

IN THE DISTRICT COURT OF THE PAWNEE NATION MAR 03 2017

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PAWNEE NATION OF OKLAHOMA, )

Plaintiff, )

vs. )

EAGLE ROAD OIL LLC, )

CUMMINGS OIL COMPANY, )

and JOHN DOES 1 through 25, )

Defendants. )

Case No. CLU-2017-003

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**PETITION**

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COMES NOW Plaintiff Pawnee Nation of Oklahoma (hereafter, "Plaintiff," "Pawnee Nation," or "Nation"), and for its petition against Defendants states:

**NATURE OF ACTION**

1. In recent months, the Pawnee Nation has sustained significant damage to its vital, historic governmental buildings through no fault of its own. These structures are more than a century old, appear on a national historic registry, and today are used daily by the Nation for its administrative, educational and cultural purposes.

2. The damage to the Nation's buildings was caused by human-induced earthquakes, now well-known to Oklahomans, linked to injection of wastewater from hydraulic fracturing, or fracking, deep within the earth.

3. In addition, these buildings are now vulnerable to additional significant damage and structural compromise from future earthquakes.

4. Worse, the Nation's members and leaders who use the historic buildings on a daily basis are at risk for personal injuries from falling debris should more quakes happen in the future resulting from Defendants' wastewater injection operations.

5. By disposing of fracking wastewater deep into the earth, Defendants introduced contaminants into the natural environment that caused an adverse change to it in the form of unnatural seismic activity. In other words, because of Defendants' pollution of the environment they caused the man-made earthquakes at issue in this case.

6. This is an action to recover the Nation's damages proximately caused by Defendants' pollution of the environment within and around the Pawnee Nation, Pawnee, Oklahoma through the disposal of fracking wastewater with injection wells, which are the pollutants.

7. The Nation seeks recovery of damages, from the Defendants, in the form of the following:

- a. Physical damages to real and personal property of the Nation;
- b. market value losses to the Nation's real property; and,
- c. punitive damages.

## **PARTIES**

8. Plaintiff Pawnee Nation of Oklahoma (“Plaintiff” or “Nation”) is an Indian tribe. The Nation has approximately 3,200 enrolled members from four confederated bands of Indians (the Chaui, Kitkehahki, Pitahawirata and Skidi). The Nation’s headquarters are located on the Pawnee tribal reserve at Pawnee, Oklahoma. Its tribal jurisdiction covers all Indian and tribal trust land within the boundaries of the original Pawnee Indian Reservation in Pawnee County and part of Payne County.

9. Defendant Eagle Road Oil LLC (“Eagle Road”) is a citizen of Oklahoma. It owns conducts oil and gas operations in this County, and more specifically, owns and operates two wastewater disposal wells that are at issue in this case. Those wells are the Eagle Road Norman SWD 1-27 disposal well, and the Eagle road Carter 1-55WD well. Its principal place of business is at 321 South Boston, Suite 300, Tulsa, Oklahoma 74103.

10. Defendant Cummings Oil Company (“Cummings”) is a citizen of Oklahoma. It conducts oil and gas operations in this County, and more specifically, owns and operates one of wastewater disposal wells at issue in this action. Its disposal well at issue is Cummings Rogers 1-13D. Cummings has its principal place of business at 5400 N. Grand Blvd., Suite 100, Oklahoma City, Oklahoma 73112.

11. John Does 1 – 25 are other Oklahoma oil and gas companies that have engaged in injection well operations in and around Pawnee, which have also contributed to the earthquakes and resulting damages to Plaintiff and the Class members.

12. Eagle Road, Cummings, and John Does 1-25 are collectively referred to in this petition as “Defendants.”

## **JURISDICTION AND VENUE**

13. Jurisdiction in this Court is proper.
14. This Court also has personal jurisdiction over Defendants as they are citizens of Oklahoma, and each do substantial business within the Pawnee Nation and own and operate oil and gas operations on lands within the Pawnee Nation.
15. Venue is proper in this Court as a substantial part of the events giving rise to this claim occurred here.

## **FACTUAL ALLEGATIONS**

### **The Nation**

16. The Pawnee Nation is a Plains Indian tribe headquartered in Pawnee, Oklahoma, with a history spanning more than 700 years. Early in the 18th century, more than 60,000 members of the Pawnee Tribe inhabited the area along the North Platt River in Nebraska.
17. By the early 19th century, the Pawnee numbered over 10,000 people and were one of the largest and most powerful tribes in the west by 1860. Although dominating the Missouri and Platte areas for centuries, they later suffered from increasing encroachment and attrition by their intruding enemies, including the Lakota, Cheyenne and Comanche tribes. In addition, the tribe suffered many losses due to diseases brought by the expanding Europeans. By 1874 their population had decreased to 4,000, and by 1900 the population decreased even further to 636.
18. After encroachment by white settlers, the Pawnees ceded their territory to the U.S.

Government in the 1800s and were removed from Nebraska to an area of Indian Territory in Oklahoma in what is now Pawnee County in 1875.

19. Thereafter, the Pawnee Indian Agency and an Indian boarding school, named the Pawnee Industrial School, were established just east of the present site of the City of Pawnee to impose tribal assimilation, viewed as a nefarious and disdained goal by the Nation over the years. However, the school was closed in 1958 and the land was returned to the Pawnee Nation in 1968.

20. Today, many of the former Industrial School buildings serve as tribal offices and as a home for the Pawnee Nation College. The area is on the National Register as a Historic District.

21. The Nation uses the buildings for governmental and administrative functions, community meetings, cultural meetings and education on a daily basis.

22. Currently, there are 3,489 members of the Pawnee Nation.

### **Oklahoma Earthquakes**

23. In recent years, thousands of earthquakes have occurred in Oklahoma.

24. In fact, Oklahoma is the most seismically active state in the continental United States.

25. Scientists have tied these earthquakes to the disposal of wastewater from fracking operations, which the oil and gas industry uses to release trapped oil and gas.

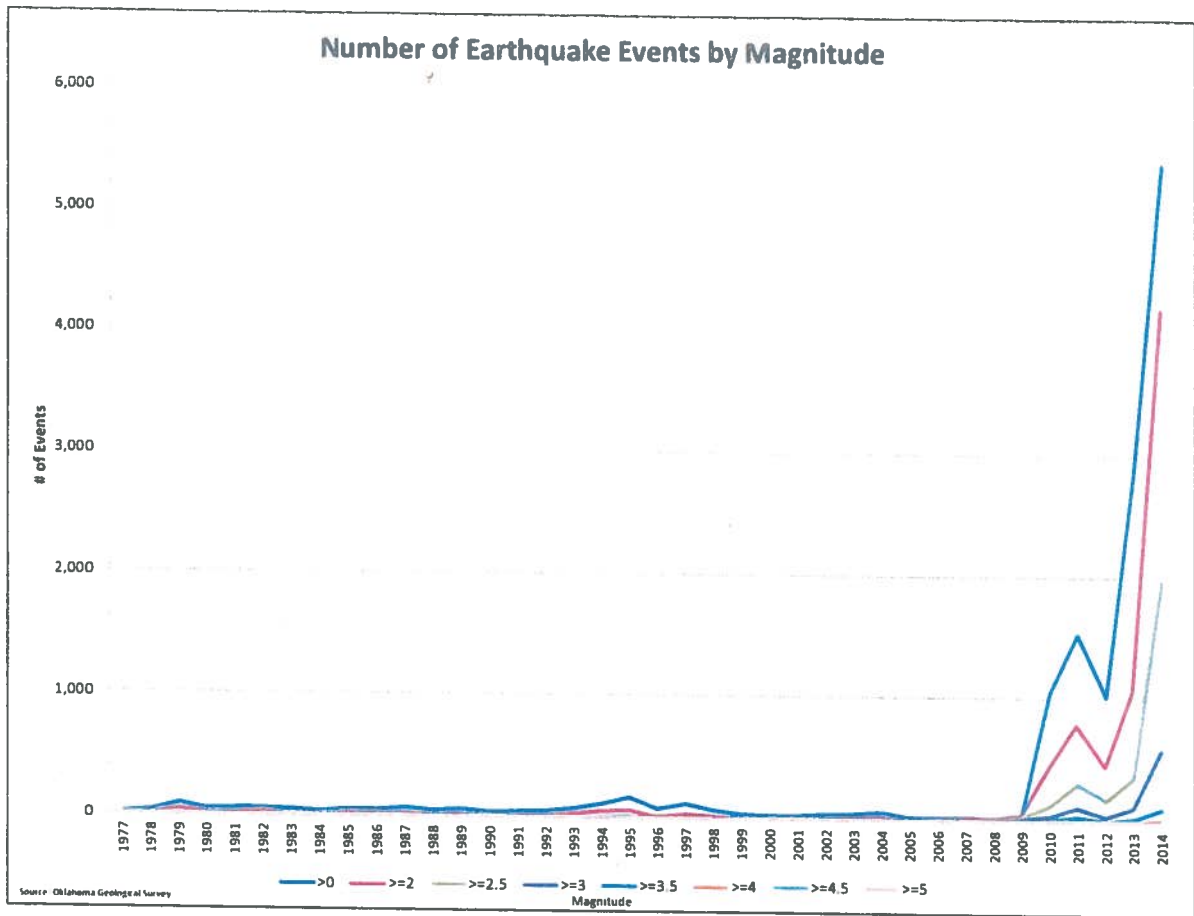
26. Over the years, the oil and gas industry has issued public statements to hide the seismic problems it is creating, and in fact continued a mantra that their operations did not cause earthquakes.

27. In truth, Oklahoma's earthquakes over the past five or so years have been caused by the oil and gas industry's disposal of fracking related waste. Some have termed these earthquakes as "induced," "man-made," "human-made," or "frackquakes."

28. The waste fluids generated from fracking are mostly disposed of by injecting the wastewater fluids back into the earth under extreme pressure in what are usually called wastewater disposal wells or injection wells. This process of pollution causes earthquakes, and indeed, have caused the earthquakes shaking Oklahoma since at least 2011.

29. In fact, the number of earthquakes in Oklahoma has increased more than 300-fold, from a maximum of 167 before 2009 to 5,838 in 2015.

30. As the number of earthquakes has increased, so has their severity. For example, the number of magnitude 3.5 earthquakes has increased fifty-fold from 4 in 2009 to 220 in 2015. See below:



31. These waste-induced earthquakes have toppled historic towers, caused parts of houses to fall and injure people, cracked basements, and shattered nerves, as people fear there could be worse to come.



32. On March 28, 2016, and revised on June 17, 2016, the United States Geological Survey (“USGS”) published a study quantifying these risks. It found that the earthquake risks in Oklahoma have risen rapidly as a result of deep disposal of production wastes. Oklahoma earthquake risks are now the highest in the nation. Maps included in the report show a broad swathe of the State of Oklahoma has a 5 to 12% likelihood of a highly damaging earthquake in the next year. Petersen, M.D., Mueller, C.S., Moschetti, M.P., Hoover, S.M., Llenos, A.L., Ellsworth, W.L., Michael, A.J., Rubinstein, J.L., McGarr, A.F., and Rukstales, K.S., 2016, 2016 One-year seismic hazard forecast for the Central and Eastern United States from induced and natural earthquakes: U.S. Geological Survey Open-File Report 2016–1035, 52 p., <http://dx.doi.org/10.3133/ofr20161035>.

33. On September 3, 2016, these scientists’ prediction that a more damaging earthquake to Oklahoma was coming proved to be true.

34. On that day, a magnitude-5.8 earthquake shattered the areas around the Pawnee Nation. The earthquake’s epicenter was about 15 km northwest of the town of Pawnee.

35. This was the largest earthquake that had ever hit Oklahoma.

36. A magnitude-5.8 earthquake is a big one. Oklahoma Geological Survey’s Director Jeremy Boak said, “Any time you have a big earthquake like that, you worry about the aftershocks,” Boak said. “How big they’ll be, how many there will be.”

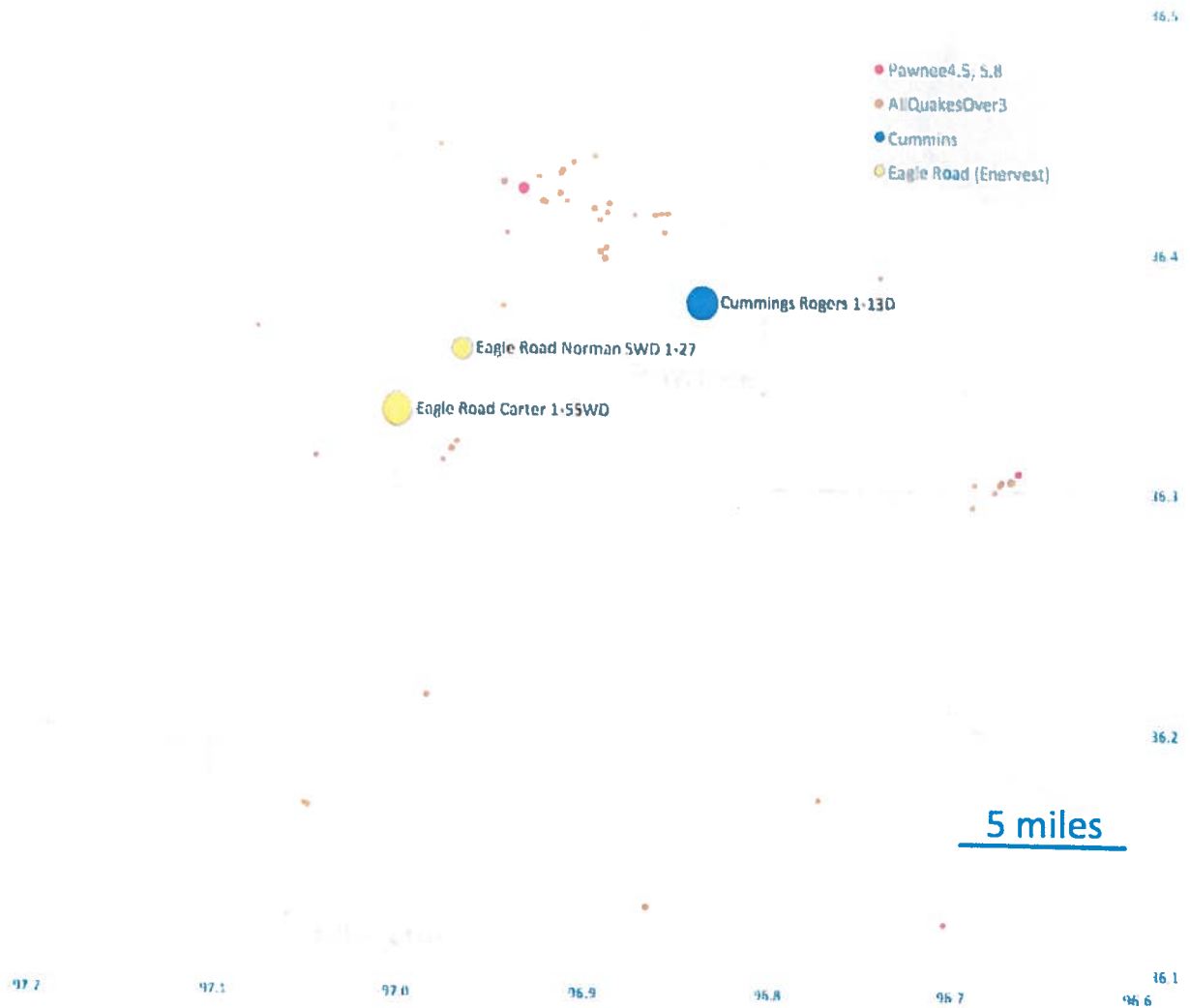
37. All segments of Oklahoma’s government, from the Governor to the Director of OGS to the OCC, agree that Pawnee’s 5.8m earthquake was induced by Defendants’ wastewater disposal operations and from the injection wells they operate nearby.

38. The 5.8m earthquake near the Pawnee Nation on September 3, 2016, was not a naturally occurring earthquake, or an act of God. Instead, the Defendants' pollution of the environment caused it, and the other earthquakes that followed.

39. Defendant Cummings operated its Rogers 1-13D well about 6.3 miles from the epicenter of the 5.8m quake on Labor Day weekend 2016 and near Pawnee. Historically, Cummings injected on average 126,092 barrels of wastewater through Rogers 1-13D and into the Arbuckle Formation below it. Cummings' pollution of the environment through its injection of wastewater into the Arbuckle and at such huge volumes through Rogers 1-13D caused the 5.8m earthquake near Pawnee on September 3, 2016 and the earthquakes that followed and detailed in this Petition.

40. Defendant Eagle Road's Carter and Norman wastewater injection wells are 7.44 and 5.0 miles from the epicenter of the 5.8m quake on Labor Day weekend of 2016, and near Pawnee. Historically, these two wells combined for a monthly average of 191,499 barrels of wastewater pollution injected into the Arbuckle. Eagle Road's pollution of the environment through its injection of wastewater into the Arbuckle and at such huge volumes through through these wells caused the 5.8m earthquake near Pawnee on September 3, 2016, and the earthquakes that followed and detailed in this Petition.

41. A map of the area, the two most substantial wastewater induced earthquakes and Defendants' disposal wells follows:



42. In the area around Pawnee, there were at least 41 shocks involving magnitude-2.5+ earthquakes before the end of September, 2016.

43. These quakes ranged in magnitude from 2.5m to 3.6, and have all been identified by USGS and shown in the following table:

TIME	MAG	PLACE
2016-09-26T09:09:05.500Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-23T08:28:17.800Z	3	12km NW of Pawnee, Oklahoma
2016-09-18T21:30:52.300Z	2.7	5km N of Pawnee, Oklahoma
2016-09-16T23:02:23.400Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-16T22:28:50.700Z	2.7	10km NW of Pawnee, Oklahoma
2016-09-12T21:39:14.500Z	3	14km NW of Pawnee, Oklahoma
2016-09-12T09:57:28.900Z	2.6	8km NNW of Pawnee, Oklahoma
2016-09-12T05:54:12.700Z	3	8km NNW of Pawnee, Oklahoma
2016-09-11T04:57:16.300Z	2.9	12km NW of Pawnee, Oklahoma
2016-09-10T17:26:45.800Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-09T20:28:01.100Z	2.6	10km NW of Pawnee, Oklahoma
2016-09-08T01:54:16.100Z	2.5	11km NW of Pawnee, Oklahoma
2016-09-07T11:17:39.300Z	2.6	11km NW of Pawnee, Oklahoma
2016-09-07T03:11:55.100Z	2.7	13km NW of Pawnee, Oklahoma
2016-09-04T18:08:11.600Z	2.7	10km NNW of Pawnee, Oklahoma
2016-09-04T16:37:08.100Z	2.8	11km NW of Pawnee, Oklahoma
2016-09-04T12:56:04.900Z	3	11km NW of Pawnee, Oklahoma
2016-09-04T12:16:46.800Z	2.9	12km NW of Pawnee, Oklahoma
2016-09-04T08:48:26.500Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-04T05:44:34.400Z	2.5	9km NNW of Pawnee, Oklahoma
2016-09-04T03:15:56.400Z	3.1	11km NW of Pawnee, Oklahoma
2016-09-03T23:56:36.600Z	3	9km NNW of Pawnee, Oklahoma
2016-09-03T23:17:26.500Z	2.6	7km N of Pawnee, Oklahoma
2016-09-03T18:07:04.400Z	2.5	8km NNW of Pawnee, Oklahoma
2016-09-03T15:31:40.900Z	3.4	11km NW of Pawnee, Oklahoma
2016-09-03T15:25:00.500Z	2.9	9km NNW of Pawnee, Oklahoma
2016-09-03T14:56:32.000Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T14:47:04.200Z	3.3	9km NNW of Pawnee, Oklahoma
2016-09-03T14:35:30.800Z	2.6	13km NW of Pawnee, Oklahoma
2016-09-03T14:07:16.900Z	2.5	9km NW of Pawnee, Oklahoma
2016-09-03T14:05:49.200Z	2.6	9km NW of Pawnee, Oklahoma
2016-09-03T13:49:37.500Z	2.5	9km NW of Pawnee, Oklahoma
2016-09-03T13:06:06.700Z	2.6	13km NW of Pawnee, Oklahoma
2016-09-03T12:58:37.800Z	3.6	13km NW of Pawnee, Oklahoma
2016-09-03T12:57:36.200Z	2.6	12km NW of Pawnee, Oklahoma
2016-09-03T12:39:48.800Z	2.7	11km NW of Pawnee, Oklahoma
2016-09-03T12:36:18.000Z	2.5	11km NW of Pawnee, Oklahoma
2016-09-03T12:32:02.300Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T12:21:25.200Z	2.7	10km NNW of Pawnee, Oklahoma
2016-09-03T12:18:54.000Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T12:16:22.200Z	3.3	3 9km NNW of Pawnee, Oklahoma

44. Defendants' pollution of the environment around Pawnee, through their disposal of fracking wastewater with injection wells, caused the 5.8m earthquake on September 3<sup>rd</sup> and all of the other seismicity shown in the table above.

45. Moreover, the quakes around Pawnee continued into October and November, 2016. In fact, there have been eleven more earthquakes, and another substantial earthquake of 4.5m shook the areas around Pawnee on November 2, 2016.

46. The following table shows the earthquakes near Pawnee in October and November, 2016, including the 4.5m earthquake:

TIME	MAG	PLACE
2016-11-14T14:41:50.710Z	3.4	15km W of Cleveland, Oklahoma
2016-11-05T15:40:31.330Z	2.9	2km E of Pawnee, Oklahoma
2016-11-05T09:39:43.990Z	3.7	13km ESE of Pawnee, Oklahoma
2016-11-02T15:10:43.700Z	3.1	12km ESE of Pawnee, Oklahoma
2016-11-02T08:57:02.590Z	2.8	12km ESE of Pawnee, Oklahoma
2016-11-02T04:26:54.200Z	4.5	14km ESE of Pawnee, Oklahoma
2016-10-29T06:06:02.580Z	3.3	9km NW of Pawnee, Oklahoma
2016-10-21T16:50:22.000Z	2.6	12km NW of Pawnee, Oklahoma
2016-10-19T12:04:51.630Z	2.7	11km NW of Pawnee, Oklahoma
2016-10-09T12:23:05.100Z	3.7	11km NW of Pawnee, Oklahoma
2016-10-01T10:58:31.300Z	2.9	8km NNW of Pawnee, Oklahoma

47. All of these earthquakes were also caused by Defendants' pollution of the environment around Pawnee, through their disposal of fracking wastewater with injection wells.

**The Consequences of the Earthquakes on the Pawnee Nation**

48. The earthquakes in Pawnee since September 3, 2016 have caused substantial cracks to interior and exterior walls, plaster, mortar, ceilings, and windows of the Pawnee Nation's governmental buildings.

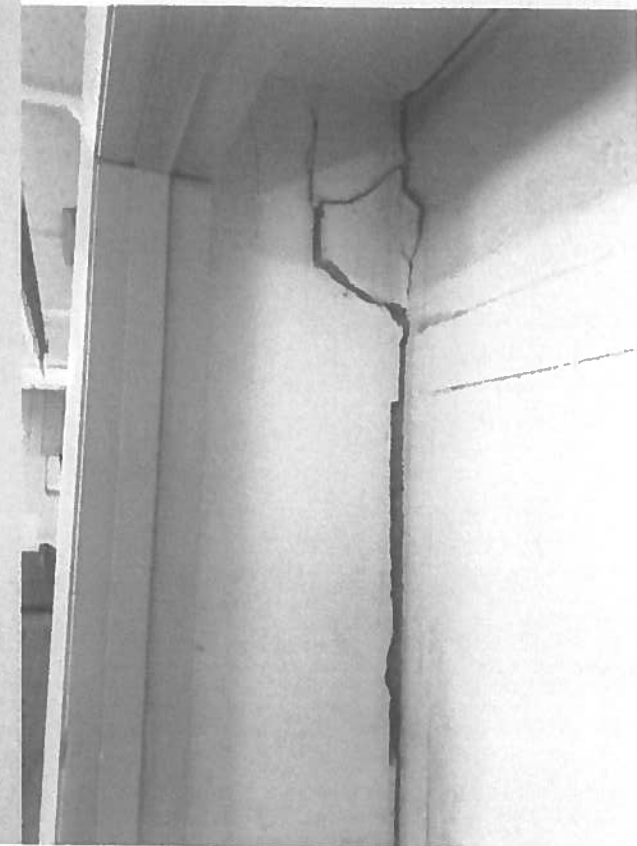
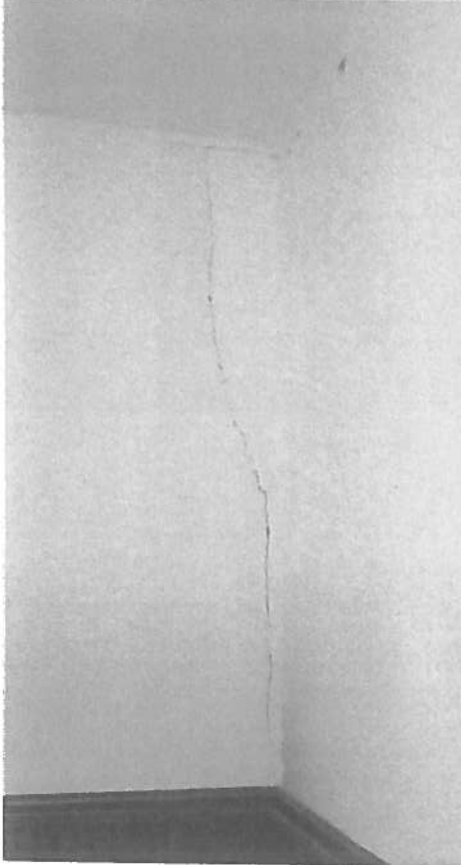
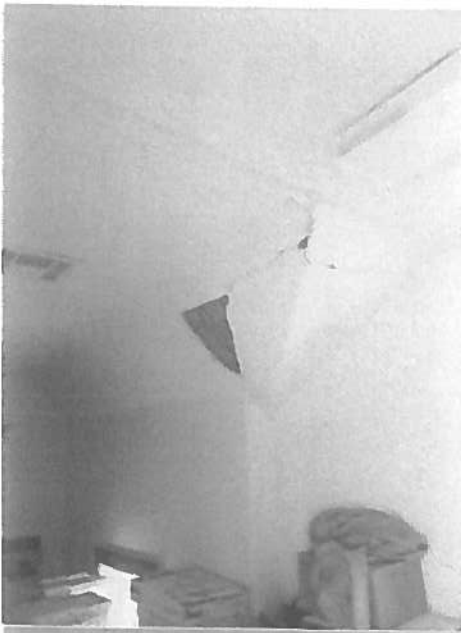
49. Normal daily administrative, educational and cultural functions and activities in certain Pawnee buildings were disrupted or suspended from the damage and the subsequent need for and conduct of inspections and repair work.

50. Moreover, the nerves of those tribal members and leaders who use the buildings on a daily basis have been frayed on account of the quakes. Safety concerns exist every time a quake hits. Operations must be interrupted or suspended to inspect for possible damage or safety risks.

51. The Nation has experienced encroachment for hundreds of years from enemy tribes and white settlers. This time, the encroachment is environmental, perpetrated by the Defendants through their wastewater injection operations, which have damaged and interfered with the use, enjoyment, value, and possible structural integrity of the Nation's property.

52. Presently, Plaintiff estimates its damages caused by Defendants' pollution as detailed above and to its building to be above \$250,000.00. Representative examples of the damages at issue to its government buildings are depicted in these photographs:







### **CAUSES OF ACTION**

#### **COUNT I**

#### **ABSOLUTE LIABILITY**

53. Plaintiff re-alleges and incorporates the foregoing Paragraphs as if fully set forth herein, word-for-word.

54. Defendants' actions described above are ultrahazardous activities that necessarily involve a risk of serious harm to a person that cannot be eliminated by the exercise of the utmost care and is not a matter of common usage.

55. As a direct and proximate result of Defendants' ultrahazardous activities, Plaintiff has suffered damages, to which Defendants are strictly liable.

56. As a direct and proximate result of Defendants' ultrahazardous activities, Plaintiff has suffered damages its buildings and lands in the form of physical damages and market losses, and also damages to its personal property.

## **COUNT II**

### **NEGLIGENCE**

57. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs, as if fully set forth herein, word-for-word.

58. The Defendants owed a duty to Plaintiff to use ordinary care and not to operate or maintain their injection wells in such a way as to cause or contribute to seismic activity. Defendants, experienced in these operations, were well aware of the connection between injection wells and seismic activity, and acted in disregard of these facts.

59. As a direct and proximate result of these facts, omissions, and fault of the Defendants, Plaintiff has suffered damages reasonably foreseeable to the Defendants in the form of property damages to its governmental buildings and lands (in the form of physical damages and market losses), and damages to its personal property.

### **COUNT III**

#### **PRIVATE NUISANCE**

60. Plaintiff re-alleges and incorporates the foregoing Paragraphs, as if fully set forth herein, word-for-word.

61. Defendants' conduct constitutes a private nuisance.

62. Plaintiff has property rights and privileges regarding the use and enjoyment of its land and buildings. Defendants' actions and operations as described above have unlawfully and unreasonably interfered with those rights and privileges.

63. Plaintiff has suffered harm and damages because of Defendants' creation of a nuisance, including:

- a. Damages to their personal and real property;
- b. Interference with their use and enjoyment of property;
- c. Annoyance, discomfort and inconvenience on their property caused by Defendants' nuisance;
- d. Diminution of property value.

### **COUNT IV**

#### **TRESPASS**

64. Plaintiff re-alleges and incorporates the foregoing Paragraphs, as if set forth herein, word-for-word.

65. Plaintiff has been lawfully entitled to possession of its lands.

66. Defendants, without the permission or consent of Plaintiff and without legal right, intentionally engaged in activities that resulted in concussions or vibrations entering Plaintiff's property. Such unauthorized invasion of Plaintiff's property constitutes a trespass.

67. Because of Defendants' trespass, Plaintiff has suffered damages, including:

- a. Damages to their personal and real property;
- b. Interference with their use and enjoyment of property;
- c. Annoyance, discomfort and inconvenience on their property caused by Defendants' nuisance;
- d. Diminution of property value.

#### **PUNITIVE DAMAGES**

69. Defendants' actions, in knowingly causing seismic activity as a result of their injection well operations, constitute wanton or reckless disregard for public or private safety, and are thus subject to a claim for punitive damages, for which Plaintiff seeks in an amount sufficient to punish the Defendants and to deter them from such conduct in the future.

#### **DEMAND FOR JURY TRIAL**

70. Plaintiff demands a trial by jury.

#### **PRAYER FOR RELIEF**

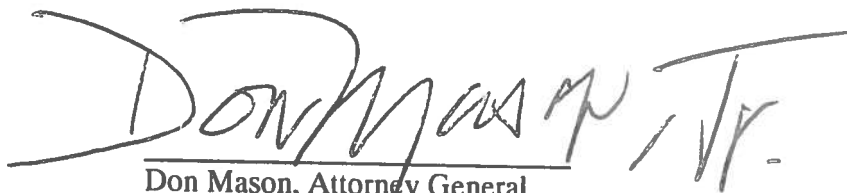
WHEREFORE, Plaintiff respectfully requests the following relief:

- i. A judgment against Defendants awarding real and personal property damages (for physical damage and market loss) caused by and continuing by the conduct of the Defendants in an amount to be proven at trial;
- ii. punitive damages;
- iii. pre-judgment and post-judgment interest; and,
- iv. all other relief to which Plaintiff is entitled or that the Court deems just and proper.

DATED: March 3, 2017

Respectfully Submitted,

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FOR THE PAWNEE NATION**



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