

ORIGINAL

FILED

JUN 1 2015

U.S. COURT OF
FEDERAL CLAIMS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WYANDOT NATION OF KANSAS,
a/k/a WYANDOTTE TRIBE OF INDIANS,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

15 - 560 L
Docket No. _____

COMPLAINT

Plaintiff, by and through its undersigned attorneys, hereby alleges as follows:

I. INTRODUCTION.

1. This is an action by Plaintiff seeking money damages against the Defendant United States of America, acting through its past and present federal agencies and officers, for breaches and continuing breaches of the Defendant's constitutional, treaty, statutory and common law fiduciary duties owed to Plaintiff. Plaintiff's breach of trust claims include, but are not limited to, the United States' failure to collect, deposit, account for, and invest Plaintiff's trust funds derived from its treaty lands and related Acts of Congress; and the United States' failure to hold, protect, manage and maintain Plaintiff's undivided ownership interest in the said trust lands and funds in the manner prescribed by federal law.

II. PARTIES.

A. The Wyandot Nation of Kansas.

2. Plaintiff **WYANDOT NATION OF KANSAS** (hereafter referred to as the “Wyandot Nation of Kansas,” Wyandotte Tribe of Indians,” or the “Absentee Wyandots”) is the **WYANDOTTE TRIBE OF INDIANS** that was established as a reorganized tribe under Article 13 of the February 23, 1867 (15 Stat. 513) (“1867 Treaty”), and changed its name to the Wyandot Nation of Kansas in 1959. As used in this complaint, the name Wyandot Nation of Kansas is synonymous with the Wyandotte Tribe of Indians. The name, “**ABSENTEE WYANDOTS**,” is a moniker that the Bureau of Indian Affairs (“BIA”) has used since the early 1870s to describe the members of the Wyandotte Tribe of Indians residing in Kansas that did not move to a 20,000 acre reservation in Oklahoma that was established under Articles 1 and 13 of the 1867 Treaty.

The name “**HISTORIC WYANDOTT NATION**,” as used in this complaint, refers to the Wyandott Nation that entered into all the Wyandot treaties with the United States and its government-to-government relations with the United States was dissolved and terminated in the Treaty of January 31, 1855 (10 Stat. 1159) (“1855 Treaty”). The Wyandot Nation of Kansas is a successor-in-interest to all the Historic Wyandott Nation treaties, including the 1855 and 1867 Treaties, which are the supreme law of the land under Article VI, Clause 2 (Supremacy Clause) of the United States Constitution.

The **WYANDOTTE TRIBE OF OKLAHOMA** was formerly part of the Wyandotte Tribe of Indians, and consists of members of the Wyandotte Tribe of Indians residing in

Oklahoma that splintered off from the Wyandotte Tribe of Indians, and reorganized as a separate tribe under Section 3 of the 1936 Oklahoma Indian Welfare Act. ("OIWA") (25 U.S.C. § 503). The Wyandotte Tribe of Oklahoma is not a party to this civil action.

B. The United States of America.

3. Defendant **THE UNITED STATES OF AMERICA** (hereafter the "United States," or the "Federal Government") is a body politic existing pursuant to the Constitution of the United States and is the trustee of the Wyandot Nation of Kansas under its treaties and related federal statutes, including but not limited to, 25 U.S.C. §§ 122, 152, 153, 157, 158, 160, 160, 161, 161a, 161c, 161d, 162a, and the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239 (1994).

III. JURISDICTION.

A. Tucker Act and Indian Tucker Act.

4. This Court has jurisdiction over the subject matter of this civil action under the Tucker Act, 28 U.S.C. § 1491, and the Indian Tucker Act, 28 U.S.C. § 1505, in that this civil action involves claims brought against the United States by the Wyandot Nation of Kansas, and Indian tribe, for money damages, and arises under the U.S. Constitution, treaties, laws and regulations of the United States, and executive orders of the President, and is one that would otherwise be cognizable in this Court if the claimant herein were not an Indian tribe, band or group.

B. "Arising Under" Constitutional, Treaty and Statutory Provisions.

5. This civil action arises under Article 1, § 8, Clause 3 (Indian Commerce Clause) and Article VI, Clause 2 (Supremacy Clause) of the United States Constitution;

and federal treaties, statutes and regulations including, but not limited to, the Treaty of January 31, 1855, 10 Stat. 1159; the Treaty of February 23, 1867, 15 Stat. 513; the Act of June 30, 1834, § 12, 4 Stat. 730, 25 U.S.C. § 177; the Act of March 3, 1871, 16 Stat. 566, 25 U.S.C. § 71; the Act of March 2, 1923, 42 Stat. 1785; the Act of December 22, 1987, 101 Stat. 1329; 31 U.S.C. § 1321 (a) (67); 25 U.S.C. § 122; 25 U.S.C. § 152; 25 U.S.C. § 153; 25 U.S.C. § 157; 25 U.S.C. § 158; 25 U.S.C. § 160; 25 U.S.C. § 161; 25 U.S.C. § 161a; 25 U.S.C. § 161c; 25 U.S.C. § 161d; 25 U.S.C. § 162a; 25 U.S.C. § 323; 25 U.S.C. § 325; the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239, 25 U.S.C. §§ 4001 et seq., 25 C.F.R., Part 87; 25 C.F.R., Part 115; 25 C.F.R. § 169.12; 25 C.F.R. § 150.5; and federal common law.

IV. STATEMENT OF FACTS.

A. Trade and Intercourse Act.

6. The Treaties of January 21, 1785 (7 Stat. 16); July 4, 1805 (7 Stat. 87); November 17, 1807 (7 Stat. 105); November 25, 1808 (7 Stat. 112); and July 22, 1814 (7 Stat. 118), brought the Historic Wyandott Nation “under the protection of the United States” and under the protection of the Trade and Intercourse Acts of July 22, 1790 (1 Stat. 137); March 1, 1793 (1 stat. 329); May 19, 1796 (1 Stat. 469); March 3, 1799 (1 Stat. 743); March 30, 1802 (2 Stat. 139); and June 30, 1834 (4 Stat. 730).

7. Section 12 of the Trade and Intercourse Act of June 30, 1834, now codified as 25 U.S.C. § 177, provided in pertinent part that :

No purchase, grants, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law

or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

This language established a fiduciary relationship between the federal government as guardian and Indian tribes as wards, Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp, D.C. R.I, 418 F. Supp. 798 (1976), and established a fiduciary relationship between the United States and the tribes with respect to the protection of their lands. Joint Tribal Council of Passamaquoddy Tribe v. Morton, D.C. Me. 388 F. Supp., 649, affirmed 528 F. 2d. 370 (1975). This statute formed the basis for the trust status of tribal lands and assets, and by virtue of the duties imposed by the Act, the United States has a trust obligation to protect Indian treaty lands when it becomes aware that Indian rights have been violated, even when the United States did not participate in the unconscionable transaction. Id.

B. Historic Wyandott Nation Treaties of 1842, 1843, and 1850.

8. The Historic Wyandott Nation ceded its last remaining ancestral lands in Michigan and Ohio to the United States under Article 1 of the 1842 Treaty (11 Stat. 581). Article 2 of the Treaty provided that:

In consideration of the foregoing cession, the United States hereby grants to the aforesaid Wyandott nation a tract of land west of the Mississippi River, to contain one hundred and forty-eight thousand acres, and to be located upon any lands owned by the United States, now set apart, or may in the future be set apart for Indian use, and not already assigned to any other tribe or nation. [Emphasis supplied].

9. The 1842 Treaty also provided in Article 3 for a perpetual annuity of \$17,500.00 and other benefits for the Historic Wyandott Nation, and further provided in Article 11 that “[a]ll persons indentified as members of the Wyandott nation, **and their heirs, and who may emigrate to the west, shall participate equally in the benefits of the annuity, and all other national privileges . . .**” [Emphasis supplied].

10. Pursuant to Article 2 of the Treaty of December 14, 1843 (9 Stat. 337), the Historic Wyandott Nation purchased 36 sections of trust land from the Delaware Nation located the confluence of the Missouri River and Kansas River in eastern Kansas. In consideration for the sum of \$46,080.00, the Delaware Nation agreed to “cede, grants, and quitclaim” to the Historic Wyandott Nation and their heirs forever,” the 36 sections of trust land, legally described as follows:

Commencing at the point at the junction of the aforesaid Missouri and Kansas rivers, running west along the Kansas river sufficiently far to include the aforesaid thirty-nine sections; thence running north to the Missouri river; thence down the said river with its meanders to the place of beginning; to be surveyed in as near a square form as the rivers and territory ceded will admit of. (Art. 2).

11. Under Article 1 of the 1843 treaty, the Delaware Nation also agreed to “donate, grants and quitclaim forever,” an additional 3 sections of trust land “lying and being situated at the point of the junction of the Missouri and Kansas Rivers.” A map of the 1843 reservation is attached to this complaint as **EXHIBIT “A”** and incorporated herein by reference.

12. The boundaries of the 39 Sections of trust land, as described Article 2 of the 1843 Treaty, and as shown in Exhibit "A," were "to be surveyed in as near a square form "as ***the rivers and territory*** ceded will admit of." [Emphasis supplied]. This language included the conveyance of the beds of the Missouri River and Kansas River, up to the medial line within said rivers, to the Historic Wyandott Nation as part of its 1843 Treaty reservation.

13. After 1843, the boundaries of the 1843 treaty reservation along the medial line within the Missouri River and Kansas River also changed in such a way as to cause portions of the reservation to move to the opposite side of the said rivers. The Wyandot Nation of Kansas has never been compensated for these lands pursuant to Article 13 of the 1867 Treaties.

14. The Treaty of April 1, 1850 (9 Stat. 987) -- which acknowledged in its preamble the 39 sections of land conveyed to the Historic Wyandott Nation by the Delaware Nation in the 1843 Treaty -- also provided in Article 1 that:

The United States, in consideration that the Wyandot nation of Indians shall and do hereby release, relinquish, and give up all claim to the said one hundred and forty-eight thousand acres of land agreed to be assigned and given to them by the treaty of March 17, 1842, hereby stipulate and agree to pay to the said Wyandot tribe of Indians the sum of *one hundred and eighty-five thousand dollars*, being at and after the rate of one dollar and twenty-five cents per acre, the manner and form following, to wit: *One hundred thousand dollars to be invested in United States Stocks, bearing five per cent interest per annum*, which

interest shall be paid to them at the time and in the manner in which their present annuities are paid – and for the purpose of enabling the Wyandot Indians to pay and extinguish all their just debts as well as is now due to the Delaware for the purchase of their lands as to others, the balance of said sum being the sum of eighty-five thousand dollars, shall be paid to the Wyandot nation on their drafts, specially describing for what the draft are given. [Emphasis supplied].

Special trust accounts for the stocks and investments of the stocks, plus interest, were required under 25 U.S.C. § 157.

C. Distinction between Citizen and Non-citizen Indians prior to 1934 Indian Citizenship Act.

15. Prior to 1924, it was incompatible to be a U.S. citizen and a tribal member at the same time. The status of Indians didn't change by the adoption of the Fourteenth Amendment to the U.S. Constitution in 1868. The Fourteenth Amendment was interpreted as not including members of Indian tribes owing direct allegiance to their several tribes. 70 Op. Att'y Gen. at 746. See *Elk v. Wilkins*, 112 U.S. 914 (1884); *U.S. v. Kim Ark*, 169 U.S. 649, 693 (1888); and *Ozawa v. United States*, 260 U.S. 178, 195-96 (1922). The only manner for an Indian to gain U.S. citizenship was to renounce membership in his/her tribe. Congress, however, had to accept such expatriation before it became effective. *Elk v. Wilkins*, *supra*; *United States v. Holiday*, 70 U.S. (3 Wall.) 406 (1866). The 1924 Indian Citizenship Act (43 Stat. 253; 8 U.S.C. § 1401) ended the incompatibility between U.S. citizenship and tribal membership by granting U.S. citizenship to all Indian people and declaring that the granting of such citizenship “shall not in any manner impair or otherwise affect the right of such person to tribal or

other property." [Emphasis supplied]. After 1924, all Wyandot people born within the United States became United States citizens.

D. Unscrupulous land speculators interest in getting the 1855 treaty negotiated, executed and ratified by the U.S. Senate.

16. The lands within the 1843 Treaty reservation were very valuable in the 1850s-1860s because of their location at the confluence of the Missouri River and Kansas River. River trade was dependent upon these waterways and the railroad companies and unscrupulous individuals associated with them, like former Ohio Senator Thomas Ewing, Jr. of Leavenworth, Kansas, the owner of the Leavenworth, Pawnee and Western Railroad later sold to Union Pacific Railroad; former Secretary of the Interior John P. Usher, the chief legal counsel for Kansas-Pacific Railroad from 1865-1880; and Historic Wyandott Nation Chief Silas Armstrong, who wanted a railroad built through Armstrong, a town named after him, all coveted the 39 sections of reservation trust lands. Ewing and Usher, through their connections within Congress and the Department of the Interior, and Armstrong through his connections to the Historic Wyandott Nation, helped instigate the negotiation, execution and ratification of the 1855 Treaty so that they could acquire portions of the 39 sections of reservation trust lands for cheap prices and resell them for large profits.

17. Thus, the primary objective of Ewing, Usher and Armstrong, and other unscrupulous land speculators, was to get the 1855 Treaty approved, executed and ratified so they could accomplish the following results:

- a. Terminate the Historic Wyandott Nation as an federally recognized Indian tribe;

- b. Declare Wyandot tribal members to be U.S. Citizens, thereby losing their status as tribal members holding trust lands;
- c. Convert the 39 sections of the trust lands into unrestricted fee simple lands;
- d. Allot the unrestricted fee simple lands to Citizen Wyandots;
- e. Allow the Citizen Wyandots to sell their unrestricted fee simple lands to whomever they chose;
- f. Allow themselves to purchase the unrestricted fee simple lands from Citizen Wyandots for low prices and resell them to the railroads and town companies for high prices and large profits; and
- g. Allow the fee simple lands to also become subject to county taxes, thereby allowing them to be sold cheaply through county tax foreclosure sales when the Citizen Wyandots could no longer afford to pay the taxes.

E. The Historic Wyandott Nation Treaty of 1855.

18. Article 1 of the 1855 Treaty provided that the Historic Wyandott Nation's organization and government-to-government relations with the United States would be dissolved and terminated "*except so far as the further and temporary continuance of the same may be necessary in the execution of some of the stipulations herein,*" and that every Wyandott Nation tribal member be declared to be a citizen of the United States. [Emphasis supplied].

19. Article 2 of the 1855 Treaty provided that the Historic Wyandott Nation cede the 39 sections of trust land that it purchased from the Delaware Nation to the United

States except for “[t]he portion now enclosed and used as a public burying-ground, shall be permanently **reserved and appropriated** for that purpose; . . .” [Emphasis supplied]. (Art. 2). The burying ground is called the “Huron Cemetery.” The 39 sections, except for the reserved lands, were then allotted in severalty to the Citizen Wyandots in fee simple under Article 3 of the 1855 Treaty.

20. In addition to the Huron Cemetery, other trust lands were also reserved under the 1855 Treaty. The treaty provided that “two acres, to include the church-building of the Methodist Episcopal Church, and the present burying-ground connected therewith, are hereby **reserved**, granted and conveyed to that church; and two acres, to include the church-building of the Methodist Episcopal Church South, are hereby **reserved**, granted and conveyed to said church . . .” [Emphasis supplied]. (Art. 2).

21. The Methodist Episcopal Church (and two acre cemetery connected therewith) ended up within a Town called “Quindaro,” that is now part of Kanas City, Kansas. The Town of Quindaro was founded by the Quindaro Town Company, which was organized by thirteen Wyandot families who received fee simple allotments under the 1855 Treaty, and several non-Indians, who wanted to establish a profitable and safe port of entry along the Missouri River. The Town of Quindaro became an important Underground Railroad station. The town was named after a Wyandot Indian woman named Seh Quindaro Brown-Guthrie, who was the wife of Abelard Guthrie, one of the Town Company’s organizers. The Methodist Episcopal Church was burned down in 1856 and never rebuilt. The two acre cemetery still exists as the “Quindaro Cemetery.”

22. In addition to the cemetery lands, the 1855 Treaty also provided that “four acres, at and adjoining the Wyandott ferry, across and near the mouth of the Kansas River, shall also be **reserved**, and, together with the rights of the Wyandotts in said ferry *shall be sold to the highest bidder, among the Wyandott people* and the proceeds paid over to the Wyandotts on the payment of purchase-money in full, a good and sufficient title to be secured and conveyed to the purchaser, by patent from the United States.” [Emphasis supplied]. (Art. 2);

23. The 1855 Treaty provided for a payment of \$380,000 for the relinquishment and release of all rights and claims under prior treaties, and that the \$380,000, plus the \$100,000 invested in United States Stock under the 1850 Treaty would be paid to the members of the Historic Wyandott Nation, except that the interest on the \$100,000 investment fund, together with amounts realized from the disposition of the ferry and land connected therewith, would be paid to the Wyandott council for the support of schools and other national or public purposes.

F. Dissolution and termination of Historic Wyandott Nation under the 1855 Treaty was delayed until the ratification of the 1867 Treaty.

24. The Historic Wyandott Nation was not immediately dissolved and terminated as an Indian tribe under Article 1 of the 1855 Treaty, and in fact remained a federally recognized Tribe up to, at least, 1868. A March 15, 1996 letter to George Zane, Chief of the Wyandot Nation of Kansas, from Deborah J. Maddox, Director of the BIA Office of Tribal Services, stated that:

Since 1867, the Federal Government has dealt with band members as individual Indians entitled to attendance at BIA schools. However, the Federal government

has not dealt with the band as an entity. *We therefore find a reasonable basis to assume that your ancestors were previously recognized as a tribe by the Federal Government as late as 1867. **The BIA will therefore consider 1867 as the last date of unambiguous prior acknowledgement***, unless other documentation verifying a later date is submitted, or unless the Office of the Solicitor determines that the Wyandotte tribe was terminated. [Emphasis supplied].

25. The statement by Deborah J. Maddox, although well intentioned, is incorrect. As alleged in Paragraphs 26-35, the organization, and government-to-government relations of the Historic Wyandott Nation with the United States, existed up to the ratification of the 1867 Treaty by the U.S. Senate on June 28, 1868. Thereafter, the Historic Wyandott Nation was replaced by a new tribe, called the “Wyandotte Tribe of Indians,” that was established under Article 13 of the 1867 Treaty. Congress has never dissolved and terminated the Wyandotte Tribe of Indians (a/k/a the Wyandot Nation of Kansas), from 1867 up to the filing date of this civil action.

G. **The 1867 Treaty created a new tribe called the “Wyandot Tribe of Indians” that still exists under the name of the “Wyandot Nation of Kansas.”**

26. Article 13 of the 1867 Treaty provided that:

A register of the whole [Wyandott] people, resident in Kansas and elsewhere, shall be taken by the agent of the Delawares, under the direction of the Secretary of the Interior . . . which ***shall show the names of all who declare their desire to be and remain Indians, and in a tribal condition . . .*** as described in the [185 Treaty]; ***and all such persons, and those only, shall***

hereafter constitute the tribe: Provided, That no one who has heretofore consented to become a citizen . . . shall be allowed to become members of the tribe, except by the free consent of the tribe after its origination, and unless the agent shall certify that such party is, through poverty or incapacity, unfit to continue the exercise of the responsibilities of citizenship of the United States, and likely to become a public charge.” [Emphasis supplied].

27. The ancestors of **all** the current members of the Wyandot Nation of Kansas elected to become non-citizen Indians and were listed in the Register, and all of them became enrolled members of the newly created tribe called the Wyandotte Tribe of Indians. Their off-spring today constitute the enrolled members of the Wyandot Nation of Kansas.

28. Article 14 of the 1867 Treaty provided that “[w]henver the register . . . shall have been completed and returned to the Commissioner of Indian Affairs, **the amount of money . . . acknowledged to be due to the Wyandottl[e]s [in Schedule A of the Treaty]** shall be divided, and that portion equitable due to the citizens of said people **shall be paid to them and their heirs**, and under the direction of the Secretary of the Interior, and the balance, after deducting the cost of the land purchase from the Senecas by the first article hereof . . . shall be paid to the Wyadnotte[e] tribe per capita.” [Emphasis supplied]. (Art. 14). The sum of \$5,000.00 would be made available “to enable the Wyandott[e]s to establish themselves in their new home, shall be paid to the Wyandott[e] tribe per capita.” [Emphasis supplied]. (Art.14). The \$5,000.00 per capita fund became known as the “Immigrants Fund.”

29. The new future home of the Wyandotte Tribe of Indians was a 20,000 acre tract of land ceded by the Seneca Nation to the United States and set aside as a reservation for the Wyandotte Tribe of Indians under Article 1 of the 1867 Treaty. The 20,000 acres was paid for by deducting the cost of the lands, i.e., \$20,000.00, from trust funds owed to the Wyandotte Tribe of Indians in Article 13, Schedule A, of the 1867 Treaty.

H. **The Secretary of Interior's 1872 letters restoring non-citizen status to 140 Wyandot citizen Indians and including their names in the 1867 Treaty Register as members of the Wyandotte Tribe of Indians.**

30. On August 22, 1870, BIA Clerk (also a city clerk) A. C. Franham, sent a letter to Commissioner of Indian Affairs Ely J. Parker, and BIA Superintendent Enoch Hoag at Lawrence, Kansas, with the Register containing the names of all the Wyandots that chose to become non-citizens once again pursuant to Article 13 of the 1867 Treaty. As alleged in Paragraph 34, the name of the ancestors of all the current enrolled members of the Wyandot Nation of Kansas are listed on the Register and all of the said ancestors became enrolled members of the Wyandotte Tribe of Indians under Article 13 of the 1867 Treaty. However, except for the completion and submission of the Register, the other terms of the 1867 Treaty remained unexecuted for nearly thirty-one months after the ratification of the treaty on June 18, 1868. Thus, the Wyandotte Tribe of Indians remained unorganized and leaderless during this period of time. This situation caused Superintendent Hoag to send a January 8, 1871 letter to Commissioner Parker that stated:

Considering the disorganized condition of the Wyandotts I have advised Special Agent Mitchell that they should enter into an organization of their tribe and that ***all Wyandotte***, who were not classified as Citizens under provisions of the treaty of 1855-- ***as all who were classified as Citizens, under said provisions, without their knowledge or consent, as appears by their testimony (See full report from this office 6/14/1870) should constitute the Wyandotte tribe of Indians***. And after their organization (full notice having been given to all members thereof) they would have power to admit to their organization such citizen Wyandot as they might be united in receiving to their Tribe. This instruction is in accordance with my report of 6/14--which I trust will meet with the Commissioner's approval. [Emphasis supplied].

31. In an April 10, 1871 letter, Superintendent Hoag instructed Agent George Mitchell as follows:

I transmit copy of a letter from the Secretary of the Interior date March 14, relative to the reorganization of the Wyandottes. Said letter inclosed (sic) for lists – “to wit.”

1st That class of Wyandottes who applied for temporary exemption from
Citizenship

2nd List of Incompetents

3rd “ Orphans

4th “ Competents

The Hon. Secretary in said letter ruled that the first three lists or classes are now

members of the Wyandotte tribe proper together with their offspring, and to those shall be added all persons placed upon the competent list who, at the date of the treaty are of non age, or incompetent, or orphans with their offspring.

Under these instructions the agent, after preparing a carefully revised list, will cause a reorganization of the tribe, using all laudable means in his power to induce said Indians to select a chief of temperate and moral habits, and who will be influential in the advancement of said tribe in education, industrial labor and civilization. ***After which the Nation may admit all citizen Wyandottes, provided the Superintendent and agent find they can so return under treaty provisions.*** [Emphasis supplied].

32. On March 30, 1872, Secretary of the Interior Columbus Delano sent a letter to Commissioner of Indian Affairs Francis A. Walker that stated: "***I return, herewith the letter of Supt. Hoag of the 22nd instant, and certificate of Chiefs the Wyandotte tribe, restoring seventy five persons therein enumerated to membership in that tribe,*** under the 13th article of the treaty of 23d February 1867. The recommendation, contained in your report, of the 29th instant, submitting the papers, [that] for the admission of the parties referred to, to membership of the tribe, is hereby approved." [Emphasis supplied].

33. The March 30, 1872 letter was followed by another letter on June 18, 1872 from Secretary Delano to Commissioner Francis A. Walker that stated: "***I return herewith, the letter of Sup't Hoag, dated the 11th instant, and the list of sixty-five (65) Wyandotte citizens, certified to by the Agent, as being adopted to***

membership with the Wyandotte tribe of Indians, under the 13th article of the treaty of Feby. 2, of '67. In compliance with your recommendation, contained in the report of the 17th Inst., submitting the papers referred to, the list is hereby approved." [Emphasis Supplied].

34. The 140 citizens Wyandots restored to non-citizen status by Secretary Delano, as alleged in Paragraphs 32, 33 and 34, "were enumerated to membership" and "adopted to membership with the Wyandotte tribe of Indians," i.e., became enrolled members of the Wyandotte Tribe of Indians. They, and all the Wyandots whose names were already on the 1867 Register, such as the ancestors of the currently enrolled members of the Wyandot Nation of Kansas, became the total number of enrolled members of the newly created Wyandotte Tribe of Indians, a sovereign Indian tribe with attendant powers. See *Powers of Indian Tribes*, 55 I.D. 14 (Oct. 25, 1934).

I. **The status of Kansas Wyandots after being declared non-citizens and members of the Wyandotte Tribe of Indians in 1872.**

35. The Federal Government is estopped from maintaining that the Wyandot Nation of Kansas, i.e, the so-called "Absentee Wyandots," was dissolved and terminated as an Indian Tribe under Article 1 of the 1855 Treaty. The whole issue of dissolution and termination of the Historic Wyandott Nation under the 1855 Treaty became a **moot** issue when all the Kansas Wyandots, both those on the 1867 Register and those among the 140 individuals mentioned in Secretary Delano's 1872 letters, became enrolled members of a newly created Wyandotte Tribe of Indians under the 1867 Treaty. The BIA misapprehends the distinction between the Historic Wyandott Nation that was dissolved and terminated under Article 1 of the 1855 Treaty and the

Wyandotte Tribe of Indians that was established as a new tribe under Article 13 of the 1867 Treaty.

36. After 1872, the Wyandotte Tribe of Indians gradually separated into two divisions and by 1896 were included on two separate federal census rolls:

- a. Those that moved to the 20,000 acre reservation in Oklahoma were included in the Quapaw Agency Census Rolls; and
- b. Those that remained in Kansas were included in the "1896 Olive Roll."

For the purposes of this civil action, the two divisions of the Wyandotte Tribe of Indians are hereinafter referred to as the "Kansas Band," and the "Oklahoma Band."

37. Both the Kansas Band and the Oklahoma Band continued to govern their affairs under separate traditional General Councils headed by chiefs and headmen until 1937 when the members of the Oklahoma Band splintered off from the tribe and reorganized as a separate Indian tribe under Section 3 of the 1936 OIWA called the Wyandotte Tribe of Oklahoma. The enrolled members of the Wyandotte Tribe of Indians consisted of members of the Kansas Band after 1937, who changed the name of the Tribe to the Wyandot Nation of Kansas in 1959 to avoid confusion with the Oklahoma Tribe.

J. Reorganization of Oklahoma Wyandots under the 1936 Oklahoma Indian Welfare Act.

38. The Oklahoma Band of the Wyandotte Nation of Indians adopted a federally approved Constitution and Bylaws and a Federal Charter pursuant to Section 3 of the 1936 OIWA to govern its governmental and business affairs. The new name of the

tribe under the Constitution and bylaws and federal charter was the “Wyandotte Tribe of Oklahoma.”

39. Under Article 2 of its OIWA Constitution, the membership of the Wyandotte Tribe of Oklahoma was limited to the following persons:

- a. Those individuals on the census roll as of January 1, 1937;
- b. Children born after January 1, 1937, both of whose parents were enrolled tribal members;
- c. Children born to a marriage between a tribal member and an Indian of another tribe who chooses to affiliate with the Tribe; and
- d. Child of tribal members and non-tribal member admitted to membership by the General Council of the Tribe.

See WTOO Constitution, Art. III, Sec. 1-4. These qualifications for membership excluded all the Kansas Wyandots.

40. Article II of the Wyandotte Tribe of Oklahoma’s OIWA Constitution provides that all persons elected to the Tribe’s Business Committee shall be “a resident of Craig, Delaware or Ottawa Counties in Oklahoma. Any members of the Business Committee removing from such territory shall automatically lose his office.” Thus, the territorial and governmental jurisdiction of the Wyandotte Tribe of Oklahoma appears to be a self-imposed limitation to those three counties. Section 3 (t) of the Tribe’s Federal Charter, however, provides that the Tribe shall have the power “(t) To protect all rights guaranteed to the Wyandotte Tribe of Oklahoma by treaty.

41. Thus, even though the Wyandotte Tribe of Oklahoma does not have territorial or governmental authority over Huron Cemetery, as limited in Article II of its Constitution, it still has a treaty right to an undivided, ownership interest in the Huron

Cemetery, along with a treaty right to an undivided ownership interest of the Wyandot Nation of Kansas, that was reaffirmed by the Act of March 3, 1871 (RS 2079; 25 U.S.C. § 71) which provided that:

No Indian nation or tribe within the territory of the United states shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contact by treaty; ***but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe, prior to May 3, 1871, shall be hereby invalidated or impaired.*** [Emphasis supplied].

The 1871 Act also reaffirmed the Wyandot Nation of Kansas' undivided ownership interest in the Huron Cemetery trust lands. The Wyandot Nation of Kansas' mismanagement land claims in this civil action only pertain to its proportionate ownership interest in the Huron Cemetery. The Federal Government is estopped from claiming that the undivided ownership interests of the two tribes in the Huron Cemetery cannot be separated since it already separated their respective undivided ownership interests in the ICC and Court of Claims judgment awards in Dockets 149, 151, 212 and 213.

K. Reorganization of Wyandot Nation of Kansas under the 1934 Indian Reorganization Act.

42. Like the Oklahoma Band of the Wyandotte Tribe of Indians, the Kansas Band also had an opportunity to reorganize as a separate reorganized tribe under the 1934 Indian Reorganization Act. ("IRA") (25 U.S.C. §§ 461-479). Section 19 of the IRA (25 U.S.C. § 479) allowed "***any tribe, . . . or Indians residing on one reservation***" to reorganize under the Section 16 (25 U.S.C. § 476) of the Act by adopting a federally

approved Constitution and Bylaws. [Emphasis Supplied]. **The Kansas Band of the Wyandotte Tribe of Indians** was both a *tribe* residing on one reservation, and its members were *Indians* residing on one reservation, i.e., the Huron Cemetery land.

43. The Kansas Band lost its opportunity to become a reorganized tribe under the IRA because the Secretary of the Interior failed to call a special election for them to adopt the provisions of the IRA within the one year period required by Section 18 of the Act (25 U.S.C. § 478). As a consequence thereof, the Wyandot Nation of Kansas was, and continues to be, deprived of many of the programs, benefits and services provided by the Federal Government to IRA tribes.

44. Notwithstanding the fact that it is not an IRA Tribe, the Wyandot Nation of Kansas is nevertheless a tribe that is federally recognized under Articles 13 and 14 of the 1867 Treaty -- even though the BIA has administratively failed to include it on its annual list of federally recognized tribes. Over the years, the BIA has provided special services to the members of the Wyandot Nation of Kansas because their status as Indians. The services include allowing its members to attend BIA schools as acknowledged in the March 15, 1996 letter to Chief George Zane from BIA Director of Tribal Services Deborah J. Maddox in Paragraph 24; entering into a maintenance agreement on behalf of the Wyandotte Tribe of Indians with the City of Kansas City, Kansas in 1918 to **perpetually** maintain, care for, and preserve the Huron Cemetery; paying for attorney fees resulting from the occupation of Huron Cemetery by the Conley sisters as provided in the Act of March 2, 1923 (42 Stat. 185); enforcement of the protections in 1997 Brownback Act (Public Law 105-83) described in Paragraphs 62

and 63; creating IIM trust Accounts for ICC and Court of Claims Judgment Funds set aside by the BIA in special trust account for minor children until they reached their majority, some of whom recently received money from the *Cobell* Settlement, and providing title services for the Huron Cemetery and "Absentee Wyandotte" Indian allotments. See 25 C.F.R. § 150.5 (d) ("The Bureau Central Office, Washington, D.C., provides title services for . . . the Absentee Wyandottes").

L. Classification of Kansas Wyandots as "wards" of the Federal Government.

45. When the ancestors of the currently enrolled members of the Wyandot Nation of Kansas were placed on the 1867 Treaty Register, they simultaneously became enrolled members of the Wyandotte Tribe of Indians and wards of the Federal Government. For example, when Lyda Conley's name was placed on the 1867 Treaty Register she became an enrolled member of the Wyandotte Tribe of Indians and a ward of the Federal Government. Congress confirmed the status of Lyda and her sisters as wards of the Government in the Act of March 2, 1923 (41 Stat. 3) as alleged in Paragraph 59. Lyda was born in 1869 and died in 1946. Thus, she was simultaneously an enrolled member of the Wyandotte Tribe of Indians and a ward of the Federal Government from 1869 to 1946. All other persons whose names were placed on the 1867 Treaty Register were likewise enrolled members of the Wyandotte Tribe of Indians and wards of the Federal Government until the time of the deaths.

46. Presently, all the current enrolled members of the Wyandot Nation of Kansas are the off-spring of enrolled members of the Wyandotte Tribe of Indians and, therefore, are also wards of the Federal Government.

M. Authorization for allotments in severalty to Kansas Wyandots under the 1894 and 1904 Acts of Congress.

47. Many members of the Kansas Band of the Wyandotte Tribe of Indians applied at Quapaw Agency for allotments on the 20,000 acre reservation in Oklahoma under the General Allotment Act of February 8, 1887 (24 Stat. 388; 25 U.S.C. §§ 331 *et seq.*) but were too late because all the available reservation lands were already allotted to tribal members. Congress responded by passing the Act of August 15, 1894 (2 Stat. 286) that allowed them to be allotted land elsewhere in “Indian territory” in Oklahoma, and the Act of June 10, 1896 (29 Stat. 321) specified that they be allotted on the Choctaw and Chickasaw Nations land based on the 1896 Olive Roll.

48. When the Kansas Wyandots were unable to get allotments on the Choctaw or Chickasaw lands, Congress passed the Act of April 28, 1904 (33 Stat. 519), which provided that all living Absentee Wyandot Indians whose names appeared on the December 17, 1896 Olive Roll:

[M]ay select in person, under such rules and regulations as the Secretary of the Interior may prescribe, from the surveyed public non-mineral domain, eighty acres of agricultural land wherever there may be such lands subject to entry; and the heirs of any deceased Absentee Wyandotte Indians so enrolled may in like manner select a like quantify of land in the name of their deceased ancestor . . . and when lands shall have so selected by any person entitled to make such selection and such selection is approved by the Secretary of the Interior, he shall cause a patent to issue in the name of the enrolled Absentee Wyandotte . . .

which patent shall contain the condition that the lands covered thereby shall not be aliened without the consent of the Secretary of the Interior . . .

49. Under the 1904 Act, members of the Kansas Band of the Wyandotte Tribe of Indians, i.e., the “Absentee Wyandots,” took restricted fee allotments on available public domain lands throughout several western states. Some of these allotments are still held in restricted fee status by the heirs of the original Absentee Wyandot allottees, who are still regarded as unemancipated wards of the Federal Government by the federal courts. See, e.g., *United States of America on behalf of heirs to the Absentee Wyandotte allotment of Laura M. Van Pelt v. Weyerhaeuser Company*, 765 F. Supp. 643 (D. Ore., 1991). The District Court held in 1991 *Van Pelt* case that:

Defendant contends that while there is no specific language in the 1904 Act evidencing Congress’ intent to emancipate the Absentee Wyandottes, the spirit of the 1904 Act and its predecessors was that the United States was finished protecting the Absentee Wyandotte Indians. * * * * * Congress intent in the 1904 Act was crystal clear, regardless of what may have been in the past. The Act itself states “the Secretary of the Interior . . . shall cause patent to issue in the name of the enrolled Absentee Wyandotte . . . which patent shall contain the condition that the lands covered thereby shall not be alienated without the consent of the Secretary of the Interior. Further, **the legislative history of the 1904 Act states ‘[i]t is the duty of Congress, upon which devolves the care of its wards, the Indians, by and through the honorable Secretary of the Interior, to afford him an opportunity to give relief to these unfortunate**

Wyandottes.’ H.R.Rep. No. 2681, 57th Cong., 1st Sess., at 2 (1902). ***The Absentee Wyandotte Indians were not emancipated.***’ *Id.*, 765 at 648-649.

[Emphasis supplied].

N. The Wyandotte Tribe of Oklahoma’s attempted sale of Huron Cemetery under the 1906 Act.

50. In 1906, a dispute arose between the Oklahoma Band and the Kansas Band of the Wyandotte Tribe of Indians over the sale of Huron Cemetery. The Oklahoma Band wanted to remove the graves from the cemetery and sell it because of its high commercial value, and because it had its own cemetery in Oklahoma and was not interested in keeping its ownership interest in the Huron Cemetery. The Kansas Band resisted the sale because it was their relatives who were buried in the cemetery and they regarded the cemetery as Sacred Ground, not commercial property.

51. The dispute began when the Oklahoma Band got Congress to pass the Act of June 21, 1906 (34 Stat. 325, 348-49) that authorized the Secretary of the Interior to sell Huron Cemetery and move the remains of deceased persons interred there to the Quindaro Cemetery, with appropriate monuments over their remains. The Act also authorized the Secretary of the Interior to deduct the costs of moving the remains of the deceased persons from the proceeds of the sale of the cemetery, and from the sale of the ferry, if the claims to the ferry were just and equitable. And any remaining money derived from the sale of the cemetery and ferry would be paid per capita to members of the Wyandotte Indians that were parties to the 1855 Treaty. It is worthy of notice that the sale of the ferry and four acres connected therewith was still being questioned by Congress in the 1906 Act, 51 years after the sale to a tribal member was authorized in

the 1855 Treaty. The BIA has never provided the Wyandot Nation of Kansas with documentation that the ferry and 4 acres were ever actually sold by the Federal Government to “the highest bidder, among the Wyandott people” as required by Article 2 of the 1855 Treaty. Any sale to a non-Wyandott would be null and void.

52. Lyda Conley and her sisters opposed the sale of the Huron Cemetery under the 1906 Act, and erected a structure on the cemetery, where they lived around the clock for several years, to protect it. They took turns standing guard with muskets, and put up “No trespassing” signs around it. Lyda attended law school and became a licensed Kansas attorney so she could challenge the 1906 Act in the federal courts. She eventually filed a lawsuit that she appealed all the way to the U.S. Supreme Court. See *Conley v. Ballinger*, 216 U.S. 84, 89 (1910). Lyda Conley became the first Native American woman to become a licensed Kansas attorney and the first to argue a case before the U.S. Supreme Court.

53. In 1907, the Federal Government offered to sell Huron Cemetery to the City of Kansas City, Kansas pursuant to the 1904 Act for \$75,000.00. The Federal Government and its agencies are therefore estopped from denying that the cemetery had a value for less than that amount as of 1907. Also see *Conley v. Ballinger*, 216 U.S. 84, 89 (1910) (plaintiff Lyda Conley argued that “although the [Huron Cemetery] land is worth \$75,000, there is no standard by which to estimate the value of her rights”).

54. As the *Conley* case gained national attention, the Conley sisters eventually gained the support of Senator Curtis of Kansas, who introduced, sponsored and got the

of Act of February 13, 1913 (37 Stat. 668) passed in Congress to prevent the sale of the Huron Cemetery

O. Trust Status Of Huron Cemetery from 1867 to 2015.

55. The United States holds legal title to all trust land held by an Indian tribe or individual Indian allottees (or their heirs) for which the land is held. The tribe or individual Indian allottees (or their heirs) on the other hand hold beneficial or equitable title to the trust land until such time as the Federal Government issues an *unrestricted* fee patent to them. After an unrestricted fee patent is issued by the Federal Government to the owners, the owners can alienate the land to whomever they chose without the approval of the Federal Government.

56. In the Act of September 8, 1916 (39 Stat. 844), Congress appropriated \$10,000 *“for the preservation and improvement of Huron Cemetery, a tract of land in the city of Kansas City, Kansas, **owned by the government of the United States, the use of which was conveyed by treaty to the Wyandotte Tribe of Indians as a cemetery for the members of the tribe . . .**”* [Emphasis supplied]. Thus, the 1916 Act confirmed and acknowledged that Huron Cemetery was trust land in which the United States held legal title and the Wyandotte Tribe of Indians held equitable or beneficial title. Moreover, because it is federal trust Indian land, the Board of Trustees of Haskell Institute (a Native American vocational school) located in Lawrence, Kansas, was assigned to administer the funds and assure the perpetual maintenance of the cemetery.

57. An agreement with the City of Kansas City, Kansas for the carrying out the

preservation and improvement of Huron Cemetery under the 1916 Act was signed on March 20, 1918. As part of the agreement the Government was to pay \$1,000 to the City, and the City in turn agreed:

To forever maintain, care for, preserve the lawns and trim the trees and give the grounds the same and usual attention that it gives to its city parks within the main part of the city, and particularly Huron Park adjoining the Cemetery; and that the City of Kansas City, Kansas, will furnish police protection equivalent to that furnished for the protection of Huron Park; and furnish all electrical energy free of charge for the maintaining of the electric lights, as provided for in the plans and specifications, maintaining and keeping in place all globes and fixtures, and give said Cemetery any and all care that a park of its nature in the heart of a city should demand.

The agreement was signed by Henry B. Peairs, Superintendent of Haskell Institute, for and in behalf of the Commissioner of Indian Affairs, and by H. A. Mendenhall, Mayor of Kansas City, Kansas. It was subsequently approved on April 17, 1918, by E. B. Merritt, Acting Commissioner of Indian Affairs.

58. In the Act of June 30, 1919 (41 Stat. 3) Congress provided that:

The Secretary of the Interior be, and he is hereby, authorized to pay the authorities of Kansas City, Kansas, the sum of \$1,000 in consideration of the agreement of said authorities forever to maintain and care for the Huron Cemetery, ***a tract of land in the city of Kansas City, Kansas , owned by the Government of the United States***, as provided in the contract for said purposes

with the said city of Kansas City, Kansas, ***the use of which was conveyed by treaty to the Wayndot tribe of Indians as a cemetery for members of said tribe***, such payment to be made from the \$10,000 appropriated for the preservation and improvement of said cemetery by the city of September 8, 1916 (thirty-ninth Statute at Large, page eight hundred and forty-four). [Emphasis supplied].

This language also confirmed that the Huron Cemetery is trust land, the legal title of which is held by the Federal Government, and the beneficial or equitable title of which was held for the Wyandotte Tribe of Indians.

59. In the Act of March 2, 1923 (42 Stat. 185), Congress provided that:

That there be paid, out of any money in the Treasury no otherwise appropriated, the sum of \$267.32 to J. W. Glidden and E. F. Hobbs, of Lawrence, Kansas, to reimburse them for money necessarily expended in connection with their contract with the government for the improvement of ***Huron Cemetery, an Indian reservation in Kansas City, Kansas***, in defending their interests in suits brought by the ***Connelley sisters, Indian wards of the Government***, to prevent them from carrying out their contracts with the United States Government in improving the Huron Cemetery in Kansas City, Kansas. [Emphasis supplied].

The 1923 Act conclusively established that: (1) Huron Cemetery is an “Indian Reservation,” and (2) that the Conley sisters (and by implication all other “Absentee Wyandots”), as enrolled members of the Wyandot Tribe of Indians, were still wards of the Federal Government. There is no federal statute enacted since 1923 that changed

the status of the enrolled members of the Wyandotte Tribe of Indians and their offspring, who are now enrolled members of the Wyandot Nation of Kansas, as wards of the Federal Government.

60. The Federal Government is estopped from claiming that the Wyandot Nation of Kansas cannot hold trust land in reservation status in Kansas since:

- a. Both the Acts of September 8, 1916 (39 Stat. 844) and June 30, 1919 (41 Stat. 3) recognized and confirmed that the Huron Cemetery was, and is, trust land;
- b. The BIA entering into a maintenance agreement on behalf of the Wyandotte Tribe of Indians with City of Kansas City, Kansas in 1918 to perpetually maintain, care for and preserve the Huron Cemetery because of the cemetery's trust land status;
- c. The BIA has promulgated regulations that requires the BIA Central Office to perform title services for the trust land of the "Absentee Wyandottes", that includes Huron Cemetery and "Absentee Wyandotte" allotments on the public domain. See 25 C.F.R. § 150.5; and
- d. Congress acknowledged that the land is trust land held as a reservation for the Wyandotte Tribe of Indians (a/k/a Wyandot Nation of Kansas) in the 1923 Act.

61. Section 1 of the Act of August 1, 1956 (Public Law 887, 70 Stat. 893), terminated federal supervision over the restricted property of the Wyandotte Tribe of Oklahoma, and the federal services furnished to them because of their status as Indians. The Wyandotte Tribe of Oklahoma, however, was never actually terminated under the 1956 Act because it was saved from termination by a lawsuit brought by the

Wyandot Nation of Kansas and others challenging Section 5 (c) of the 1956 Act which authorized the removal of graves and sale of the Huron Cemetery. See *City of Kansas City, Kansas v. United States*, 192 F. Supp. 179 (D. Kan., 1960). The lawsuit resulted in the inability of the United States to fulfill the terms of the 1956 Termination Act and the 1956 Act was subsequently repealed by the Act of May 15, 1978 (92 Stat. 246).

O. Protection of Huron Cemetery under 1997 Brownback Act.

62. In 1997, Principal Chief Janith English and the General Council of the Wyandot Nation of Kansas had a bill drafted to protect the Huron Cemetery from commercial development, i.e., a proposal by the Wyadnotte Tribe of Oklahoma to remove the human remains to Quindaro Cemetery and build a Class II and III casino on the two-acre tract of cemetery trust land that would be owned and operated by the Oklahoma Tribe. They got Senator Sam Brownback of Kansas to introduce the bill in Congress.

63. On November 14, 1997, Congress enacted the Brownback Bill into law as Public Law 105-83 (111 Stat. 1543). Section 125 (2) (A) and (B) of Public Law 105-83 provided that:

- (2) The lands of the Huron Cemetery shall be used only—
 - (A) for religious and cultural uses that are compatible with use of the lands as a cemetery; and
 - (B) as a burial ground.

Section 125 (3) of the Act also contained the following legal description of the cemetery:

- (3) The description of the lands of the Huron Cemetery is as follows:

The tract of land in the NW $\frac{1}{4}$ of sec. 10, T. 11 S., R. 26 E., of the sixth principal meridian, in Wyandotte County, Kansas (as surveyed and marked on the ground on August 15, 1888, by William Millor, Civil Engineer and Surveyor), described as follows:

“Commencing on the Northwest corner of the Northwest Quarter of the Northwest Quarter of said Section 10;

“Thence South 28 poles to the ‘true point of beginning’;

’ “Thence South 71 degrees East 10 poles and 18 links;

“Thence South 18 degrees and 30 minutes West 28 poles;

“Thence West 11 and one-half poles;

“The North 19 degrees 15 minutes East 31 poles

and 15 feet to the ‘true point of beginning’, containing

2 acres or more.”

64. The amount of acres described in Public Law 105-83 for Huron Cemetery is “2 aces or more.” It appears that the cemetery is “more” that two acres according to a November 9, 1859 letter to Commissioner of Indian Affairs A. B. Greenwood from J. C. McCoy. The letter states in pertinent part that:

The Grave Yard Reserve containing 2 acres (in conformity with the treaty) as reported to the Commissioners is mathematically incorrect, and will not close. Mr. Miller . . . committed an error which was not detected until lately and which does not include two acres. Nor does it include the whole of the ground which is occupied by Graves, and the copy which was forwarded by myself and

afterwards by Mr. Lawrence is the correct survey of the ground . . .

However, for the purposes of this civil action, the Wyandot Nation of Kansas' claims to the cemetery are based on 1888 Millor Survey. The Wyandot Nation of Kansas, however, reserves the right to assert claims to any portion of the cemetery that extends beyond the 1888 Millor Survey as indicated in the 1859 McCoy letter.

V. EQUITABLE TOLLING / DELAYED ACCRUAL.

A. The audit, accounting and reconciliation Acts.

65. By the Act of December 22, 1987, Pub. L. 100-202, 101 Stat. 1329, Congress imposed two requirements on the Federal Government:

- a. To audit and reconcile tribal trust funds, and
- b. To provide accounting of such funds.

Congress reaffirmed these two mandates in subsequent statutes, namely the Act of October 22, 1989, Pub. L. 101-121, 103 Stat. 701; the Act of November 5, 1990, Pub. L. 101-512, 104 Stat. 1915; and the Act of November 3, 1991, Pub. L. 101-154, 105 Stat. 990. By these Acts, Congress further required that the Federal Government certify, through an independent party, the results of the reconciliation of tribal trust funds as the most complete reconciliation possible of such funds.

B. The appropriation acts.

66. To protect the rights of tribes until the aforementioned accountings of their trust funds could be completed, Congress has included, in a series of Interior Department Appropriations Acts, language providing that ***“the statute of limitations shall not commence to run on any claim concerning losses to or mismanagement***

of trust funds until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss.” See, Act of November 5, 1990, Pub. L. 101-512, 104 Stat. 1915; Act of November 13, 1991, Pub. L. 102-154, 105 Stat. 990; Act of October 5, 1992, Pub. L. 102-381, 106 Stat. 1374; Act of November 11, 1993, Pub. L. 103-138, 107 Stat. 1379; Act of September 30, 1994, Pub. L. 103-332, 108 Stat. 2499; Act of April 26, 1996, Pub. L. 104-134, 110 Stat. 1341; Act of September 30, 1996, Pub. L. 104-208, 110 Stat. 3009; Act of November 14, 1997, Pub. L. 105-83, 111 Stat. 1543; Act of October 21, 1998, Pub. L. 105-227, 112 Stat. 2681; Act of November 29, 1999, Pub. L. 106-113, 113 Stat. 1501; Act of October 11, 2000, Pub. L. 106-291, 114 Stat. 922; Act of November 5, 2001, Pub. L. 107-63; Pub. L. 109-158 (December 30, 2005).

C. The Arthur Anderson Reports.

67. To satisfy the requirements of the Act of December 22, 1987, the Federal Government retained the accounting firm of Arthur Andersen LLP to prepare and issue reports to federally recognized Indian tribes. As of the filing date of this civil action, the Wyandot Nation of Kansas has not received an Arthur Anderson Report even though it has been an unterminated tribe since 1867, and has received, and is still receiving, special services provided by the Federal Government because of its status as an Indian tribe as described in Paragraph 44. Moreover, the Wyandot Nation of Kansas has enforceable treaty rights in this civil action regardless of whether the Federal Government recognizes it as a federally recognized or unrecognized tribe. See *Greene v. Babbitt*, 64 F.3d 1266, 1270 (9th Cir. 1995) (“[n]onrecognition of tribe by the federal

government . . . can have no impact on vested treaty rights”); *Timpanogos Tribe v. Conway*, 286 F.3d 1195, 1203 (10th Cir. 2002) (“the fact that a tribe is not administratively recognized does not affect that tribe's vested treaty rights”); *Menominee Tribe v. United States*, 391 U.S. 404 (1968) (“treaty hunting rights survived despite Congressional termination of all formal tribal political authority”).

D. Preservation of unknown damage claims.

68. To the extent that an accounting to which the Wyandot Nation of Kansas is entitled reveals that it has one or more additional monetary claims against the United States, they also seek damages on those additional claims in this civil action, and will seek leave of this court to amend this complaint to allege those additional claims, if necessary.

VI. IDENTIFICATION OF THE WYANDOT NATION OF KANSAS’ INTERESTS IN TRUST FUNDS AND TRUST ACCOUNTS.

A. Categories of accounting claims.

69. The Federal Government’s total control and management of the Wyandot Nation of Kansas trust funds can be divided into **two categories** for the purposes of this civil action:

- a. **Category One** Trust funds are those funds described in Schedule A of the 1867 Treaty; and
- b. **Category Two** Trust funds are those funds that should have been collected, deposited, accounted for and invested from income derived from the use of two tracts of Huron Cemetery trust lands that the Federal Government has allowed the City of Kansas City, Kansas to use for two

streets since 1857 without easement for grants of rights-of-way required by federal law.

70. The Wyandot Nation of Kansas ownership interest in both Categories One and Two trust funds and accounts must be based on the 1896 Olive Roll and 1896 Quapaw Agency Roll since both rolls have the number of members of both the Oklahoma Band and Kansas Band of the Wyandotte Tribe of Indians as of 1896.

71. Thus, the percentage of ownership Interest of the Oklahoma Band and Kansas Band of the Wyandotte Tribe of Indians in the Categories One and Category Two trust funds based on the 1896 Olive Roll and 1896 Quapaw Agency Roll are as follows:

308/500 to the Wyandotte Tribe of Oklahoma; and

202/500 to the Wyandotte Tribe of Indians (a/k/a Wyandot Nation of Kansas)

These percentages should still apply after the Oklahoma Band splintered off from the Wyandotte Tribe of Indians and reorganized as a separate tribe under the Section 3 of the OIWA in 1937.

B. Interest of Wyandot Nation of Kansas in Category One -- 1867 Treaty trust funds claims.

72. The Category One trust funds described in Schedule A of the 1867 Treaty were derived from the sale of Historic Wyandott Nation treaty lands that were placed in U.S. Treasury trust accounts. The Wyandot Nation of Kansas is a successor-in-interest to all the Historic Wyandotte Nation treaties pursuant to the Act of March 3, 1871 (25 U.S.C. § 71) ("no obligation of any treaty lawfully made and ratified with any such Indian

nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired"). The Wyandot Nation of Kansas therefore has an undivided 202/500 ownership interest in the said Category One treaty trust funds, and therefore, has a right to an accounting of the said trust funds in this civil action.

C. Interest of Wyandot Nation of Kansas in Category Two – Easements for Grants of Rights-of-way trust funds claims.

73. The Category Two trust funds are derived from easements for grants of rights-of- way for the use of two tracts of the Huron Cemetery trust land for Kansas City Kansas streets since 1857. The Federal Government had, and has, a fiduciary duty to collect and deposit said trust funds in U.S. Treasury trust accounts in the name of the Wyandot Nation of Kansas, and to account for, and invest said funds after they are deposited.

74. As alleged in Paragraphs 2 and 72, the Wyandot Nation of Kansas is a successor-in-interest to all Historic Wyandott Nation treaties under 25 U.S.C. §71, and is therefore entitled to its share of the Category Two trust funds based on its 202/500 ownership interest in said funds, and is moreover entitled to an accounting and reconciliation of said funds.

VI. CLAIMS FOR RELIEF.

**FIRST CLAIM FOR RELIEF
(Category One – 1867 Treaty Trust Funds Claims)**

75. As its first claim for relief, the Wyandot Nation of Kansas realleges and incorporates by reference the allegations contained in paragraphs 1-74.

76. Category One treaty claims are defined in Articles 13 and 14 of the 1867

Treaty as follows:

Article 13. . . . the Secretary of the Interior is hereby authorized and required to appoint three persons whose duty it shall be to ***ascertain and report to the Department the amount of money, if any, due by the United States to the Wyandott[e] Indians under existing treaty stipulations, and the items mentioned in Schedule A***, appended to this treaty, and the report of the person so appointed with the evidence taken, shall be submitted to Congress for action in its next session. [Emphasis supplied].

Article 14. Whenever the register in the next preceding article shall have been completed and returned to the Commissioner of Indian Affairs, the amount of money in said article acknowledged to be due to the Wyandott[e]s shall be divided, and that portion equitable due to the citizens of said people shall be paid to them and their heirs, under the direction of the Secretary of the Interior; **and the balance, after deducting the cost of the land purchased from the Senecas** by the first article hereof, and the sum of five thousand dollars to enable the Wyandott[e]s to establish themselves in their new homes, **shall be paid to the Wyandott[e] tribe per capita.**

Since the ancestors of all of the enrolled members of Wyandot Nation of Kansas were non-citizen Indians whose names were placed on the 1867 Treaty Register, it was part of their \$20,000 that was used to pay for the 20,000 acres of reservation land (at \$1.00 per acre) in Oklahoma. The \$20,000 was deducted from the \$83,814.40 amount in Schedule A and the balance -- the \$28,109.51 described in Paragraph 78 -- which the

Kansas Band of the Wyandotte Tribe of Indians never received, was supposed paid out 15 year later (in 1882) to all the non-citizen Wyandots on the 1867 Treaty Register.

77. Schedule A of the 1867 treaty provided as follows:

a. Annuity due under the 6th article of the treaty of January 31, 1855 --

\$8,750.00;

b. Amount discounted on \$53,594.53 in State bonds on the 13th of May,

1859 -- **\$15,187.03;**

c. Interest on the above \$15,787.03 from May 13th, 1859, to February, 1 at 5 per cent -- **\$6,150.87;**

d. Amount discounted on \$53,000 in State bonds, March 24, 1860 --

\$11,130.00;

e. Interest on the above \$11,130 from March 24, 1860, to February 24, 1867 -- **\$4,618.95;**

f. Moneys heretofore appropriated in fulfillment of treaty stipulations, but transferred to the surplus fund -- **\$3,635.05;** and

g. Amount for depredations on Wyandotte property, claim approved by Secretary of the Interior, March 21st, 1862 -- **\$34,342.50.**

TOTAL AMOUNT **\$83,814.40**

The above-named total sum is designed to represent the full claim of the Wyandottes against the United States under former treaties.

The 1st, 2d, and 4th items, together with another named in the 14th article of the foregoing treaty, were examined and approved by the House Committee

on Indian Affairs, and their payment recommended.—(See Congressional Globe, page 1037, part 2d, 2d session of 38th Congress.)

The 3d and 5th items constitute the interest on the moneys discounted on the bonds mentioned in items 2 and 4. Although the committee did not recommend the payment of this interest, they acknowledged its justice, but said that its allowance would possibly endanger the passage of the appropriation, as the general feeling was averse to paying interest on claims.

The 7th item embraces several small amounts for schools, blacksmith, &c., which were due and appropriated at the date of the treaty, but not paid, and were afterwards transferred to the surplus fund.

The 8th item is for depredations on Wyandotte property during the Kansas troubles and the entire emigration to California. It was examined and approved by the Secretary of the Interior, March 21, 1862.

78. After 14 years, on March 3, 1881, Congress appropriated **\$28,109.51** to pay the Wyandotte Tribe of Indians for claims based on Schedule A of the 1867 Treaty. *Report of the Commissioner of Indian Affairs*, 1881, p. XLII. The following year, in March and April, 1882, the \$28,109.51 was purportedly paid to them as full payment on their claims based on the 1867 Treaty. *Report of the Commissioner of Indian Affairs*, 1882, p. 82-83.

79. The Schedule A \$28,109.51 payment was deposited and sat in interest-bearing trust accounts between 1855 and 1888, before it was supposedly paid to the

Wyandotte Tribe of Indians. During those years, the Federal Government assumed total control over the trust funds, all of which were subject to the following federal statutes that were in effect and applicable to the said trust funds and accounts, both prior to and subsequent to 1888, viz: 25 U.S.C. §§ 122, 152, 153, 157, 158, 160, 160, 161, 161a, 161c, 161d, 162a, and the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239 (1994). In addition thereto, since the Wyandotte Tribe of Indians (a/k/a Wyandot Nation of Kansas) was created as a federally recognized tribe entitled to receive special services from the Federal Government under Article 13 of the 1867 Treaty, it has in fact received, and continues to receive such special services up to the filing date of this civil action, as alleged in Paragraphs 44.

80. Its Category One trust funds and accounts are therefore subject to the provisions of the American Indian Trust Fund Management Reform Act of 1994 (108 Stat. 4239; 25 U.S.C. §§ 4001-61), that recognized the pre-existing trust responsibilities of the Federal Government, and charged it with additional responsibilities to ensure the proper discharge of its trust responsibilities.

81. The total amount claimed under Schedule A to the 1867 Treaty was \$83,814.40. The amount actually paid to the Wyandotte Tribe of Indians in 1888 was supposedly \$28,109.51. The \$28,109.51 was held by the Federal Government in U.S. Treasury trust accounts from 1855 to 1888. During the time the Federal Government held the \$28,109.51 in U.S. Treasury trust accounts, it assumed the duties and obligations of a trustee. *United States v. Mitchell*, 463 U.S. 206,225; *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001).

82. As trustee of the Wyandot Nation of Kansas' Category One (Schedule A) treaty trust funds, the Federal Government assumed a fiduciary duty to administer the Schedule A trust funds with the greatest of **skill and care** possessed by a trustee. It charged itself with moral obligations of the highest responsibility and trust in its conduct with the Wyandotte Tribe of Indians and should, therefore, be judged by the most exacting fiduciary standards. *Cobell*, 240 F.3d at 1099 (quoting *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)).

83. The trust obligation to the Wyandotte Tribe of Indians, in regards to its \$28,109.51 in trust funds, includes a duty to ensure that the funds are protected, preserved, and managed so as to produce a maximum return to the tribal owner consistent with the trust character of the funds, including ensuring that the Wyandotte Tribe of Indians (a/k/a the Wyandot Nation of Kansas) was afforded its full rights to payment, including interest, on the \$28,109.51 from 1855 to the filing date of this civil action.

84. To date, the Federal Government has breached its fiduciary duties to the Wyandot Nation of Kansas by failing to provide it with a full, accurate and timely accounting of its Category One (Schedule A) treaty trust funds, and income derived from the said funds, under federal law. Article 14 of the 1867 Treaty provides that any amount of money due from the Schedule A trust funds "**shall be paid** to the Wyandott[e] per capita." Moreover, Section 201 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4021) provides that one of the purposes of the Act is to give Indian tribes an opportunity to manage their trust funds, and Section

202 of the Act (25 U.S. C. § 4022 (a) and (b)) allows Indian tribes to submit plans to withdraw their trust funds from the U.S. Treasury, subject to federal approval. Thus, both the 1867 Treaty and 1994 Act have money mandating provisions requiring the Federal Government to pay the Wyandot Nation of Kansas its treaty trust funds that are held in the U.S. Treasury, or other interest bearing accounts.

85. The failure of the Federal Government to provide a full, accurate and timely accounting of the Category One (Schedule A) treaty trust funds has deprived the Wyandot Nation of Kansas of the ability to determine whether it has suffered a loss, and the extent of a loss it has suffered. The Wyandot Nation of Kansas is therefore entitled to a full and complete accounting as possible of its Category One (Schedule A) treaty trust funds “to the earliest possible date”, as provided in 25 U.S.C. § 4044 (2) (A).

SECOND CLAIM FOR RELIEF
(Category Two – Easements for Grants of Rights-of-way Trust Funds)

86. As its second claim for relief, the Wyandot Nation of Kansas realleges and incorporates by reference the allegations contained in paragraphs 1-85.

86. On January 29, 1859, when the town of Wyandott, Kansas (later Kansas City, Kansas) was incorporated, two streets had already been cut across Huron Cemetery trust lands.

87. A July 12, 1959 article in the *Kansas City Kansan* newspaper showed photos of those portions of the cemetery that extended onto Minnesota Avenue and Seventh Street, a copy of which is attached as **EXHIBIT “B”** and incorporated herein by reference. The newspaper article reported that “[b]elief has been expressed that the legal principle of “prescription” which gives title or right to property thru its continued use

and possession over a long period, probably means the street property is the city's as long as it wants it."

88. The July 12, 1959 Kansas City Kansan newspaper article photo is corroborated by official maps of the City of Kansas City, Kansas that also shows portions of Huron Cemetery extending onto Minnesota Avenue and Seventh Street, copies of which are attached as **EXHIBIT "C"** and incorporated herein by reference.

89. The portions of the Huron Cemetery that extend on to Minnesota Avenue and Seventh Streets, like the rest of the cemetery, are held in trust by the United States and are not subject to the legal principle of "prescription" under Kansas law. See Op Sol., Vo. II, p. 1473 (Oct. 7, 1947) ("Kansas City, Kansas has no title in, or right to, the cemetery tract" and the "only interest of the city in the cemetery is that of a caretaker, which stem from a contract dated April 20, 1918 and approved by this Department on April 17, 1918").

90. The boundaries of Huron Cemetery are based on the 1888 Millor Survey described in Paragraph 63, and includes the two tracts of cemetery trust lands used for the two Kansas City streets. The Federal Government had, and still has, total control over easements for grants of right-of-way over and across Indian trust lands under Section 1 of the Act of February 5, 1948 (25 U.S.C. § 323) which provides that:

The Secretary of the Interior be, and ***he is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations***, or any

lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations . . . and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians. [Emphasis supplied].

Thus, since 1948, the Secretary of the Interior had a fiduciary duty under 25 U.S.C. § 323 to ensure that the City of Kansas City, Kansas obtained federally approved easements for grants of right-of-way over and across the two tracts of Huron Cemetery trust lands used for its two city streets. The Secretary of the Interior, moreover, had an identical fiduciary duty to ensure that the City of Kansas City, Kansas obtained federally approved easement for grants of rights-of-way for the two city streets prior to 1948 under Section 12 of the Trade and Intercourse Act June 30, 1834 (25 U.S.C. § 177), which provided that “[n]o . . . grants . . . of land . . . from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution.”

91. Section 3 of the 1948 Act (25 U.S.C. § 325) also provides that “[n]o grants of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just” and that “[t]he compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.” [Emphasis supplied]. Moreover, 25 C.F.R. § 169.12 allows for “severance damages, if any, to the remaining estate.” Both 25 U.S.C. § 325 and 25 C.F.R. § 169.12 are money mandating.

92. Pursuant to authority delegated to him under 25 U.S.C. § 323 and 325, the Secretary of the Interior issued a Handbook entitled "*PROCEDURAL HANDBOOK, Grants of Easement for Right-of-Way on Indian lands*" dated March 6, 2006. Section 4, Step 3 of the Handbook provides as follows:

Step 3: Collect compensation from the grantee on behalf of the landowner(s) for use of the land.

- ***Compensation is formally collected by OST; although the Realty Office's Collections Officer will initially receive the checks.*** [Emphasis supplied].

93. The OST, however, never actually receives money from the BIA. The BIA Realty Office receives the payment for an easement for grant of rights-of-way from the grantee, then places the money in a lock box and records the transaction in its Trust Asset and Accounting Management System (TAAMS). The BIA then sends the information to the Office of Special Trustee ("OST") at Albuquerque, N.M. for recording in its Trust Fund Accounting System (TFAS). After the OST records the transaction in its system, the BIA wire transfers the money from its lock box directly to Tribe's bank account. Money is dispersed to the tribes once a year, or in some cases twice a year. The OST was established by Section 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4042) to improve the accountability and management of Indian trust funds held by the Federal Government.

94. The Federal Government not only had a fiduciary duty to issue easements for grants of rights-of-way for the Huron Cemetery trust lands used for Kansas City, Kansas streets, but also assumed a fiduciary duty to collect, manage, deposit, and

accrue interest on the proceeds for the use of the two tracts of cemetery trust lands under the following federal statutes: 25 U.S.C. §§ 122, 152, 153, 157, 158, 160, 160, 161, 161a, 161c, 161d, 162a, and the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239 (1994). The Federal Government breached its trust responsibility by failing to perform its trust responsibility pursuant to the said federal statutes since 1857. See *Shoshone Indian Tribe of the Wind River Reservation v. United States*, 364 F.3d 1339, 1350 (Fed. Cir. 2004) (“Shoshone II”) (finding Government responsible for collecting and managing all payments relating to mining leases, and further required to “**deposit and accrue interest** on such proceeds pursuant to the general trust provisions of 25 U.S.C. §§ 161a, 161b, and 162a”).

95. As part of its fiduciary duties, the Federal Government must keep **clear and accurate accounts**, showing what it has received, what it has expended, what gains have accrued, and what losses have resulted for the use of the Huron Cemetery trust lands. See *Shoshone II*, 364 F.3d at 1351 (quoting 2A Scott on Trusts § 172 (2001)).

96. This Court has addressed the statutory obligations of the United States under 25 U.S.C. §§161a and 161b, and §162a and has consistently held the Federal Government responsible for **investing Indian trust funds in the highest yielding investment vehicles available** to the funds in question. See *Mitchell v. U.S.* 664 F.2d 265, (Ct. Cl. 1981), *Cobell v. Norton*, 240 F. 3d 1081 (D.C. Cir 2001); and *Cheyenne Arapaho Tribe of Indians of Oklahoma et al v. United States*, 512 F. 2d 1390 (March 19, 1975). These holdings apply equally to trust income generated from the use of the two Kansas City, Kansas streets.

97. Because of the enactment of 25 U.S.C. §§161a and §162a, and the American Indian Trust Fund Management Reform Act of (108 Stat. 4239; 25 U.S.C. §§ 4001 et seq.), the Federal Government assumed a **statutory trust duty** that runs concurrently with its federal common law obligations **to properly manage** trust monies and lands for the highest and best use of the tribe.

98. Under the common law of trusts “it is indisputable that a trustee has an affirmative duty to act reasonably to **preserve** trust property. *White Mountain Apache Tribe v. United States*, 249 F.3d at 1364, 381-83 (Fed. Cir. 2001), affirmed, *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003). “[E]lementary trust law . . . confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch.” *Id.*, 537 U.S. at 475. These common law principles apply to the Federal Government’s duty to preserve the Huron Cemetery trust lands.

99. The Federal Government breached its trust responsibility to the Wyandot Nation of Kansas for its Category Two claims by failing to collect, deposit, account for, and invest its trust funds that should have been collected and deposited in the U.S. Treasury for the use of its Huron Cemetery trust lands for two Kansas City, Kansas streets without federally approved easements for grants of rights-of-way required by 25 U.S.C. §§ 177, 325 and 325; 25 C.F.R. § 169.12, and Section 4, Step 3 of the *PROCEDURAL HANDBOOK, Grants of Easement for Right-of-Way on Indian lands* dated March 6, 2006.

100. The Secretary of the Interior is specifically required by 25 U.S.C. § 325 to ensure that compensation to the Indian owners trust land **are paid** “such compensation” that he “determines to be just.” The consideration for any right-of-way granted or renewed cannot be less than, but not limited to, the fair market value of the rights granted under 25 C.F.R. §169.12.

101. The failure of the Federal Government to provide a full, accurate and timely accounting of the Category Two (easements for grants of rights-of-way) trust funds has deprived the Wyandot Nation of Kansas the ability to determine whether it is suffered a loss, and the extent of any loss it has suffered. The Wyandot Nation of Kansas is therefore entitled to an audit of its Category Two trust funds and accounts to the earliest possible date, as provided in 25 U.S.C. § 4044 (2) (A).

THIRD CLAIM FOR RELIEF
(Mismanagement of Category One treaty trust funds and accounts)

102. As its third claim for relief, the Wyandot Nation of Kansas realleges and incorporates by reference the allegations contained in paragraphs 1-101.

103. The Wyandot Nation of Kansas' Category One (Schedule A) treaty trust funds are derived from Articles 13 and 14 of the 1867 Treaty. As alleged in Paragraphs 2, 72 and 74, the Wyandot Nation of Kansas is a successor-in-interest to all the Historic Wyandott Nation treaties, including the 1867 Treaty.

104. The Federal Government has grossly mismanaged, and continues to mismanage, the Wyandot Nation of Kansas' Category One (Schedule A) treaty trust funds and accounts by:

- Failing to collect, deposit, account for and invest the trust funds in the

highest yielding investment vehicles available;

- Failing to accrue interest on the trust funds;.
- Failing to keep clear and accurate accounts, showing amounts received and expended, and what gains have accrued and what losses have resulted for the use of the trust funds;
- Failing to preserve the trust property;
- Failing to keep adequate records and to install adequate accounting systems, including an adequate accounts receivable system; and
- Failing to ensure that the trust funds it maintains are not lost, dissipated, or converted to the Federal Government's own use.

105. Congress has established a comprehensive regulatory and statutory scheme under 25 U.S.C. § 162a (d) for the Secretary of the Interior to discharge his trust responsibilities when managing tribal trust funds. Under § 162a, the Secretary is required to:

- Maintain adequate systems for accounting for and reporting cash Balances;
- Provide adequate controls over receipts and disbursements;;
- Provide periodic, timely reconciliations to assure the accuracy of Accounts;
- Determine accurate cash balances;
- Prepare and supply account holders with periodic statements of their account performances and with balances of their accounts which shall be

available on a daily basis;

- Establish consistent, written policies and procedures for trust fund management and accounting; and
- Provide adequate staffing, supervision, and training for trust fund management and accounting.

106. As alleged in Paragraph 84, Article 14 of the 1867 Treaty provides that any amount of money due from the Category One (Schedule A) trust funds “**shall be paid** to the Wyandott[e] per capita,” and Section 202 of the American Indian Trust Fund Management Reformat of 1994 (25 U.S. C. § 4022 (a) and (b)) allows Indian tribes to submit plans to withdraw their trust funds from the U.S. Treasury, subject to federal approval. These treaty and statutory provisions are money mandating and require the Federal Government to pay the Wyandot Nation of Kansas its treaty trust funds that are held in the U.S. Treasury, or other interest bearing accounts.

107. As a direct and proximate result of the Federal Government’s breach of its fiduciary duties and trust obligations, the Wyandot Nation of Kansas has been deprived of substantial sums of money that it would have received from its Category One (Schedule A) treaty trust funds, had they not been mismanaged by the Federal Government.

108. The Wyandot Nation of Kansas is uncertain as to the exact amount of damages to which it is entitled, which it will calculate and present to the Federal Government at the appropriate time in accordance with the procedures established by the Court.

FOURTH CLAIM FOR RELIEF
(Mismanagement of Category Two Huron Cemetery trust funds)

109. As its fourth claim for relief, the Wyandot Nation of Kansas realleges and incorporates by reference the allegations contained in paragraphs 1-108.

110. The Wyandot Nation of Kansas' Category Two (Huron Cemetery) trust funds are derived from the trust status of the cemetery as follows:

- Article 1 and 2 of the 1843 Treaty, under which the Historic Wyandott Nation acquired 39 sections of trust land from the Delaware Nation with Congressional approval (the two-acre Huron Cemetery was included within the 39 sections as trust land). See Paragraphs 10-11;
- Reserving the cemetery trust status from the cession of the 39 sections of trust land ceded to the United States under Article 2 of the 1855 Treaty;
- Congressional affirmance of the cemetery as the trust lands of the Wyandot Tribe of Indians (a/k/a the Wyandot Nation of Kansas) in the 1916 1919 and 1923 Acts; and,
- Total control over the cemetery trust lands by the BIA since 1855, including the unilateral execution of an 1918 agreement between the City of Kansas City, Kansas, and the BIA to perpetually "maintain, care for, and preserve" the cemetery grounds without any consultation or an input from the Wyandotte Tribe of Indians.

111. As alleged in Paragraph 90, the Secretary of the Interior had, and still has, a fiduciary duty under 25 U.S.C. § 323 and 25 U.S.C. § 177 to ensure that the City of Kansas City, Kansas obtained federally approved easements for grants of right-of-

way over and across the two tracts of Huron Cemetery trust lands used for its two city streets, and breached his duty by failing, and continuing to fail, to require the City of Kansas City, Kansas to obtain federally approved easements for grant of rights of way for the two tracts of trust lands..

112. The Federal Government has grossly mismanaged, and continues to grossly mismanage, the Wyandot Nation of Kansas' Category Two (Huron Cemetery easements for grant of rights of way) trust funds and accounts by:

- Failing to collect, deposit, account for and invest the trust funds in the highest yielding investment vehicles available;
- Failing to accrue interest on the trust funds;
- Failing to keep clear and accurate accounts, showing amounts received and expended, and what gains have accrued and what losses have resulted for the use of the trust funds;
- Failing to preserve the trust property;
- Failing to keep adequate records and to install adequate accounting systems, including an adequate accounts receivable system; and,
- Failing to ensure that the trust funds it maintains are not lost, dissipated, or converted to the Federal Government's own use.

113. Congress has established a comprehensive regulatory and statutory scheme under 25 U.S.C. § 162a (d) for the Secretary of the Interior to discharge his trust responsibilities when managing tribal trust funds; the Secretary is required to:

- Maintain adequate systems for accounting for and reporting cash Balances;
- Provide adequate controls over receipts and disbursements;
- Provide periodic, timely reconciliations to assure the accuracy of Accounts;
- Determine accurate cash balances;
- Prepare and supply account holders with periodic statements of their account performances and with balances of their accounts which shall be available on a daily basis;
- Establish consistent, written policies and procedures for trust fund management and accounting; and
- Provide adequate staffing, supervision, and training for trust fund management and accounting.

114. The Federal Government breached its fiduciary duties and trust obligations described in Paragraphs 104 and 105 by mismanaging the Wyandot Nation of Kansas' Category Two (Huron Cemetery easements for grant of rights of way) trust funds in violation of federal statutory and common law, including but not limited to, 25 U.S.C. §§ 122, 152, 153, 157, 158, 160, 160, 161, 161a, 161c, 161d, 162a, and the American Indian Trust Fund Management Reform Act of 1994, 108 Stat. 4239 (1994).

115. As alleged in Paragraph 91, 25 U.S.C. § 325 provides that no grants of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just, and that the compensation received on behalf

of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior,” and 25 C.F.R. § 169.12 allows for “severance damages, if any, to the remaining estate.” Both 25 U.S.C. § 325 and 25 C.F.R. § 169.12 are money mandating.

116. As a direct and proximate result of the Federal Government’s breach of its fiduciary duties and trust obligations, the Wyandot Nation of Kansas has been deprived of substantial sums of money that it would have received from its easement for grants of rights of way trust accounts had they not been so grossly mismanaged by the Federal Government.

117. The Wyandot Nation of Kansas is uncertain as to the exact amount of damages to which it is entitled, which it will calculate and present to the Federal Government at the appropriate time in accordance with the procedures established by the Court.

PRAYER FOR RELIEF

WHEREFORE, the Wyandot Nation of Kansas respectfully requests that the Court:

1. Award monetary damages in an amount to be determined by the Court following a determination of liability on the part of the Federal Government for its breaches of trust which will compensate the Wyandot Nation of Kansas for the injuries and losses caused by the breaches of trust, including interest as required by law.
2. Award an accounting in aid of jurisdiction to render the monetary judgment;
3. Award attorney fees and costs incurred herein under 28 U.S.C. § 2412 and

other applicable law; and

4. Award such other relief as the Court deems just and equitable.

Dated this 29 day of May, 2015.

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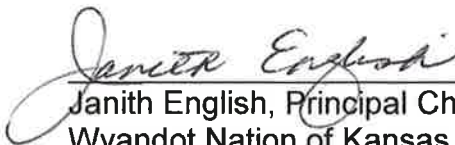
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VERIFICATION OF COMPLAINT

State of Kansas)
) SS.
County of Johnson)

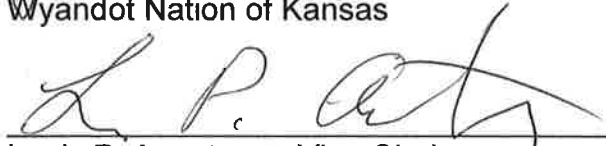
Janith English, Jim Gilliford, and Louis P. Armstrong, first being duly sworn upon oath, say that the facts and allegations contained in the forgoing complaint are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, they believe them to be true.



Janith English, Principal Chief
Wyandot Nation of Kansas



Jim Gilliford, Second Chief
Wyandot Nation of Kansas



Louis P. Armstrong, Vice-Chairman
Wyandot Nation of Kansas Business Committee

Taken, sworn to and subscribed before me on this 26th day of May, 2015, at Kansas City, Kansas.



Notary Public, State of Kansas

MY COMMISSON EXPIRES: 3/30/19

[SEAL]



Exhibit A

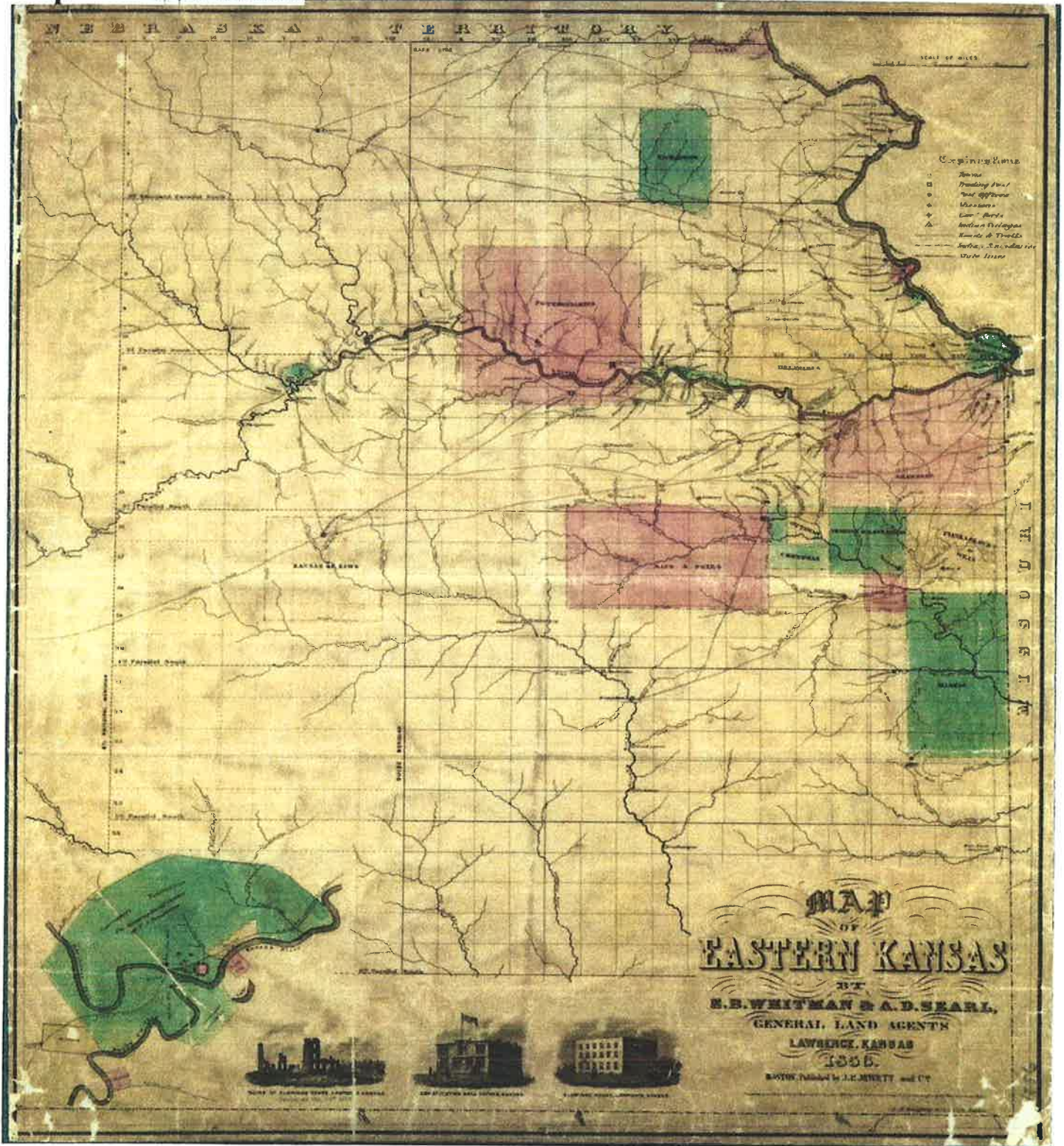
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KANSAS
HISTORICAL
SOCIETY

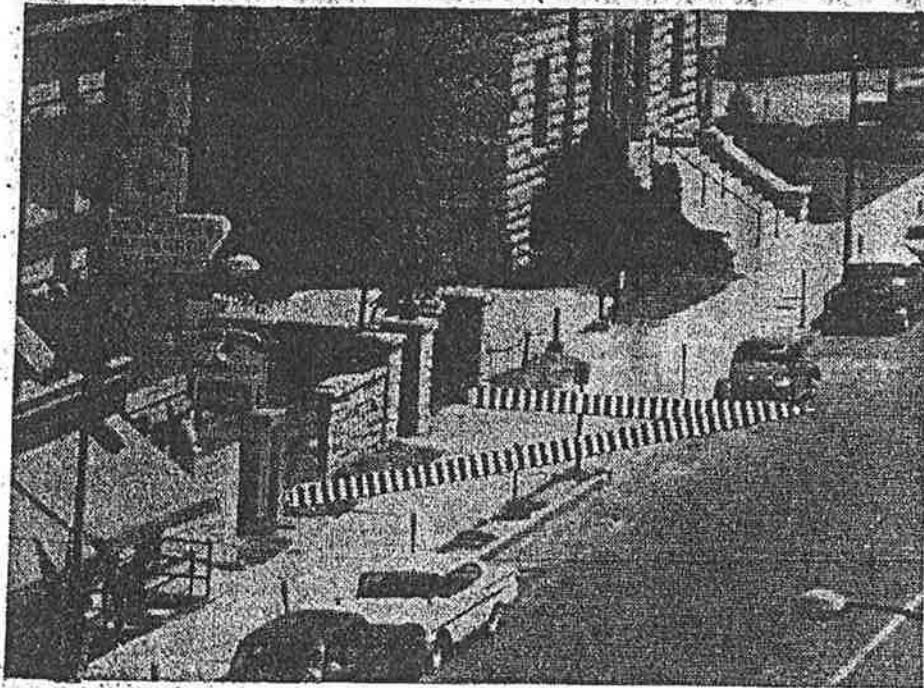
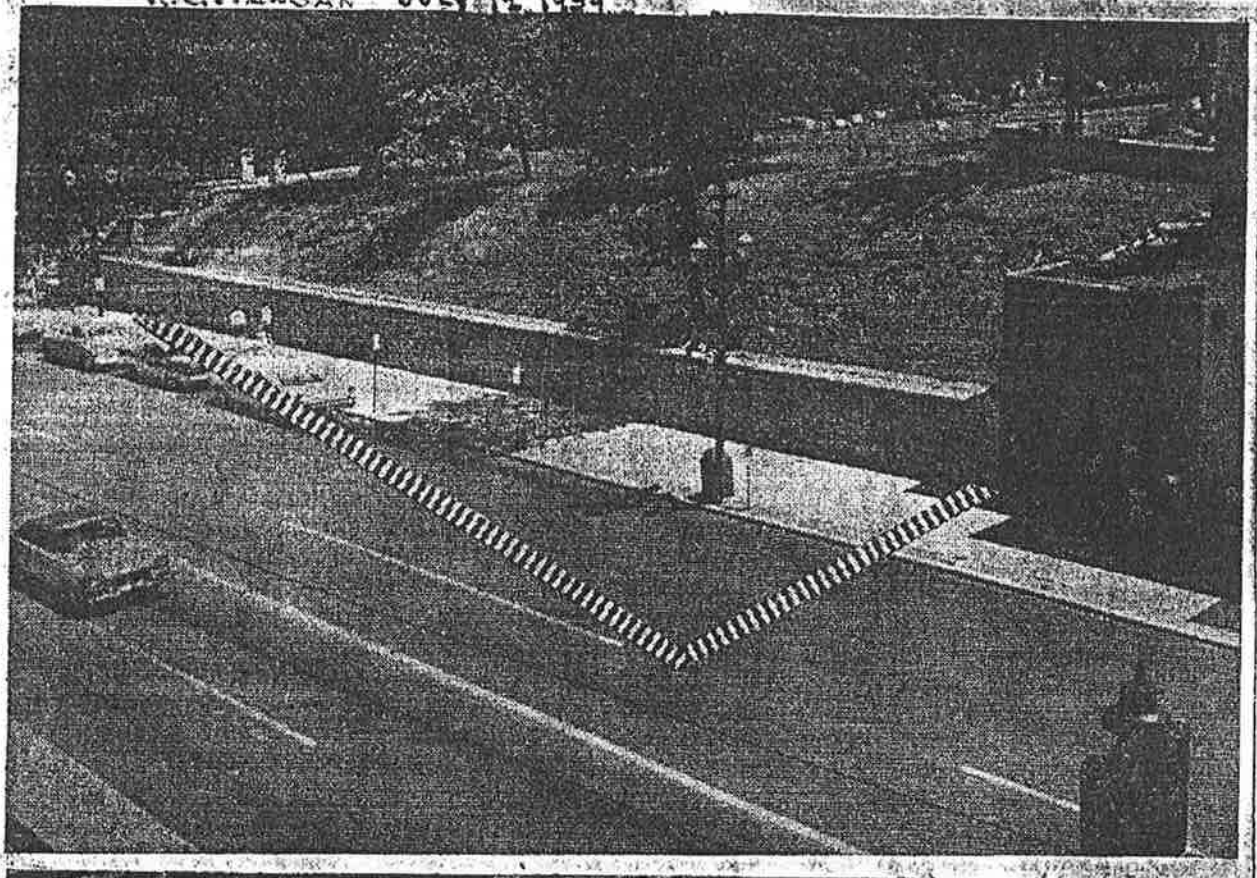
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Map of Eastern Kansas



<http://www.kansasmemory.org/item/213048/page/1>
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Exhibit B



cemetery for commercial purposes against the desires of many citizens here who

want it preserved as a national shrine.

Regardless of the cemetery controversy, it does not appear that motorists and shoppers need fear barricades creating new traffic hazards. Belief has been expressed that the legal principle of "prescription," which gives title or right to property thru its continued use or possession over a long period, probably means the street property is the city's as long as it wants it.

Streets Use Indian Land

Two highly valuable chunks of real estate may still belong to the Indians, but they probably couldn't get them back if they wanted to.

Broken lines indicate the areas concerned which ex-

tend into two busy streets, Minnesota Ave. at the top, and 7th St., just around the corner, below.

The triangular pieces of land outlined by the photographer coincide with an 1888 survey of controversial Hu-

ron cemetery, still owned by the Wyandotte tribe. Officials believe the survey to be accurate.

The city's encroachment on the Huron land was pointed out after the controversy arose over attempts of the Wyandottes to sell the

Exhibit C



Ann Ave.

Armstrong Ave

EXHIBIT

C

ST.

SEVENTH

