

**JAMES ADAMS, on behalf of himself
and other Oklahoma citizens similarly
situated,**

Plaintiff,

V.

**EAGLE ROAD OIL LLC, CUMMINGS
OIL COMPANY, and
JOHN DOES 1 through 25,**

Defendants.

Case No. 16-CV-0757-CVE-TLW

**REPLY MEMORANDUM FILED IN FURTHER
SUPPORT OF PLAINTIFF'S MOTION TO REMAND**

Plaintiff James Adams (“Plaintiff” or “Mr. Adams”), on behalf of himself and the putative class of similarly situated Oklahoma citizens (“Class”), respectfully provides this reply in response to Defendants’ response and objection to Plaintiff’s motion to remand.

Plaintiff adopts and incorporates the arguments he made in his opening brief, and offers this brief in response to Defendants’ objections. In sum, however, “It is well-established that statutes conferring jurisdiction upon the federal courts, and particularly removal statutes, are to be narrowly construed in light of [federal courts’] constitutional role as limited tribunals.” *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1094–95 (10th Cir. 2005). The Notice of Removal fails to even overcome this presumption, and fails to meet its burden in proving federal

question jurisdiction as required under the law. *Karnes v. Boeing Co.*, 335 F.3d 1189, 1193 (10th Cir. 2003), and *McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008).

INTRODUCTION

The Class definition excludes “all Class member properties on exclusive federal and/or tribal land.” Petition ¶ 36. It is also clear that the Plaintiff and proposed Class Representative, Mr. Adams, only wishes to bring induced earthquake claims on behalf of Oklahoma citizens that he is similarly situated to, and which own their properties in fee simple absolute, and free of any federal restrictions or BIA oversight. See Exhibit D to the Motion to Remand, Declaration of Plaintiff James Adams (hereafter, the “Adams Declaration”).

Defendants totally ignore these facts, and also that Mr. Adams never intended to represent tribal members owning tribal lands that have federal restrictions and federal oversight. Defendants also discount the affidavit of Executive Director Andrew Knife Chief (Exhibit A to the motion to remand), which explains the meaning of the phrase “tribal lands” and how that phrase and “Indian lands” are used interchangeably, but clearly fall within the BIA’s supervision and federal restrictions excluded by the Petition.

LAW AND ARGUMENT

At bottom, the Plaintiff and his Petition exclude lands owned by a tribe or a member of a tribe, and thus, the well-pleaded complaint rule applies. *Karnes v. Boeing Co.*, 335 F.3d 1189, 1192—93 (10th Cir. 2003) (Under the well-pleaded complaint rule, “the plaintiff is considered

the ‘master of the claim,’” and “may choose to have his claims heard in state court by avoiding claims based on federal law.”).

Defendants’ stretch is that the phrase “tribal land,” which serves as an exclusion from the Class definition only concerns allotted lands owned by a tribe, and not the lands owned by individual tribal members. First, that argument runs contrary to what Executor Director Knife Chief provided in his declaration for the Court. See Exhibit A to the Motion to Remand, Declaration of Andrew Knife Chief, Executive Director of the Pawnee Nation (hereafter, the “Knife Chief Declaration”). Additionally, such a limited view of the phrase also runs contrary to what Plaintiff intended and the class of citizens he seeks to represent, which are only those Oklahoma citizens similarly situated to him, and thus, own their properties without any federal oversight or restrictions. See the Adams Declaration (Exhibit D to the motion to remand).

Moreover, the interchangeability of these phrases is also demonstrated by the Tribal Energy and Environmental Information Clearinghouse’s website. Indeed, the information on this government site, citing to various federal regulations and laws, reveals that these two phrases are often used to describe lands held by either a tribe or an individual tribal member. *See* www.teeic.indianaffairs.gov.¹

WHEREFORE, Plaintiff has demonstrated that his Petition was brought on his own behalf and for other Oklahoma citizens owning properties without federal oversight and/or restrictions, and thus, he prays for an order remanding this action to Pawnee County District Court, and for all other just and appropriate relief.

¹ A highlighted PDF of the information appearing on this site is provided for the Court’s convenience as Exhibit A to this reply.

DATED: March 10, 2017

Respectfully submitted,

/s/ Scott Poynter

Scott Poynter (Admitted *pro hac vice*)
Poynter Law Group
400 W. Capitol Ave., Suite 2910
Little Rock, AR 72201
Tel: (501)251-1587
Email: scott@poynterlawgroup.com

Robin L. Greenwald (Admitted *pro hac vice*)
Curt D. Marshall (Admitted *pro hac vice*)
Weitz & Luxenberg, PC
700 Broadway
New York, NY 10003
Tel: (212) 558-5500
Fax: (212) 344-5461
Email: rgreenwald@weitzlux.com
Email: cmarshall@weitzlux.com

Keith Allen Ward
Keith A. Ward PLLC
1874 S. Boulder Ave
Tulsa, OK 74119
Tel: (918) 764-9011
Fax: (918) 764-9384
Email: keith@keithwardlaw.com

Billy Joe Ellington
Attorney at Law
PO Box 491
Pawnee, OK 74058
Ph: (918) 762-2589
Email: bjelaw33@gmail.com

CERTIFICATE OF SERVICE

On this 10th day of March, 2017, I electronically filed the foregoing via the Court's CM/ECF system. The CM/ECF system will automatically serve all counsel of record.

/s/ Scott Poynter