
2 before 1946. The statute required Indians to assert any such claims by 1951. *Id.* § 12. To ensure
3 that tribes had a fair opportunity to present their claims, the ICCA required the ICC to send a
4 “written explanation of the provisions of the [ICCA] to the recognized head of each Indian tribe
5 and band, and to any other identifiable groups of American Indians existing as distinct entities,
6 residing within the territorial United States” *Id.* § 13(a). Upon information and belief,
7 neither the ICC nor any other representative of the Federal Government gave the Tribe this
8 required notice.

9 24. The Tribe did not file a claim with the ICC before 1951. After the Tribe learned of
10 the ICCA, it petitioned the ICC to intervene in an action that had been filed by the Caddo Tribe of
11 Oklahoma. *See The Caddo Tribe of Oklahoma v. United States*, 35 Ind. Cl. Comm. 321 (1975).
12 Although the ICC initially allowed the Tribe to intervene, it later dismissed the Tribe’s petition in
13 intervention because the Tribe’s aboriginal land claims conflicted with those of the Caddo. The
14 ICC ultimately rejected the claims of the Caddo as meritless. In doing so, the ICC expressly
15 recognized that “the situation with respect to the Alabama and Coushatta Indians was
16 considerably different”:

17 By . . . 1845 in Texas the Alabamas and Coushattas had established
18 extensive areas of use and occupancy which they continued to
19 inhabit for a long time thereafter. They are, in fact, still present in
20 portions of these areas. These areas were generally located . . . in
21 Texas, in portions of the area called the Big Thicket, principally
22 Polk, Tyler, San Jacinto, Trinity, and Angelina Counties. The
23 relative inaccessibility of these areas discouraged use and
24 occupancy by other Indians migrating from the north and deferred
25 white settlement until many years after the United States had
26 acquired these lands. The evidence here indicates that for a long
27 time beginning before and ending after the United States acquired
28 these areas the Alabamas and Coushattas effectively exercised
control over these areas and over other Indians who may have
ventured therein. Unfortunately, such proof does not admit of
recovery herein because the holding of the Court of Claims in the
Kiowa, Comanche case, *supra*, has necessitated dismissal of the
petition in intervention filed by the Alabamas and Coushattas.

34 Ind. Cl. Comm. at 35-51.

1 25. Following this recognition of its aboriginal title, the Tribe petitioned Congress for
2 redress of the Federal Government's pre-1946 wrongdoing. In 1983, the House of
3 Representatives responded by passing a resolution referring the Tribe's case to the Court of
4 Federal Claims. *See* H.R. Res. 69, 98th Cong. (1983); 28 U.S.C. § 1492 (providing jurisdiction in
5 congressional reference cases). Thereafter, the Tribe litigated its claim against the Department of
6 Justice ("DOJ") for more than sixteen years.

7 26. Finally, in 2000, the Court of Federal Claims issued its opinion that vindicated the
8 Tribe's claims. *See* CFC Opinion. The Court held that the Tribe had established aboriginal title
9 to approximately 5.5 million acres of land in East Texas ("CFC Title Area"), an area that includes
10 Hardin, Montgomery, Newton, Polk, San Jacinto, Trinity, Tyler, and Walker Counties, the
11 northern two-thirds of Liberty County, the northern one-third of Orange County, and the southern
12 half of Jasper County. *See Alabama-Coushatta Tribe of Texas v. United States*, No. 3-83, 2000
13 WL 1013532 (Fed. Cl. June 19, 2000); *see also* CFC Map (marked as "Exhibit A," attached and
14 incorporated herein) (showing a broader area originally claimed). In addition, the Court held that
15 the United States breached fiduciary duties to protect the Tribe's aboriginal lands from third party
16 intrusions and was liable for the Tribe's loss of occupancy and use of more than 2.85 million
17 acres of its land. Finally, the Court found that the Tribe's aboriginal title had not been
18 extinguished.

19 27. After the Court made these findings, the Tribe and the United States stipulated that
20 the Federal Government would owe compensatory damages to the Tribe in the amount of
21 \$270,600,000, for the loss of tribal lands that occurred between 1845, when Texas entered the
22 Union, and 1954, when the Federal Government (temporarily) ended its trust relationship with the
23 Tribe.² The Court of Federal Claims subsequently adopted this stipulation.

24 ² In 1954, Congress enacted the Alabama and Coushatta Termination Act of 1954, 25 U.S.C. §§
25 721-728. In the Termination Act, which was drafted after consultation with the Tribe, Congress
26 terminated "the Federal trust relationship to [the Tribe] and its members," 25 U.S.C. § 722, and
27 transferred this relationship (and its accompanying duties) to the State of Texas. In 1987,
28 Congress passed the Alabama-Coushatta Restoration Act, Title II, Pub. L. 100-89, 101 Stat. 666,
25 U.S.C. §§ 731-737 ("Restoration Act"). The Restoration Act restored "Federal recognition of
the tribe and . . . the trust relationship between the United States and the tribe." *Id.* § 203(a), 25
U.S.C. § 733(a). The Restoration Act provided that "[a]ll rights and privileges of the tribe and
members of the tribe under any Federal treaty, Executive order, agreement, statute, or under any

1 28. The Tribe spent much of the last decade attempting to persuade Congress to
2 acknowledge the Court of Federal Claims' findings and fairly compensate the Tribe for the
3 Federal Government's pre-1946 breaches of fiduciary duty. Congress, however, has chosen to
4 ignore its own Congressional reference proceeding.

5 29. Since 2000, the Federal Government's breaches of fiduciary duty to the Tribe have
6 continued unabated, necessitating this action.

7 **C. The Federal Government Continues to Breach its Fiduciary Duties to the Tribe.**

8 30. The Federal Government, through various federal agencies, including but not
9 limited to the Department of the Interior and the Department of Agriculture, exercises regulatory
10 authority over those portions of the Tribe's aboriginal land that fall within the Claim Area. In
11 particular, the National Park Service regulates activities in the Big Thicket National Preserve, and
12 the U.S. Forest Service oversees the Davy Crockett National Forest and the Sam Houston
13 National Forest. Leasing of federal oil and natural gas resources in the forests is administered by
14 the BLM.

15 31. As described in detail below, rather than exercising its regulatory authority
16 consistent with its fiduciary duties under the Nonintercourse Act and federal common law, the
17 Federal Government instead is actively facilitating the ongoing exploitation of natural resources
18 on the Tribe's aboriginal land.

19 **a. The Big Thicket National Preserve**

20 32. Established in 1974 as part of the National Park System, the Big Thicket National
21 Preserve (the "Preserve") spans approximately 105,000 acres within Polk, Hardin, Tyler, Jasper,
22 Orange, Jefferson and Liberty Counties in Texas. *See* 16 U.S.C. §§ 698a-e. The Preserve falls
23 entirely within the CFC Title Area. When authorizing the creation of the Preserve, Congress
24 directed the Secretary of the Interior to "not acquire the mineral estate in any property . . . without
25 the consent of the owner unless in his judgment, he first determines that such property or estate is
26 subject to, or threatened with, uses which are, or would be, detrimental to the purposes and

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28

other authority of the United States which may have been diminished or lost under the
[Termination] Act [of 1954] . . . are hereby restored." *Id.* § 203(b), 25 U.S.C. § 733(b).

1 objectives of this Act.” 16 U.S.C. § 698a(a). Upon information and belief, the Secretary of the
2 Interior never acquired subsurface mineral rights when assembling the Preserve.

3 33. The Alabama-Coushatta Tribe continues to hold aboriginal title to the subsurface
4 estate in the Preserve, including to minerals therein, and its right to use and possess that estate is
5 superior to the rights of those who claim any other form of legal title.

6 34. As of 2004, the National Park Service estimated that there were 1.21 million
7 barrels of oil, 70.11 billion cubic feet (“MCF”) of natural gas, and 1.02 million barrels of natural
8 gas liquids beneath the Preserve. The National Park Service has issued and, upon information
9 and belief, continues to issue, permits to third parties to drill for this oil and gas. As of late 2011,
10 at least 16 oil and gas wells were extracting oil and gas from the Preserve. Upon information and
11 belief, some of these wells are based outside the borders of the Preserve and use directional
12 drilling to reach resources located underneath the Preserve.

13 35. From mid-2009 until mid-2011, these wells produced approximately 148,000
14 barrels of oil, worth approximately \$16.9 million, and approximately 2.6 million MCF of natural
15 gas, worth approximately \$10.8 million.

16 36. A party that seeks to drill for oil or gas in the Preserve (referred to as an “operator”
17 by National Park Service regulations, 36 C.F.R. § 9.31(d)) must obtain a permit from the National
18 Park Service. *See* 36 C.F.R. § 9.32. The National Park Service has adopted comprehensive
19 regulations to govern this permitting process. *See* 36 C.F.R. Part 9, Subpart B (36 C.F.R.
20 §§ 9.30-9.52). For wells drilled from a surface location outside the Preserve’s borders, an
21 operator may apply for an exemption from these regulations. *See* 36 C.F.R. § 9.32(e).

22 37. An operator generally must navigate through several steps to obtain a permit to
23 drill in the Preserve. First, an operator must request temporary access to the Preserve to gather
24 basic information for inclusion in a permanent permit application. *See* 36 C.F.R. § 9.38.

25 38. The Intermountain Regional Director for the National Park Service, a bureau of the
26 Department of the Interior, must approve all temporary access requests. *See* 36 C.F.R. § 9.38. If
27 its application is approved, the operator must submit a plan of operations to the National Park
28 Service. These plans also must also be approved by the Intermountain Regional Director. *See* 36

1 C.F.R. §§ 9.32, 9.36, 9.37.

2 39. When an operator applies for a temporary access permit, approval of a plan of
3 operations, or a § 9.32(e) exemption, the “most basic and important piece of information that an
4 operator must provide to the” National Park Service is proof that the operator “has an undisputed
5 property right to the oil and gas resources” in the Preserve. National Park Service Operators
6 Handbook at 2, 13, 113; *see also* 36 C.F.R. §§ 9.32, 9.36, 9.37.

7 40. The Intermountain Regional Director has the authority to reject any temporary
8 access permit application, proposed plan of operations, or § 9.32(e) exemption request on the
9 ground that the operator lacks an undisputed property right to enter and extract oil or gas from the
10 relevant mineral estate.

11 41. The National Park Service Operators Handbook states: “In no event will the
12 [National Park Service] issue a data collection permit or formally accept a plan of operations as
13 complete if a prospective operator lacks documentation of property rights in all areas where
14 operations are proposed.” Operators Handbook at 13. This admonition applies as well to
15 operators seeking a § 9.32(e) exemption. *Id.* at 113.

16 42. Upon information and belief, operators of the sixteen wells currently producing oil
17 or gas from the Big Thicket Preserve have applied for, received approval for, and currently
18 operate under either a temporary access permit, a plan of operations, or a § 9.32(e) exemption that
19 was approved by the Intermountain Regional Director and/or the Big Thicket Superintendent.

20 43. The Tribe’s aboriginal title to land and land interests within the Preserve entitles
21 the Tribe to control access to and the removal of minerals from all land, including mineral estates,
22 within the Preserve’s borders. The United States’ trust relationship with the Tribe requires the
23 United States and its officers to honor and safeguard that entitlement.

24 44. None of the United States, its officers, or any operator currently extracting oil or
25 gas from mineral estates beneath the Preserve has consulted the Tribe about, or sought or received
26 the Tribe’s permission for, those activities.

27 45. Upon information and belief, no operator seeking a temporary access permit, a
28 plan of operations, or a § 9.32(e) exemption has provided the Park Service with evidence of the

1 Tribe's permission to drill for oil or gas in or under the Big Thicket Preserve.

2 46. Upon information and belief, neither the Intermountain Regional Director nor the
3 Big Thicket Superintendent has requested evidence of the Tribe's permission to drill for oil or gas
4 in the Big Thicket before approving temporary access permits, plans of operations, or § 9.32(e)
5 exemptions.

6 47. Because any party who wants to drill for oil and gas in the Big Thicket must
7 receive initial and continuing approval of its operations from the National Park Service and the
8 Department of the Interior, the Federal Government plays an active role in facilitating the
9 extraction of resources from the Big Thicket Preserve.

10 **b. The Sam Houston and Davy Crockett National Forests**

11 48. Established in 1934, the Sam Houston National Forest covers approximately
12 163,000 acres of land located within Montgomery, San Jacinto and Walker Counties in Texas.
13 Also established in 1934, the Davy Crockett National Forest covers approximately 160,000 acres
14 of land located within Houston and Trinity Counties in Texas. Trinity County includes
15 approximately 67,000 acres of the Davy Crockett National Forest and Houston County includes
16 the remainder. Both the Davy Crockett and Sam Houston National Forests were established
17 pursuant to the Weeks Act of 1911, 36 Stat. 961. The Weeks Act does not purport to authorize
18 the extinguishment of any native aboriginal title.

19 49. All of the Sam Houston National Forest and the Trinity County portion of the
20 Davy Crockett National Forest fall within the CFC Title Area.

21 50. The Tribe holds aboriginal title to all National Forest land in the CFC Title Area.
22 This title encompasses all mineral, timber and other resources located on or under that land.
23 Accordingly, the Tribe's right to use and possess National Forest land and its resources in the
24 CFC Title Area is superior to the rights of those who claim any other form of legal title to the
25 land or to particular interests therein.

26 51. For a significant portion of land within the Sam Houston and Davy Crockett
27 National Forests, the United States holds legal title to the surface estate, but non-federal parties
28 hold legal title to the underlying oil and gas deposits. For other portions of land within the

1 National Forests, the United States holds legal title to both the surface estate and the subsurface
2 mineral rights. The United States has issued to various private persons oil and gas leases
3 authorizing exploitation of substantial federally-titled mineral estates within these two National
4 Forests.

5 52. As of late 2011, approximately 74 oil and gas wells were extracting oil and gas
6 from mineral estates (both federal and non-federal) beneath the Sam Houston National Forest.

7 53. From mid-2009 until mid-2011, these wells produced approximately 508,000
8 barrels of oil, worth approximately \$41.4 million, and approximately 9.5 million MCF of natural
9 gas, worth approximately \$40.2 million.

10 54. As of late 2011, approximately 27 oil and gas wells were extracting oil and gas
11 from mineral estates (both federal and non-federal) beneath the Trinity County portion of the
12 Davy Crockett National Forest.

13 55. From mid-2009 until mid-2011, these wells produced over 130,000 barrels of oil,
14 worth approximately \$10.9 million, and over 117,000 MCF of natural gas, worth approximately
15 \$470,000.

16 56. In 2007, the Forest Service, the unit in the Department of Agriculture responsible
17 for administering these two National Forests, categorized both the Sam Houston and the Davy
18 Crockett National Forests as having a “high potential for occurrence of oil and gas,” meaning that
19 the “[g]eological environments” in the two Forests were “highly favorable for the occurrence of
20 undiscovered oil and/or gas resources.” *See* Forest Service, 2007 Five-Year Review and
21 Recommendations Report for the National Forests and Grasslands in Texas 78-80 (2009),
22 *available at* http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5209825.pdf.

23 57. Accordingly, the Forest Service projected that requests for new permits and new
24 leases within the Sam Houston and Davy Crockett National Forests would continue into the
25 future. *Id.* at 78.

26 *Permits for Non-federal Mineral Estates*

27 58. Non-federal holders of title to mineral estates beneath the Sam Houston and Davy
28 Crockett National Forests hold at least two types of legal title. “Reserved” mineral rights were

1 retained by a grantor in a deed conveying land to the United States. “Outstanding” mineral rights
2 are those rights to which title is held by a party other than the surface owner who originally
3 conveyed the surface estate to the United States.

4 59. Regardless of whether they hold reserved or outstanding mineral rights, parties
5 seeking to exploit non-federally-titled mineral estates under the Sam Houston or Davy Crockett
6 National Forests must first obtain permission from the Forest Service.

7 60. A party seeking to exploit reserved mineral rights must apply for a permit under 36
8 C.F.R. § 251.15. A party seeking to exploit outstanding mineral rights must apply for a special
9 use permit under 36 C.F.R. § 251.50. The regulations governing reserved mineral rights require
10 permit applicants to “submit satisfactory evidence of authority” to extract oil or gas from the
11 relevant mineral estate. 36 C.F.R. § 251.15(1).

12 61. A party seeking to exploit outstanding mineral rights must also provide the Forest
13 Service with proof of his or her right to do so. *See* Forest Service Manual 2830, “Mineral
14 Reservation and Outstanding Mineral Rights” at 2832 (1990).

15 62. The Forest Service has the authority to reject permit requests made by purported
16 holders of reserved or outstanding mineral rights on the ground that the requesting party lacks an
17 undisputed property right to extract oil or gas from the relevant mineral estate beneath the Sam
18 Houston or Davy Crockett National Forests.

19 63. The Forest Service Manual on Minerals and Geology directs Forest Service
20 personnel not to “issue a reserved mineral permit until questions concerning the mineral owner’s
21 title and rights under the deed reservation are resolved.” Forest Service Manual 2830, at 2831.
22 The Manual also mandates that a “mineral owner or lessee [claiming outstanding mineral rights]
23 must provide the Forest Supervisor with proof of right to exercise mineral rights.” *Id.* at 2832.

24 64. Upon information and belief, reserved mineral rights holders now producing oil or
25 gas from the Sam Houston and Davy Crockett National Forests have applied for, received
26 approval for, and currently operate under permits issued pursuant to 36 C.F.R. § 251.15.

27 65. Upon information and belief, outstanding mineral rights holders now producing oil
28 or gas from the Sam Houston and Davy Crockett National Forests have applied for, received

1 approval for, and currently operate under special use permits issued pursuant to 36 C.F.R. §
2 251.50.

3 66. The Tribe's aboriginal title to land and land interests within the Davy Crockett and
4 Sam Houston National Forests entitles the Tribe to control access to and the removal of minerals
5 from those national forests, including mineral estates, and the United States' trust responsibility to
6 the Tribe with respect to tribal land interests requires the United States to honor and safeguard
7 that entitlement.

8 67. Neither the United States nor any reserved or outstanding mineral rights holder
9 currently extracting oil or gas from beneath the Sam Houston and Davy Crockett National Forests
10 has sought or received the Tribe's permission for those activities.

11 68. No reserved or outstanding mineral rights holder seeking a drilling permit under
12 26 C.F.R. § 251.15 or a special use permit under 36 C.F.R. § 251.50 has received the Tribe's
13 permission to drill for oil or gas in or under the Sam Houston or Davy Crockett National Forests.

14 69. No Forest Service employee received the Tribe's permission to drill for oil or gas
15 in the Sam Houston or Davy Crockett National Forests before approving a permit under 26 C.F.R.
16 § 251.15 or a special use permit under 36 C.F.R. § 251.50.

17 70. Because any party who wants to exploit mineral rights under the Sam Houston and
18 Davy Crockett National Forests must receive initial and continuing approval of its operations
19 from the Forest Service and the Department of Agriculture, the Federal Government plays an
20 active role in facilitating the extraction of resources from these lands.

21 *Leases and Permits for Federal Mineral Estates*

22 71. The BLM administers oil and gas leases on Federal land, including national
23 forests. *See* 30 U.S.C. § 226. For land within the National Forest System a lease may not be
24 issued over the objection of the Forest Service, *see* 30 U.S.C. § 226(h), and the Forest Service
25 regulates surface-disturbing activity on the leasehold. 36 C.F.R. § 228.106(a).

26 72. The BLM awards leases through a competitive bidding process. If no competitive
27 bids are received, or if all bids submitted are below the national minimally acceptable bid, the
28 BLM will offer a lease on a noncompetitive basis. 30 U.S.C. § 226(b)(1), (c).

1 73. All oil and gas leases of federal mineral estates are conditioned on the payment to
2 the United States of a royalty of at least 12.5% of the value of oil or gas production that is
3 removed or sold from the leased land. 30 U.S.C. § 226(b)(1).

4 74. In addition to royalties, the issuance of leases is conditioned on the payment of
5 annual rental fees. *Id.* § 226(d). Generally, the rate for the first five years of a lease is \$1.50 per
6 acre per year, with the amount increasing to \$2 per acre for each additional year of the lease. 43
7 C.F.R. § 3103.2-2(a). For leases issued after December 22, 1987, a minimum royalty in lieu of
8 the rental fee is due once oil or gas has been discovered on the leased land. *Id.* at § 3103.3-2(a).

9 75. The BLM has issued oil and gas leases for land in the Sam Houston and Davy
10 Crockett National Forests. Upon information and belief, the Forest Service has consented to the
11 issuance of these leases. The Forest Service also has issued permits to allow lessees to enter the
12 Sam Houston and Davy Crockett National Forests to search for and extract oil and gas from the
13 land subject to their leases.

14 76. Parties seeking permits from the Forest Service must comply with the regulatory
15 requirements set forth in 36 C.F.R. § 228.107(a). A party seeking a permit must first submit a
16 surface use plan of operations, which is reviewed by the Forest Service for regulatory
17 compliance. Subsequent deviations from such a plan must receive approval from the Forest
18 Service. 36 C.F.R. § 228.106(d).

19 77. The Forest Service “periodically inspect[s] the area of operations to determine and
20 document” compliance with applicable laws and regulations. 36 C.F.R. § 112(c), (e).
21 Noncompliance can lead to a suspension of operations. *Id.* §§ 226.113-228.114.

22 78. The Tribe’s aboriginal title to land within the National Forests entitles the Tribe to
23 control access to and the removal of minerals from all such National Forest land, including
24 mineral estates, and the United States’ trust responsibility to the Tribe with respect to tribal land
25 interests requires the United States and its officers to honor and safeguard that entitlement.

26 79. Neither the United States nor its officers nor any lessee currently extracting oil or
27 gas from beneath the Sam Houston and Davy Crockett National Forests received the Tribe’s
28 permission for those activities.

1 80. No lessee currently extracting oil or gas from the Sam Houston and Davy Crockett
2 National Forests has received the Tribe's permission to drill for oil or gas in or under the Sam
3 Houston or Davy Crockett National Forests.

4 81. Because any party who wants to exploit mineral rights under the Sam Houston and
5 Davy Crockett National Forests must receive initial and continuing approval of its operations
6 from the Forest Service and the BLM, the Federal Government plays an active role in facilitating
7 the extraction of resources from these lands.

8 82. Upon information and belief, the United States has received and continues to
9 receive royalties and rental payments from oil and gas lessees in the Sam Houston and Davy
10 Crockett National Forests. To date, the United States has not accounted for any of these monies
11 to the Tribe.

12 *Timber Harvesting in the Davy Crockett and Sam Houston National Forests*

13 83. The Federal Government is actively exploiting timber that is subject to the Tribe's
14 aboriginal title. The National Forest Service is responsible for administering the sale of timber on
15 national forest land, and it has adopted comprehensive regulations to govern this process. *See*
16 *generally* 36 C.F.R. Part 223. Nearly all the timber in the Davy Crockett and Sam Houston
17 National Forests is available for sale to private parties. 36 C.F.R. § 223.1.

18 84. Upon information and belief, the National Forest Service has sold hundreds of
19 thousands of cubic feet (CCF) of timber in the Davy Crockett and Sam Houston National Forests
20 in the past six years alone. Upon information and belief, the National Forest Service plans to sell
21 more than 40,000 CCF of timber in these forests over the next year.

22 85. Because the surface estate in the Davy Crockett and Sam Houston National Forests
23 is subject to the Tribe's aboriginal title, the Tribe has a right to control access to and the removal
24 of timber resources from these forests. Under the Nonintercourse Act and federal common law,
25 the United States has a fiduciary duty to safeguard this right.

26 86. The United States, however, has never received the Tribe's permission for the sale
27 of timber in the Claim Area. Nor has the United States accounted to the Tribe for the revenue it
28 has received from selling timber in the Davy Crockett and Sam Houston National Forests.

CLAIM:

BREACH OF FIDUCIARY DUTY UNDER THE NONINTERCOURSE

ACT AND FEDERAL COMMON LAW TO PROTECT THE

TRIBE'S ABORIGINAL TITLE LANDS AGAINST

THIRD-PARTY ENCROACHMENT

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6 87. The Tribe incorporates by reference paragraphs 1 through 86 as if set forth fully
7 herein.

8 88. As determined by the Court of Federal Claims, the Tribe holds unextinguished
9 aboriginal title to the land within the Claim Area.

10 89. Aboriginal title may be extinguished only by a sovereign act.

11 90. In the United States, only Congress may extinguish a Tribe's aboriginal title, and
12 its intent to do so must be unambiguous.

13 91. Neither the United States Congress nor any prior sovereign has extinguished the
14 Tribe's aboriginal title.

15 92. Aboriginal title confers on its holder a federally protected right to the possession
16 and use of the land to which it attaches. This protection extends to both surface and subsurface
17 natural resources, guaranteeing a tribe the use and possession of those resources.

18 93. The Nonintercourse Act, 25 U.S.C. § 177, and federal common law impose on the
19 United States a fiduciary duty to protect the Tribe from intrusions on land to which the Tribe
20 holds aboriginal title. This includes a duty to refrain from facilitating any encroachment on the
21 Tribe's land or interests in land by third parties without the consent of the Tribe.

22 94. The actions of third persons described in paragraphs 30 to 86 violate the Tribe's
23 federally protected rights to the use and possession of land within the Claim Area.

24 95. These violations include acts of trespass on and conversion of tribal property.

25 96. The United States has breached and continues to breach its fiduciary duties to the
26 Tribe by actively facilitating these ongoing trespasses on and conversions of the Tribe's property.

27 97. The United States is breaching its fiduciary duty to the Tribe by failing to account
28 to the Tribe for the royalties, rental payments, and other revenue it has received from leasing and

1 selling oil, natural gas, and timber in and on, or allowing access to, the Tribe’s aboriginal land.

2 98. A present controversy exists between the Tribe and the United States in that the
3 Tribe contends and the United States denies that the United States has breached its fiduciary
4 duties to the Tribe by issuing or approving permits or leases for, or taking other federal actions
5 relating to, operating activities on under land within the Claim Area without first considering or
6 accomodating the Tribe’s aboriginal title and incidental rights.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff prays for relief as follows:

9 A. Pursuant to 28 U.S.C. § 2201, a declaration that the activities of the United States
10 described in paragraphs 30 through 86 violate the United States’ duties to the Tribe under the
11 Nonintercourse Act and federal common law.

12 B. Pursuant to 28 U.S.C. § 2201, a declaration that, in the future, the United States
13 must consider and accommodate the Tribe’s aboriginal title and incidental rights prior to issuing
14 or approving permits or leases for, or taking other federal actions relating to, operations or
15 activities on or under land within the Claim Area.

16 C. A permanent injunction preventing the United States from facilitating the
17 exploitation of resources within the Claim Area, including but not limited to the future sale of
18 timber or issuance of permits or leases for oil and natural gas exploitation, in a manner that fails
19 to consider and accommodate the Tribe’s aboriginal title rights.

20 D. An order requiring the United States to conduct a full accounting of the revenues
21 and profits it has collected as a result of its sale of timber and issuance of leases and permits for
22 oil and natural gas exploitation in, or allowing access to, the Claim Area.

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E. Any further equitable relief, including but not limited to the appointment of a Special Master, to which the Tribe may ultimately be entitled or which the Court may deem appropriate after full development of the facts and consideration of all relevant interests.

DATED: February 29, 2012

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