UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No.16-2050

PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico Corporation, Plaintiff-Appellant, v. **LORRAINE BARBOAN, aka, LARENE H. BARBOAN**, et al., Defendants-Appellees, And **APPROXIMATELY 15.49 ACRES OF LAND IN MCKINLEY COUNTY, NEW MEXICO**, et al., Defendants.	D.C. No. 1:15-CV-00501-JAP-DG (D.N.M)

***Amicus Curiae* Brief of GPA Midstream Association in support of Public Service Company of New Mexico and Reversal of the District Court**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

CORPORATE DISCLOSURE STATEMENT iv

STATEMENT OF INTEREST OF AMICUS CURIAE 1

Argument 2

I. Indian Lands are subject to condemnation action when authorized by Congress 2

A. Indian Nation lands may be condemned through *In Rem* proceedings 2

B. Condemnation of Allotment Land under established Federal Law 6

1. U.S.C. § 357 6

2. Section 357 is a *Special* Statute Allowing the Condemnation of Allotment Lands 8

3. The Indian Land Consolidation Act is a General law affecting the descent and distribution of allotted lands, which does not modify 25 U.S.C. § 357 11

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 17

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS 18

CERTIFICATE OF SERVICE 19

TABLE OF AUTHORITIES

Cases

Blackfeet Indian Tribe v. Montana Power Co.,
838 F.2d 1055, 1058 (9th Cir.1988).....14

Cheyenne River Sioux Tribe of Indians v. United States,
338 F.2d 906, 908-910 (8th Cir. 1964) 4,5,11

Cherokee Nation v. Southern Kansas Railway Co.
135 U.S. 641, 10 S. Ct. 656-657, 965 (1890) 3,4

County of Yakima c. Confederated Tribes and Bands of the Yakima Indian Nation et al., 502 U.S. 251, 253-254, 264 (1992).....4,15

Felix S. Cohen's Handbook of Federal Indian Law,
§16.03[4][d][ii], pp. 1084-85 (2012).....8

Hartford Underwriters Ins. Co. v. Union Planters Bank, NA, 530 U.S. 1 (2000) ..13

Jachetta v. United States, 653 F.3d 898, 907 (9th Cir. 2011).....6,7

Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004).....13

Oklahoma Dept. of Sec. v. Wilcox, 691 F.3d 1171, 1174-75 (10th Cir. 2012).....13

Seneca Nation of Indians v. United States, 338 F.2d 55, 56 (2nd Cir. 1964).....3

Shade v. Downing, 333 U.S. 586, fn. 1 (1948).....10

Southern Calif. Edison Co. v. Rice, 685 F.2d 354, 356 (9th Cir.1982).....7,8

State of Minnesota v. United States, 125 F.2d 636, 639 (8th Cir. 1942).....3,6

Town of Okemah v. United States, 140 F.2d 963, 934 (10th Cir. 1944).....8,10

United States v. 2979.72 acres of land, 235 F.2d 327, 329 (4th Cir. 1956).....5

United States v. 5,677.94 acres of land of Crow Reservation,
162 F. Supp. 108, 109 (D. Mont. 1958).....3

United States v. 687.30 acres of land et al.
319 F. Supp. 128, 132 (D. Neb. 1970).....3

United States v. Clarke, 445 U.S. 253, 254 (1980) 7

United States v. Dow, 357 U.S. 17, 25 (1958).....13

United States v. Dunnington, 146 U.S. 338, 352-53 (1892).....2

United States v. Mitchell, 445 U.S. 535, 542 (1980).....4

United States v. Petty Motor Co., 327 U.S. 372, 376 (1946) 3

United States v. Rice, 327 U.S. 742, 745-46 (1946).....9, 10

Statutes

25 U.S.C. § 2213..... 11,12
25 U.S.C. § 2218..... 12,13,14
25 U.S.C. § 357..... 6,7,8,10,11,12,14,15
Title 25 § 2209.....11
Title 25 § 2201.....1
Title 25 § 2221.....1
Title 44 Stat. 239.....9

Other Authorities

Restatement (Third) of Property: Servitudes, § 1.1(1) 14

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae GPA Midstream Association has no parent corporation or stock of which a publicly held corporation can hold.

s/ CLINT RUSSELL
STRATTON TAYLOR, OBA # 10142
staylor@soonerlaw.com
CLINT RUSSELL, OBA # 19209
crussell@soonerlaw.com
Counsel of Record for
GPA Midstream Association
TAYLOR, FOSTER, MALLETT, DOWNS RAMSEY & RUSSELL
400 West Fourth Street P.O. Box 309
Claremore, OK 74018
918-343-4100; 918-343-4900 fax

Dated: June 30, 2016

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

GPA Midstream Association (hereinafter "GPA Midstream" or "*Amicus Curiae*") has served the U.S. energy industry since 1921, as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." GPA Midstream members also operate thousands of miles of domestic natural gas transmission pipelines, gas gathering pipelines and are involved with storing, transporting, and marketing natural gas.

Amicus Curiae has a vital interest in this case because its members have constructed, operated, and maintained a significant number of pipelines across restricted Indian allotment lands pursuant to term easements granted by the United States of America, as trustee for the allottees. The increasing fractionalization of Indian allotment lands and unforeseen consequences arising from the Indian Land Consolidation Act "(ILCA"), Title 25, Ch. 24, §§ 2201-2221, present significant challenges to *Amicus Curiae*. As easements expire, it is becoming increasingly common for pre-existing pipeline infrastructure, such as natural gas transmission

[1] In accordance with Fed. R. App. P. 29, counsel of record for the Plaintiff-Appellant and Defendants-Appellees (the parties) have consented to the filing of this *Amicus* brief. No party's counsel has authored the brief in part or in whole. No party's counsel has contributed money intended to fund preparing or submitting this brief.

pipelines, to be impacted by the escheatment of fractional interests in Indian allotment lands to Tribal interests. Transmission pipeline companies, electric cooperatives, midstream entities, and public utilities are faced with a Hobson choice: Pay settlement demands sometimes numbering in the tens-of-millions for the renewal of easements across fractional interests of Tribal land, in order to obtain the approval and renewal of a pre-existing easement on land which escheated to a Tribe by the ILCA or re-route and move existing infrastructure to other locations, such as onto adjacent individual Indian allotments, where fractional Tribal interests do not exist, perhaps miles away, resulting in tens-of-millions of dollars in additional expenses to the industry, utilities, consumers and ratepayers. *Amicus Curiae* submits that a way forward exists which harmonizes well-established federal law governing the condemnation of Indian allotment lands and the ILCA based on the express terms of each statute.

Argument

I. Indian Lands are subject to condemnation actions when authorized by Congress.

A. Indian Nation lands may be condemned through *In Rem* proceedings.

The United States Supreme Court has recognized for well over a century that condemnation actions are *in rem* proceedings against the land itself. *See United States v. Dunnington*, 146 U.S. 338, 352-53 (1892)(stating that a proceeding *in rem* is "a taking, not of the rights of designated persons in the thing needed, but of the

thing itself, with a general monition to all persons having claims in the thing."); *Accord, United States v. Petty Motor Co.*, 327 U.S. 372, 376 (1946)("Condemnation proceedings are in rem."); *State of Minnesota v. United States*, 125 F.2d 636, 639 (8th Cir. 1942)("a proceeding such as this…is in rem against the land…"). In fact, the United States has condemned lands owned by Indian Nations through numerous *in rem* actions where the Indian nation owner of the land is not named as a necessary party, only the land itself. *See e.g., United States v. 687.30 acres of land et al.*, 319 F. Supp. 128, 132 (D.Neb. 1970)(condemning trust lands of Winnebago Nation for lake); *United States v. 5,677.94 acres of land of Crow Reservation*, 162 F. Supp. 108, 109 (D. Mont. 1958)(condemning Crow Indian Nation lands for construction of dam); *Seneca Nation of Indians v. United States*, 338 F.2d 55, 56 (2nd Cir. 1964)(condemning Seneca tribal lands for highway).

In the case of *Cherokee Nation v. Southern Kansas Railway Co.*, the United States Supreme Court held that the land of an Indian Nation may be condemned for a public purpose, such as a railroad line and telephone and telegraph lines. 135 U.S. 641, 10 S .Ct. 965, 965 (1890). More generally, the Supreme Court held that the United States may exercise the right of eminent domain notwithstanding the rights of territories, states, or Indian Nations, because it is "essential to the independent existence and perpetuity of the United States, …." 135 U.S. at 656. The Court overruled the

Cherokee Nation's objections to the taking of its lands in Indian Territory for a railroad line to be operated by the Southern Kansas Railway Company:

> The lands in the Cherokee territory, like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them for such objects or are germane to the execution of the powers granted to it, provided only that they are not taken without just compensation being made to the owner.
>
> 135 U.S. at 657.

The United States is the only indispensable party when a tract of Indian land held in trust for the beneficial owners is condemned, since the matter is an *in rem* proceeding and the United States acts in its capacity as Trustee holding title to the land. *See County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 253-254 (1992)(noting the Trusteeship of the United States while it holds title); *Accord, United States v. Mitchell*, 445 U.S. 535, 542 (1980)(title to restricted Indian lands remains in the United States as Trustee); *See also Cheyenne River Sioux Tribe of Indians v. United States*, 338 F.2d 906, 909 (8th Cir. 1964)(hereinafter "*Cheyenne River*"). In *Cheyenne River*, the United States initiated a condemnation action to acquire 640 acres of land from Peter Hiatt, a member of the Cheyenne River Sioux Tribe, for the construction of a reservoir. 338 F.2d at 908. Although the Tribe had already conveyed its interest to the United States, the Tribe filed a motion to intervene in Hiatt's case as the real party in interest, which the federal district court denied. *Id.* Judgment was entered *in rem* for the value of the

640 acres taken, and the Tribe appealed to the United States Court of Appeals for the Eighth Circuit. *Id.* On appeal, the 8th Circuit discussed the *in rem* nature of condemnation proceedings and, notably, which entity constitutes an indispensable party when the United States holds the land as Trustee, observing that:

> *The authorities support the view that generally the Government is the indispensable party in an action which involves alienation or condemnation of Indian property*. Generally one whose rights will be affected by a judgment is an indispensable party to litigation. But there are exceptions…It is true that one whose rights will be affected by a judgment or decree is usually an indispensable party in the action. *But there is a well recognized exception to that rule, within which this case falls, that where the trustee is capable of fully representing the interests of the beneficiary, the beneficiary is not an indispensable party to the action.*
>
> 338 F.2d at 909-10 (internal edits)(citations omitted)(emphasis added).

It is not necessary to join the individual Native American allottees or the applicable Indian Nation itself, where the land being condemned *in rem* is held in trust by the United States for the beneficial Native American owners. This is because the sole issue to be decided in an *in rem* condemnation proceeding is the amount of just compensation for the property interest being taken for public use. *See e.g., United States v. 2979.72 acres of land*, 235 F.2d 327, 329 (4th Cir. 1956) ("The condemnation suit is a proceeding in rem. The owners of the res are entitled to have the compensation divided among them according to their interest in the res taken. The value of the property once being determined in a proper proceeding, the sum so

determined stands in the place of the property and can be distributed upon the adjudication of the value of the respective interests."). *See also Jachetta v. United States*, 653 F.3d 898, 907 (9th Cir. 2011)("When a state brings formal condemnation proceedings to acquire an Indian allotment, the United States is an indispensable party to that action because the United States remains the owner of the fee of the Indian allotted lands and holds the same in trust for the allottees." (Internal citations omitted, citing *Minnesota*, 305 U.S. at 388). Thus, the presence or absence of a Tribe or individual allottees does nothing to enhance or diminish their rights to the proceeds generated by the condemnation of the allotted lands held in trust for them by the United States, as it fully and fairly represents their interests as their Trustee.

B. Condemnation of Allotment Land under established Federal Law.

1. U.S.C. § 357.

Title 25 U.S.C. § 357 (hereinafter "§ 357") was originally enacted by Congress on March 3, 1901 and it has never been amended. Section 357 provides:

> *Lands allotted* in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

It is widely accepted that § 357 is a Congressional waiver of sovereign immunity permitting suit against the United States government in its capacity as Trustee for Indian allottees whose land is condemned for public projects. *See Minnesota*, 305 U.S. at 388-89(highway condemnation case brought by State of Minnesota against

United States for crossing of nine allotted parcels of restricted Indian land). "Because § 357 permits condemnation actions that cannot effectively proceed absent the United States, § 357 waives the government's sovereign immunity." *See Jachetta* 653 F.3d at 907; *See also, United States v. Clarke*, 445 U.S. 253, 254 (1980). In *Clarke*, the Supreme Court of the United States held that inverse condemnation actions could not be brought by American Indian allotment owners under § 357 for damages to allotment lands caused by states or municipalities. *Clarke*, 445 U.S. at 254. In reaching its conclusion, the Court in *Clarke* discussed the underlying purposes of the statute and applied the plain meaning canon of interpretation to its language, observing:

> We think this is a case in which the meaning of a statute may be determined by the admittedly old-fashioned but nonetheless still entirely appropriate "plain meaning" canon of statutory construction. *We further believe that the word "condemned," at least as it was commonly used in 1901, when 25 U.S.C. § 357 was enacted, had reference to a judicial proceeding instituted for the purpose of acquiring title to private property and paying just compensation for it.*
>
> *Clarke*, 445 U.S. at 254 (emphasis added).

The Supreme Court's acknowledgement that the simple purpose of § 357 is to provide just compensation to owners of lands allotted to Native Americans is consistent with other courts which have considered the matter. In *Southern Calif. Edison v. Rice*, the United States Court of Appeals for the Ninth Circuit described the purpose of § 357 as follows:

> With respect to condemnation actions by state authorities, *Congress explicitly afforded no special protection to allotted lands beyond that which land owned in fee already received under the state laws of eminent domain. Thus, consistent with its assimilation policy, Congress placed Indian allottees in the same position as any other private landowner vis-a-vis condemnation actions, with the interest of the United States implicated only to the extent of assuring a fair payment for the property taken and a responsible disposition of the proceeds.*
>
> *Southern Calif. Edison Co. v. Rice*, 685 F.2d 354, 356 (9th Cir.1982)(emphasis added).

To be clear, § 357 has expressly permitted the condemnation of Indian allotment lands since its passage by Congress in 1901, so long as just compensation is paid for the taking of the interest in the allotment land. Section 357 has never been repealed, amended, or revised. Its clear purpose is to allow the taking of Indian allotment lands for public projects upon the payment of just compensation to the allotment owners. *See also Felix S. Cohen's Handbook of Federal Indian Law*, §16.03[4][d][ii], pp. 1084-85 (2012)(discussing § 357 and its purpose of allowing the alienation of lands allotted to Indians for any public purpose under the laws of the State where the land is located).

2. Section 357 is a Special Statute Allowing the Condemnation of Allotment Lands.

In the case of *Town of Okemah v. United States*, the town of Okemah sought to condemn an easement in the District Court of Okfuskee County across lands allotted to full-blood Creek Indians which were restricted against alienation. 140 F.2d 963,

964 (10th Cir. 1944). Although the restricted lands were held in trust by the United States for the Creek Indian owners, the United States government was not named as a party to the action. *Id.* The Town of Okemah did not name the United States as a party defendant, but instead served notice on the Five Civilized Tribes pursuant to the Act of April 12, 1926, Title 44 Stat. 239 (the "Act of 1926"). *Id.* The Act of 1926 provides for the filing in state district courts of actions affecting the title or interest to lands allotted to the citizens of the Five Civilized Tribes and restricted in terms of alienation. *See United States v. Rice*, 327 U.S. 742, 745-46 (1946). As summarized by the Supreme Court in *Rice*, Section 3 of the Act of 1926 provided as follows, in pertinent part, that:

> [A] party to a suit in the State courts of Oklahoma to which a restricted *745 member of the Five Civilized Tribes in Oklahoma, or the restricted heirs or grantees of such Indian are parties, * * * and claiming or entitled to claim title to or an interest in lands allotted to a citizen of the Five Civilized Tribes or the proceeds, issues, rents, and profits derived from the same, may serve written notice of the pendency of such suit upon the Superintendent for the Five Civilized Tribes. The United States is afforded a specified time after notice is given to appear in the suit, and after such appearance, or the expiration of the time specified, it is provided that 'the proceedings and judgment in said cause shall bind the United States and the parties thereto to the same extent as though no Indian land or question were involved. The Act further provides that *the United States* may be, and hereby *is, given the right to remove any such suit pending in a State court to the United States district court by filing in such suit in the State court a petition for the removal of such suit into the said United States district court*, to be held in the district where such suit is pending…. and *the cause shall then proceed in the same manner as if it has been originally commenced in said district court….*

Rice, 742 U.S. at 745; *See also Shade v. Downing*, 333 U.S. 586 (1948).

The Act of 1926 expressly permitted the United States – as Trustee for the Creek allottees – to remove the Okemah action from Okfuskee County district court to the Eastern District of Oklahoma and to file a motion to dismiss the condemnation action on grounds that it had not been named as an indispensable party to the action. *Id.* The Eastern District granted the motion to dismiss, and the Town appealed, alleging that it had complied with the express terms of the Act of 1926, which authorized the filing of probate suits in state courts. *Id.* On appeal, the United States Court of Appeals for the Tenth Circuit Court examined the interplay between § 357 and the Act of 1926. The 10th Circuit harmonized the two statutes at work in *Okemah* as follows:

> *[T]he act of April 12, 1926 is a general* statute in the sense that it applies to all suits of the character therein described. *Section 357*, supra, *is a special statute applying only to condemnation proceedings.* Where there are two statutes upon the same subject, the earlier being *special* and *the later general, unless there is an express repeal or an absolute incompatibility, the presumption is that the special is intended to remain in force as an exception to the general*. Here, there was no express repeal and there is no absolute incompatibility, for both statutes can be given reasonable operation by the application of such presumption…*We do not think Congress intended by the Act of April 12, 1926 to amend Sec. 357….*

140 F2.d at 966 (emphasis added).

The logic of *Okemah* is a reasonable interpretation of the law governing the condemnation of lands originally allotted to individual Native Americans.

3. The Indian Land Consolidation Act is a General Law affecting the descent and distribution of allotted lands, which does not modify 25 U.S.C. § 357.

In Title 25 § 2209, the ILCA specifically provides that "[t]itle to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe." This does not alter the result in *Cheyenne River, supra*, 338 F.2d at 909, and neither the individual allottees nor a Tribe are indispensable parties to a condemnation action because any interest in land inuring to the Tribe under the ILCA is held in trust by the United States, as trustee, thereby making it the only necessary and indispensable party to the condemnation of what has long been recognized as allotment land. Other specific provisions of the ILCA similarly provide that tribal sovereignty is not implicated by its operation, such as 25 U.S.C. § 2213(a) and (c)(2), which specifically provide that the Secretary of the Interior may lease allotment property which an Indian tribe acquires through the operation of the ILCA, even if the Tribe does not consent, to wit:

> The lease or agreement described in paragraph (1) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), *and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe*.
>
> 25 U.S.C. § 2213(c)(2)(emphasis added)

Likewise, the operation of § 2213 specifically rests upon the express Congressional statement that "the Indian tribe shall not be treated as being a party to

the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe." Once again, the only indispensable and necessary party to the condemnation of allotment land is the United States, in its capacity as Trustee for the individual Native Americans or Tribes, because the ILCA specifically provides that its operation does not require Tribal participation or affect Tribal sovereignty. *See* § 2213(c)(2).

The Congressional intent to avoid any conflicts with other federal laws affecting lands allotted to Indians, such as § 357, is made exceptionally clear in the ILCA § 2218(a)(3) Definition of Allotted Land, which expressly states as follows:

> In this section, *the term "allotted land" includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians*.
>
> 25 U.S.C. § 2218(a)(3), Definition (emphasis added).

While some may argue this quoted definition of "allotted land" includes only "individual" Indians - not Tribes, this argument is contrary to § 2218(d)(2), which expressly states that a Tribe is not regarded as being a party to any lease or agreement which the Secretary enters into regarding "allotted land" subject to the ILCA. Since the operation of the ILCA is *the* statutory mechanism by which Tribes acquire fractional interests in "allotted land," there is no basis to contend that Congress did not mean to include fractional interests acquired by Tribes under the ILCA in its definition of "allotted land". "We cannot attribute to Congress the intention to promulgate a rule which would open the door to such obvious incongruities and

undesirable possibilities." *See United States v. Dow*, 357 U.S. 17, 25 (1958)(condemnation case reconciling the Taking Act and the Assignment of Claims Act); *Accord, Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004)("[W]hen [a] statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms."); *Oklahoma Dept. of Securities v. Wilcox*, 691 F.3d 1171, 1174-75 (10th Cir. 2012), quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, NA*, 530 U.S. 1 (2000) ("[W]e begin with the understanding that Congress says in a statute what it means and means in a statute what it says …. [W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the test is not absurd – is to enforce it according to its terms.").

By expressly exempting Tribes from being considered as parties to any leases or agreements approved by the Secretary for "allotted land," Congress deliberately chose *not* to create fodder for new legal arguments inhibiting the operation of previously enacted federal laws. In fact, it is abundantly clear by the plain language of the ILCA that Congress in its passage of the Act expressly preserved all waivers of sovereign immunity previously enacted by Congress in § 2218(g) of the ILCA, which states:

> (g) Other laws
>
> *Nothing in this chapter shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval*

> *of any type of land use transaction* involving fractional interests in trust or restricted land.
>
> § 2218(g)(emphasis added).

This statement of law found in § 2218(g) expressly preserves all previously granted Congressional authority enacted through federal statutes "authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land." It cannot be disputed that the acquisition of an easement for the use of real property is a land use transaction involving interests in land. *See e.g.*, *Restatement (Third) of Property: Servitudes*, § 1.1(1)(in part, "A servitude is a legal device that creates a right or an obligation that runs with land or an interest in land."). Thus, the long acknowledged waiver of sovereign immunity for the condemnation of lands allotted to Indians, pursuant to § 357, is not altered or disturbed by the enactment of the ILCA.

The interpretation and statutory construction of the terms of § 357 and the ILCA begins and ends with the plain language of the statutes themselves. In the absence of an irreconcilable conflict, there is no need for further interpretation. "Where two statutes are involved, legislative intent to repeal an earlier statute must be clear and manifest. In the absence of such intent, apparently conflicting statutes must be read to give effect to each if such can be done by preserving their sense and purpose." *See Blackfeet Indian Tribe v. Montana Power Co.*, 838 F.2d 1055, 1058 (9th Cir.1988), *cert denied*, 488 U.S. 828, 109 S. Ct. 79 (1988). "Judges are not at liberty to pick and

choose among congressional enactments, and when two [or more] statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *See County of Yakima c. Confederated Tribes and Bands of the Yakima Indian Nation et al.*, 502 U.S. 251, 264 (1992)(internal citations omitted). The operations of § 357 and the ILCA are harmonized by interpreting the plain language of each. Both statutes speak in terms of "lands allotted" to Indians and held in trust by the United States. Both statutes contemplate that interests in "lands allotted" may be transferred, so long as compensation is paid for the "lands allotted."

CONCLUSION

The district court erred in its interpretation of § 357 and the ILCA. This Court should reverse the district court and reconcile the two statutes in such a manner as to give effect to each. The district court's interpretation of the two statutes is contrary to well established federal law providing for the condemnation of allotted lands.

s/CLINT RUSSELL
STRATTON TAYLOR, OBA # 10142
staylor@soonerlaw.com
CLINT RUSSELL, OBA # 19209
crussell@soonerlaw.com
Counsel of Record for
GPA Midstream Association
TAYLOR, FOSTER, MALLETT, DOWNS RAMSEY & RUSSELL
400 West Fourth Street P.O. Box 309
Claremore, OK 74018
918-343-4100; 918-343-4900 fax

Dated: JUNE 30, 2016

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

_X_ This brief contains 4067 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B0(iii). I relied on my word processor, Microsoft Word 2013, to obtain the count.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

_X_ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman font, size 14.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

CLINT RUSSELL
Counsel of Record for *Amicus Curiae*

Dated: JUNE 30, 2016

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that a copy of the foregoing Amicus Curiae Brief as submitted in digital form via the Court's EFC system is an exact copy of the written document filed with the Clerk and has been scanned for viruses with Microsoft Intune Endpoint Protection last updated June 30, 2016 and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

CLINT RUSSELL
Counsel of Record for *Amicus Curiae*

Dated: JUNE 30, 2016

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, I electronically filed the foregoing Amicus Curiae Brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/EFC system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF System.

CLINT RUSSELL
Counsel of Record for *Amicus Curiae*