IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) ALABAMA-QUASSARTE TRIBAL TOWN,	)	
Plaintiff,	)	
vs.	)	**Case No. 06-CV-558-RAW**
	)	**Judge Ronald A. White**
(1) UNITED STATES OF AMERICA, (2) SALLY JEWELL, Secretary of the United States Department of the Interior, (3) KEVIN K. WASHBURN, Associate Deputy of the Department of the Interior, (4) JACK LEW, Secretary of the Treasury, (5) MUSCOGEE (CREEK) NATION	)	
Defendants.	)	

BRIEF IN SUPPORT OF MOTION TO DISMISS
OF DEFENDANT MUSCOGEE (CREEK) NATION

As this court is aware, Plaintiff's lawsuit involves a dispute between the Alabama-Quassarte Tribal Town and the Muscogee (Creek) Nation over the ownership of the beneficial title to more than eight hundred acres of land held in trust by the United States for the benefit the Muscogee (Creek) Nation. The land is in Hughes County, near Interstate 40, and has been known at various times as the Wetumka Project or the Dustin Project lands. Plaintiff has asserted that it is entitled to the beneficial ownership of the acreage by virtue of letters from the 1940's stating that Plaintiff *should* be the beneficial owner. (Doc. No. 174 at ¶27, Doc. 174-2, Doc. 174-3). Plaintiff also relies on a tribal resolution from 1980 of the Muscogee (Creek) National Council stating that the Alabama-Quassarte Tribal Town *should* be the beneficial owner. (Doc. No. 174 at ¶18, Doc. 174-4).

In its prior rulings, this court determined that the land was never conveyed by the Muscogee (Creek) Nation to the Alabama-Quassarte Tribal Town. This court also determined that the United

States never conveyed the beneficial title from the "Creek Tribe" to the Alabama-Quassarte Tribal Town. Finally, this court also noted that the AQTT took no actions for more than half a century to do so. (Doc. No. 50).

Although Plaintiff relies on a Tribal Resolution from 1980 which stated that the beneficial interest should belong to the AQTT, Plaintiff has conveniently excluded subsequent Tribal Resolutions which effectively repealed the 1980 Resolution and all others expressing an opinion that the beneficial interest "should" belong to the AQTT. Specifically, in 1996, in Resolution TR 96-10 and TR 96-13, the National Council "repealed" a former resolution which expressed concurrence that the lands be placed in trust for the AQTT. (TR 96-10, attached as Exhibit 1). The Resolution concludes with the following:

> TR 94-07 and any concurrence thereunder are hereby repealed, and be it further resolved that the Muscogee (Creek) Nation hereby expresses its opposition to any such land being placed in trust for said Tribal Town within the jurisdictional boundaries of the Muscogee (Creek) Nation, unless and until the aforementioned jurisdictional problems and conflicts are resolved by mutual written agreement approved by the National Council, between the Nation and Tribal Town.

(Exhibit 1). Similarly, TR 96-13 expressed the opposition of the National Council to any assignment of the Wetumka or Dustin Project lands to the AQTT. (TR 96-13, attached as Exhibit 2). It unequivocally expressed the Nation's opposition in its conclusion:

> The Muscogee (Creek) Nation does hereby express its opposition to the proposed or requested assignment of the Wetumka or Dustin Project lands to the said Tribal Town or to any other person, tribe or organization and does hereby authorize the Principal Chief to submit written comments and documentation in opposition to any proposed or requested assignment of said Wetumka or Dustin Project lands or any interest therein.

(Exhibit 2). This opposition by the Muscogee (Creek) Nation to the attempts by the AQTT to place the land in trust for its interest have continued. (Letter from Principal Chief A.D. Ellis to Tarpie

Yargee, dated February 11, 2009, attached as Exhibit 3).

For nearly ten years Plaintiff's lawsuit has been pending in this court. This case was initially filed in 2006. The Muscogee (Creek) Nation was not named as a party and has not been involved in prior proceedings in this court. Plaintiff's Amended Complaint basically requests that this court vacate its 2008 order and require the Muscogee (Creek) Nation to transfer its beneficial interest in the eight hundred acres to the Alabama-Quassarte Tribal Town. Plaintiff requests an accounting and that this court "assign" and "transfer" the beneficial interest from the Muscogee (Creek) Nation to the AQTT. Plaintiff has no explanation as to why it waited *fifty years* before pursuing this claim. It also offers no explanation as to why it continues to seek an assignment of the beneficial interest when that claim was previously dismissed by this court. (Doc. No. 50).

This court previously dismissed all of Plaintiff's claims for an assignment of the Wetumka Project lands. (Doc. No. 50). This court remanded the claims for an accounting to the United States defendants for further investigation and proceedings. (Doc. No. 135). The United States Department of Interior, Board of Indian Appeals issued its Final Reconsideration Decision in 2014. (Doc. No. 164-1). That decision rejected the claims of the AQTT. Essentially, Plaintiff has requested that this court overturn the opinion of the Administrative Law judges, overturn its prior rulings, and enter an order requiring the Muscogee (Creek) Nation and the government to assign or transfer the beneficial title of the Wetumka Project lands to the Alabama-Quassarte Tribal Town.

As the following argument shows, the sovereign immunity of the Muscogee (Creek) Nation protects it from having to defend suits such as this. In spite of Plaintiff's claims, there has been no express waiver of that immunity. Nor has there been any waiver by implication. Even if the Nation had waived its sovereign immunity, Plaintiff has no legal basis for the claims asserted here.

THE MUSCOGEE (CREEK) NATION IS ENTITLED TO ASSERT ITS SOVEREIGN IMMUNITY

As this court has often stated, Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17, 8 L.Ed. 25 (1831). Suits against Indian tribes are thus barred by sovereign immunity absent the presence of either a clear waiver by the tribe or congressional abrogation of the doctrine of sovereign immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Oklahoma v. Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998).

The Court expressed these concerns more recently in *Michigan v. Bay Mills Indian Community*, __ U.S. __, 134 S. Ct. 2024 (2014). In *Bay Mills*, the state of Michigan attempted to enjoin the operation of a casino on land which the Bay Mills Indian Community had purchased with funds from its land trust. Reaffirming a long line of cases, the Court found that such suit was barred by sovereign immunity, stating:

> Among the core aspects of sovereignty that tribes possess – subject, again, to congressional action – is the "common-law immunity from suit traditionally enjoyed by sovereign powers." . . . That immunity, we have explained, is "a necessary corollary to Indian sovereignty and self-governance." . . . (It is "inherent in the nature of sovereignty not to be amenable" to suit without consent). And the qualified nature of Indian sovereignty modifies that principle only by placing a tribe's immunity, like its other governmental powers and attributes, in Congress's hands. . . . ("It is as though the immunity which was theirs as sovereigns passed to the United States for their benefit"). Thus, we have time and again treated the "doctrine of tribal immunity [as] settled law" and dismissed any suit against a tribe absent congressional authorization (or a waiver).

__ U.S. at __, 134 S. Ct. at 2030-31 (citations omitted). To abrogate tribal immunity, "Congress

must unequivocally express that purpose." *Id.* at __, 134 S. Ct. at 2033 . It is "fundamentally Congress's job, not [the court's], to determine whether or how to limit tribal immunity. The special brand of sovereignty the tribes retain – both its nature and its extent – rests in the hands of Congress." *Id*. at __, 134 S.Ct. at 2037. A "fundamental commitment of Indian law is judicial respect for Congress's primary role in defining the contours of tribal sovereignty." *Id.* at __, 134 S.Ct. at 2039.

The Muscogee (Creek) Nation, its government and citizens have had a continuous treaty relationship with the United States since at least 1790. These treaties have consistently recognized the Nation's right to self-determination. *See, e.g.,* Treaty with the Creeks, Apr. 4, 1832, art. XIV ("The Creek country . . . shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves"); Treaty with the Creeks and Seminoles, Aug. 7, 1856, art. IV & art. XV, 11 Stat. 699 ("The United States do hereby solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek").

Tribal sovereign immunity deprives this court of subject matter jurisdiction to decide any of the matters between the parties. *See Miner Electric, Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1009 (10th Cir. 2007). Indeed, tribal sovereign immunity is a matter of subject matter jurisdiction. *See Fletcher v. United States*, 116 F.3d 1315, 1323-24 (10th Cir.1997). The issue of tribal sovereign immunity may be challenged by a motion to dismiss under Fed .R. Civ. P. 12(b).[1] *See, Holt v. United States*, 46 F.3d 1000, 1002-03 (10th Cir.1995). As the Tenth Circuit has

[1] Issues related to immunity, including sovereign immunity, are threshold questions of law. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001), *receded from on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009).

explained:

> Such motions may take one of two forms. First, a party may make a facial challenge to the plaintiff's allegations concerning subject matter jurisdiction, thereby questioning the sufficiency of the complaint. . . . In addressing a facial attack, the district court must accept the allegations in the complaint as true. . . . "Second, a party may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends." . . . In addressing a factual attack, the court does not "presume the truthfulness of the complaint's factual allegations," but "has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)."

E.F.W. v. St. Stephen's Indian High School, 264 F.3d 1297, 1302-03 (10th Cir. 2001)(citations omitted).

In the instant case, there is no language whatsoever in the Oklahoma Indian Welfare Act of 1936 wherein Congress abrogated the sovereign immunity of any of the tribes in Oklahoma. The Act provides, in its entirety:

> Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: Provided, however, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.]: Provided, that the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter.

25 U.S.C. §503. There is no language in this statute that discusses or relates to the sovereign immunity of any Oklahoma Indian tribe. The Act simply confirms the inherent right of Oklahoma Indian tribes to organize. *See Cheyenne–Arapaho Tribes v. Beard*, 554 F. Supp. 1, 3 (W.D. Okla.

1980). Without specific congressional abrogation of immunity, Plaintiff must show some type of waiver by the Nation. Quite simply, Plaintiff cannot do so.

THERE IS NO EVIDENCE THAT THE NATION HAS WAIVED TRIBAL SOVEREIGN IMMUNITY

In Plaintiff's request to amend in order to add the Muscogee (Creek) Nation as a defendant, Plaintiff claimed that the Nation waived its sovereign immunity when it "voluntarily entered an appearance in this matter." (Doc. No. 174, p. 3, ¶6). Contrary to the claims of the Plaintiff, the Muscogee (Creek) Nation has never "entered an appearance" in this matter. Indeed, the docket sheet for this case, consisting of more than 175 entries and spanning a period of nearly ten years, does not reveal even one entry, pleading, or document filed on behalf of the Muscogee (Creek) Nation.[2] No lawyer has entered an appearance on behalf of the Muscogee (Creek) Nation. The Muscogee (Creek) Nation has not sought any relief in this matter and has not requested any affirmative action from this court. Plaintiff's claim that the Nation has somehow "entered an appearance" is simply wrong.

The Nation does not deny that it responded to a request from the Department of the Interior concerning an affidavit of confidentiality. (Status Report of Muscogee (Creek) Nation, attached as Exhibit 4). The Nation also filed an answer brief and a supplemental brief in those proceedings. (Answer brief of Muscogee (Creek) Nation, attached as Exhibit 5; Supplemental Brief of Muscogee (Creek) Nation, attached as Exhibit 6). It is undisputed that in order to develop the administrative record before the Office of Hearings and Appeals, production of documents from the Muscogee (Creek) Nation was absolutely necessary to both the Plaintiff and the government. The Nation has never denied that it filed certain responses and reports within the administrative proceedings.

[2] The Attorney General for the Muscogee (Creek) Nation did sign an affidavit of confidentiality which was filed in this court concerning confidential documents. (Doc. No. 150).

However, such a voluntary appearance before the Office of Hearings and Appeals, at the request of the government and to answer specific questions related to the trust lands, may hardly be considered a waiver of the sovereign immunity of the Nation.

Indian tribal governments, such as the Nation, enjoy the same immunity from suit enjoyed by other sovereign powers and are "subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe,* 523 U.S. at 754. It is settled law that a waiver of sovereign immunity "'*cannot be implied but must be unequivocally expressed*.'" *United States v. Testan*, 424 U.S. 392, 399 (1976) (*quoting, United States v. King*, 395 U.S. 1, 4 (1969))(emphasis added). *See also, Santa Clara Pueblo*, 436 U.S. at 58-59.

A waiver of sovereign immunity must be clear and express, particularly when the remedy sought is against the Nation itself. *See, e.g., First Bank & Trust v. Maynahonah*, 2013 OK CIV APP 101, 313 P.3d 1044. The laws of the Muscogee (Creek) Nation provide that any waiver of sovereign immunity must be clear and express and in writing, specifically stating:

> The sovereign immunity of neither this Nation or any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Title, absent a recorded, properly ratified, express waiver of sovereign immunity.

M(C)NCA Title 33, §1-101(a)(2007).

Contrary to Plaintiff's claims, the Nation did not waive its sovereign immunity by voicing its objection to the transfer or assignment of the Wetumka Project lands. An argument similar to Plaintiff's was rejected by the Supreme Court in *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). In *Citizen Band Potawatomi*, the State of Oklahoma attempted to argue that the Potawatomis had waived their sovereign immunity by seeking

an injunction against the Oklahoma Tax Commission's proposed tax assessment. *Id.* at 509. The Court disagreed, holding that the "Tribe did not waive its sovereign immunity merely by filing an action for injunctive relief." *Id.* at 510.

In the instant case, the Muscogee (Creek) Nation has not sought any relief in either the administrative proceedings or in this lawsuit. No waiver can be found by simply citing to the limited participation of the Muscogee (Creek) Nation in the administrative proceedings.

Furthermore, Plaintiff cannot argue that the purpose of the 1936 Act, as well as the subsequent historical events, have shown a waiver by implication. *See, e.g*, *Ute Distribution Corp. v. Ute Indian Tribe*, 149 F.3d 1260, 1265-66 (10th Cir. 1998). In the *Ute Distribution* case, the court had before it issues concerning certain tribal assets jointly managed by the Tribal Business Committee and the Ute Distribution Corporation. The court dealt with the Ute Partition and Termination Act of 1954, 25 U.S.C. §§ 677–677aa, which was one of a series of Indian termination statutes enacted during a period in which the federal government pursued a policy of terminating its supervisory responsibilities for Indian tribes. The termination statutes also typically provided for the division and distribution of tribal land and other assets to individual members of terminated tribes and ended federal restrictions on the alienation of such land. *Id.* at 1261. The stated purposes of the federal act was to "partition and distribute the assets of the Ute Indian Tribe between the mixed-blood group and full-blood group; to end federal supervision over the trust and restricted property of the mixed-blood group; and to create a development program for the full-blood members to assist them in preparing for later termination of federal supervision over their property." *Id.*

When certain members of the Tribe sued for their part of the tribal assets, the Ute Tribe asserted its sovereign immunity. The Tribe argued that the federal act contained no express waiver

of immunity to suit. Among its arguments for a waiver of sovereign immunity, the plaintiff claimed that the Ute Tribe had waived its sovereign immunity under the federal statutes, based on the *purpose* of the statutes. Although the trial court had ruled against the Tribe, the Tenth Circuit reversed and remanded the matter for a dismissal. Citing a long line of federal cases involving sovereign immunity and the requirement for an express waiver or Congressional intent, the Tenth Circuit found no waiver. In particular, the court noted that a waiver *could not be implied through the purpose of the statute*.

As the Tenth Circuit expressed, "finding a waiver of tribal immunity based on the purpose of the UPA, rather than an unequivocal expression of intent to waive immunity, is inconsistent with both the language and the analysis of the Supreme Court in *Santa Clara Pueblo*." Discussing prior Supreme Court opinions, the court commented:

> Given the absence of an unequivocal expression of congressional intent to waive immunity, the Court ruled that the tribe was immune from suit. In so holding, the Court rejected the argument, much like that advanced by the [plaintiff], that because the ICRA was "'designed to provide protection against tribal authority, the intention of Congress to allow suits against the tribe was an essential aspect [of the ICRA]. Otherwise, it would constitute a mere unenforceable declaration of principles.'" . . . Similarly, this court may not infer congressional intent to waive tribal immunity whether based on a determination that immunity is inconsistent with the purpose of the UPA or a determination that allowing the [plainitff] to bring a suit against the Tribe in federal court would ensure the Tribe's compliance with the UPA's provisions.

Id. at 1266 (citations omitted). In the instant case, Plaintiff has not cited to any waiver of sovereign immunity either in the statute, in a resolution from the Nation, or by some sort of implication.

THE MUSCOGEE (CREEK) NATION IS A NECESSARY PARTY WHICH CANNOT BE JOINED AS A DEFENDANT

As this court has already determined, the Muscogee (Creek) Nation is a necessary party to

litigation involving the Wetumka Project lands. (Doc. No. 50). Clearly, an Indian tribe is a necessary party to actions affecting its legal and financial interests. *See, e.g., McClendon v. United States,* 885 F.2d 627, 633 (9th Cir. 1989) (Indian tribe is a necessary party to an action seeking to enforce a lease agreement signed by the tribe); *Enterprise Mgt. Consultants, Inc. v. United States,* 883 F.2d 890, 893 (10th Cir. 1989) (Indian tribe is a necessary party to an action seeking to validate a contract with the tribe); *Wichita & Affiliated Tribes v. Hodel,* 788 F.2d 765, 774 (D.C. Cir. 1986) (Indian tribe's beneficiary interest in a trust makes it a necessary party to an action by a minority tribe seeking to obtain redistributions of future income). In this case, the Nation clearly has an interest in the outcome of this action, notably that the actions of the Alabama-Quassarte Tribal Town are actually directed at the property which is held in trust for the Muscogee (Creek) Nation and any income derived from that property.

Once it is determined that the Nation is a necessary party under Fed. R. Civ. P. 19, and cannot be joined because of its tribal immunity, a court "must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed" under Rule 19. Typically, where an indispensable tribal party cannot be joined because of sovereign immunity, the action must be dismissed. *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496 (9th Cir. 1991). The Tenth Circuit has recognized a "strong policy" under Rule 19(b) favoring dismissal when an Indian tribe is indispensable and cannot be joined because of immunity. *Davis v. United States*, 192 F.3d 951, 960 (10th Cir. 1999).

This court has already analyzed the factors under Rule 19 set out by the Tenth Circuit in *Davis*, and determined that the Muscogee (Creek) Nation is a necessary party which cannot be joined. (Doc. No. 50, at p. 13). Thus, this court dismissed Plaintiff's claims for an assignment of

the Wetumka Project lands. (Doc. No. 50). The court's prior ruling was well supported by the law. Plaintiff cannot attack that ruling, nearly eight years later, by seeking to add the Muscogee (Creek) Nation as a defendant.

As the Tenth Circuit remarked in *Davis*, Rule 19, "by its plain language, does not require the absent party to actually *possess* an interest; it only requires the movant to show that the absent party '*claims an interest* relating to the subject of the action.'" *Id.* at 958. In the instant case, even Plaintiff asserts that the "Muscogee (Creek) Nation may claim some right, title, or interest in and to the IIM monies or the Wetumka Project Lands." (Doc. No. 174 at p. 8, ¶19).

Any judgment against the Muscogee (Creek) Nation would clearly affect the Nation's interests because it would deprive the Nation of its interest in the Wetumka Project lands and would interfere with the Nation's use of the property. The beneficial title to the trust lands cannot possibly be transferred to the AQTT without having an impact on the Nation.

PLAINTIFF'S CLAIMS ARE BARRED

In its order of 2008, this court repeatedly held that Plaintiff's claims were time barred. (Doc. No. 50, at pp. 7-11). As this court noted, any cause of action for the assignment of the beneficial title accrued when the lands were acquired. This court astutely noted that "Plaintiff should have known at least as early as April 29, 1942 that the Wetumka Project lands were being held in trust for hte Creek Nation rather than for Plaintiff." (Doc. No. 50, at p. 7). This court rejected Plaintiff's arguments concerning the timeliness of its claims and dismissed all claims related to assignment of the Wetumka Project lands. The only claim allowed to remain concerned the Surface Lease Income Trust. (Doc. No. 50, at p. 14).

Plaintiff now appears to argue that until it "discovered" the 1980 Tribal Resolution, it was

unaware that the Muscogee (Creek) Nation had "intended" to assign the lands to the AQTT. This Tribal Resolution, like other Tribal Resolutions, is a public document. *See*, M(C)NCA Title 30, §§1-102 through 1-114 (2007). It was not hidden away in someone's attic. Pursuant to law, a "Tribal Resolution" is a "formal expression of the policy, opinion, or will of the Muscogee (Creek) Nation relating to some specific matter or thing of significance to the Muscogee (Creek) Nation government and citizens." *Id.* at §1-102(I). As an "opinion," it was not codified as an ordinance or law. No action was taken on that Resolution to transfer the beneficial interest or any other interest to the AQTT. As the attached Tribal Resolutions confirm, that "opinion" was hardly constant.

The fact that Plaintiff is a federally recognized tribe does not alter the statutes of limitations or provide an excuse for Plaintiff's failure to act on its claims. Even if the claims were not time barred, Plaintiff has offered no excuse for its failure to pursue those claims. As the Tenth Circuit has explained:

> Laches may be found, however, where a party, having knowledge of the relevant facts, acquiesces *for an unreasonable length of time in the assertion of a right adverse to his own*. . . . A party must exercise reasonable diligence in protecting his rights. . . .

Jicarilla Apache Tribe v. Andrus, 687 F.2d 1324, 1338 (10th Cir. 1982)(emphasis added; citations omitted). In the *Andrus* opinion, the court determined that the claims by the Jicarilla Apache were barred by laches because the tribe had waited three years after a ruling by the Tenth Circuit before pursuing its claim for a NEPA violation. The court remarked that "[l]aches does not depend on the subjective awareness of the legal basis on which a claim can be made." *Id.* at 1339. The court also acknowledged that the delay in bringing suit would result in prejudice to the defendants.

In the instant case, Plaintiff's delay of more than half a century in bringing this action could

scarcely be deemed non-prejudicial to the Muscogee (Creek) Nation. As this court remarked in its prior order, since 1942 the land has been held in trust for the Muscogee (Creek) Nation. For reasons known perhaps only to history, Plaintiff took no steps whatsoever to have the Wetumka Project lands assigned to the AQTT. As members of the Muscogee (Creek) Nation, members of the AQTT have never been deprived of the benefits of income from that land. Indeed, all members of the Muscogee (Creek) Nation have benefitted from it. Plaintiff has failed to provide any authority to this court for its request to rewrite history.

CONCLUSION

This court is not faced with the issue of what should have been done in 1942 when the land was acquired. As this court has already determined, it is undisputed that the beneficial title was never transferred to the Alabama-Quassarte Tribal Town. Defendant Muscogee (Creek) Nation has no answer as to why that was not done in 1942. Indeed, it is doubtful that any living person has the answer to the question as to why the beneficial title was never transferred. Nonetheless, this court must deal in the historical facts and not in hypotheticals.

There is no waiver of sovereign immunity in the acts and expressions of Congress concerning the Wetumka Project lands. Nor is there any written, express waiver from the Muscogee (Creek) Nation of its sovereign immunity. There is no law which supports Plaintiff's claims that the Muscogee (Creek) Nation has waived its tribal sovereign immunity by its limited participation in the administrative investigation and proceedings. The Muscogee (Creek) Nation is entitled to tribal sovereign immunity. It cannot be joined as a defendant in this action.

WHEREFORE, the Defendant Muscogee (Creek) Nation requests an order of this court dismissing Plaintiff's claims in their entirety.

Respectfully submitted,

ATKINSON, HASKINS, NELLIS, BRITTINGHAM, GLADD & FIASCO
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June 2015, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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