



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
Plaintiff,)
vs.)
SHANNON KEPLER,)
Defendant.)

CF-14-3952

The Honorable Sharon Holmes

DISTRICT COURT
FILED

AUG 11 2017

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

**VERIFIED
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

Shannon Kepler was an Indian within Indian Land at the time of these events and this Court is required to dismiss this case for want of jurisdiction.

As per the attached exhibits, Shannon Kepler is a Native American as recognized by a copy of his Creek Nation Citizenship ID card. He has a Doves Roll number of 31936. He has a Native American car tag and he is eligible and has previously utilized the Indian Hospital in Rogers County. Also attached is an affidavit of Mr. Kepler's great grandmother, Joan [Berryhill] Morton, whose son was Mr. Kepler's grandfather, George Morton. See Ex. A. Documents of Indian Heritage.

As we are all aware, subject matter jurisdiction, cannot be waived to confer jurisdiction on a court lacking the power to adjudicate a particular type of controversy. See *Bowen v. State*, 1972 OK CR 146 at ¶ 8, 497 P.2d at 1097 ("jurisdiction of subject matter can neither be waived nor conferred by consent"). In Oklahoma, "issues of subject matter jurisdiction are never waived and can even be raised on appeal." *Wallace v. State*, 1997 OK CR 1997, 935 P.2d 366, 372 ; *Wackerly v. State*, 2010 OK CR 16, 237 P.3d 795, 797, (considering jurisdictional claim that crime occurred on federal land raised in prisoner's second application for post-conviction relief); *Magnan v. State*, 2009 OK CR 16, 207 P.3d

397, 402,(considering Indian country jurisdictional challenge and explaining subject matter jurisdiction may be challenged at any time).

18 U.S.C.A. § 1153(a) mandates that “[a]ny Indian who commits against the person . . . of another Indian or person. . . murder. . . shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.” The statutory language is mandatory and jurisdiction lies exclusively within the federal courts.

Most recently, the Tenth Circuit Court of Appeals in *Murphy v. Royal*, ____ F. 3d ___, August 8, 2017, 2017 WL 3389877, held that Congress had never “disestablished the Creek Reservation.” Hence, the Court ruled that OCCA had ruled contrary to clearly established federal law in defining what is “Indian land” and in that case a man who had been on death row since 1999, was ordered released or retried in federal court because most of the City of Tulsa is Indian Land.

The attached map of the Muscogee (Creek) Reservation shows both the scope of the holdings of the Creek Nation throughout eleven (11) counties and also shows a Google GPS placement of 202 N. Maybelle, Tulsa, OK, which is clearly within the now officially designated “Indian Land.” Should the Court so desire, Mr. Kepler will present both keepers of the records for the Creek Nation documents and a land surveyor of 202 N. Maybelle, Tulsa, OK.. See *Ex. B. Maps of the Muscogee (Creek) Nation*; see also http://mcngis.com/images/stories/maps/MCN_JURISDICTION_2016.pdf. (This map allows one to type in a specific address which will appear on the map).

Accordingly, Mr. Kepler prays this Court dismiss this matter with prejudice, or in the alternative, that evidence be taken at the soonest convenience to conclusively prove these

VERIFICATION & CERTIFICATE OF SERVICE

- The undersigned swears and attests under penalty of perjury that the he is personally informed as to the facts described in the foregoing pleading and he does verily believe they are true and correct to the best of his knowledge and belief;
- The undersigned further swears and attests that these issue are raised in the interest of justice and not to unduly burden or delay the Court.

Respectfully submitted to the Court and delivered to:

Tulsa County District Attorney's Office
500 S. Denver
Tulsa, OK 74104

as of August 11, 2017, by



Richard O'Carroll OBA # 11947
O'Carroll & O'Carroll
2171 N. Vancouver
Tulsa, OK 74127
(918) 584-4192
troc@cox.net

ATTORNEY FOR SHANNON KEPLER

Ex. A

Documents Establishing Indian Heritage

**MUSCOGEE (CREEK) NATION
CITIZENSHIP ID**

Shannon James Kepler

Tulsa, OK 74134

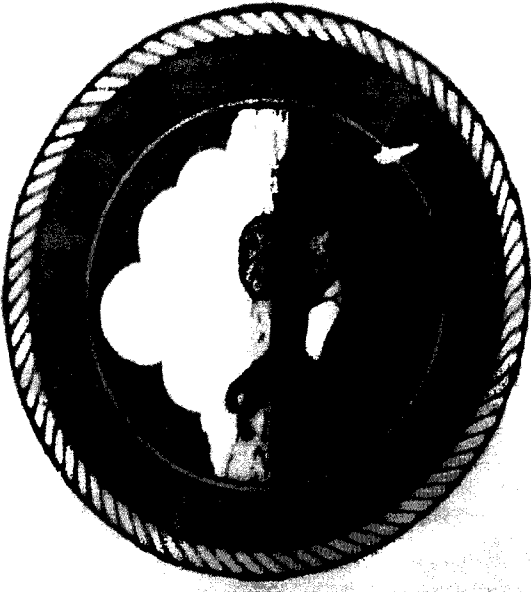
Gender Male

Birthdate

08/10/2017

Card Issue

Blood Quantum 1/128



Roll Num 31936



263261

ESTE MYSKOKYLKE

Shannon J. Kepler

James R. J. J. J.

Principal Chief

Card Expires: 08/09/2022

MUSCOGEE (CREEK) NATION
CITIZENSHIP ID



Shannon James Kepler
Tulsa, OK 74134

Gender Male
Birthdate [REDACTED]
Card Issued 08/10/2017
Blood Quantum 1/128



Roll Num 31936

ESTE MYSKOKVLKE

James R. Jyd
Principal Chief

Card Expires: 08/09/2022

TVSEKVVV SOHCEYETV

169

'Card Expires' date does not reflect upon your citizenship status.

TO VERIFY AUTHENTICITY CALL: 1 (800) 482-1979 Ext. 7941

IF FOUND DROP IN ANY MAILBOX OR

Please mail to:
Muscogee (Creek) Nation
Citizenship Board
P.O. Box 580
Okmulgee, OK 74447



4177975



MUSCOGEE NATION
CITIZENSHIP BOARD



MUSCOGEE ETV' LWV
TVSE' KIA EN COKV
HAVE APOKON

CITIZENSHIP CARD

THIS IS TO CERTIFY THAT SHANNON JAMES KEPLER
BORN [REDACTED] IS ENROLLED WITH THE MUSCOGEE TRIBE,
DEGREE CREEK BLOOD 1/128 ROLL NO. 31936

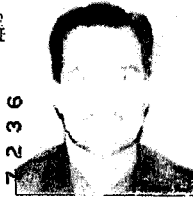
DATE _____ AUTHORIZED SIGNATURE _____

OKLAHOMA

DRIVER
LICENSE

EXPIRES [REDACTED]
ISSUED [REDACTED]
CLASSIFICATION [REDACTED]
SEX [REDACTED] HAIR [REDACTED] EYES [REDACTED]
HT [REDACTED] WT [REDACTED]

7236



KEPLER, SHANNON JAMES
412 S. [REDACTED]



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
OKMULGEE AGENCY

CERTIFICATE OF DEGREE OF INDIAN BLOOD
This is to certify that SHANNON JAMES KEPLER

born [REDACTED] is 1/128 degree Indian blood
of the CREEK Tribe.
2-17-83
Date _____
[Signature]
Issuing Officer

SHANNON JAMES KEPLER

TULSA, OK.

74128

Roll No. CR-31936

D.O.B. [REDACTED]

Social Security No. [REDACTED]

District TULSA

Precinct TULSA

[Signature]
Authorized By

2/17/83
Date

DEPARTMENT OF THE INTERIOR,
 COMMISSION TO THE FIVE CIVILIZED TRIBES.
 MUSKOGEE LAND OFFICE, NOV. 14, 1899.

In the matter of the application of JOAN MOTON, for enrollment as a citizen of the Creek Nation.

JOAN MOTON, being sworn and examined, testified as follows:
 (By Mr. Emerson)

- Q Please state your name, age and present residence?
 A Joan Morton, age 29 years; I live at Stone Bluff, Indian Territory.
 Q How long have you lived in the Creek Nation? A 14 years I believe.
 Q Are you recognized citizen of the Creek Nation? A Yes sir.
 Q When were you admitted to citizenship in the Creek Nation? A
 A I don't remember; (Refers to certificate) October 28, 1890.
 Q State the name of your father? A G W Berryhill.
 Q Your mother. A Ara Ann, Berryhill.
 Q Are they citizens of the Creek Nation?
 A My father was, my mother was a white woman.
 Q Please state whether you are married or single? A Married.
 Q What is the name of your husband? And when were you married to him? A Thomas Moton; was married in 1892.
 Q Is Mr. Moton a citizen or non-citizen? A Non-citizen.
 Q Have you any children as a result of this marriage to Mr. Moton?
 A Yes, I have three.
 Q Three alive? A No, two living.
 Q State the names of those living. A George Franklin and Ara Ethel.
 Q How old are they? A Franklin is six years old and Ethel 2 not quite three.
 Q Did you ever have any other children? A Just one.
 Q What was its name? A Price.
 Q How old would the child that is dead be now? A 4 years old last February.
 Q Pearl Hampton would have been 4 years old. A yes sir.
 Q That is a daughter of yourself and Martin? A Yes sir.
 Q you stated something about some other one, Price; did you have a child named Price? A yes sir.
 Q Is that Mr. Moton's and your child? A No sir, it is mine.
 Q Did you draw the \$29? A Yes sir.
 Q That was before you were married? A Yes sir.
 Q Your father drew that for you? A Yes sir.
 Q About the 14.40; did you draw in the \$14.40 payment?
 A My father drew for me.
 Q Were you married to Mr. Moton at that time? A Yes sir.
 Q For whom did your father draw? A Myself and two children, Burl Hampton and Franklin.
 Q Then Burl Hampton was living at the time of the payment?
 A yes sir.
 Q Did you draw this \$14.40 for yourself and children, or did your father? A My father.
 Q At the same time he drew for himself? A No sir, he drew when they paid the omitted roll.
 Q How did it come that he didn't draw for you at the time he drew for himself? A Like a lot of others; our names were left off.
 Q Your names were left off of the first payment? A Yes sir.
 Q Do you know how they came to be left off? A Nothing more than they were left off through mistake. I was telling about.

#2.

- Q Please explain in detail in regard to this statement what your father told you
- A When he went to draw, they had my name down John Moton, and when they called the name there to pay the money, Taylor Chissoe didn't recognize any person by that name, and Judge Moore's wife paid out the money. She called the 2 children's name, and father spoke up and told when it was, and she put down my name right by the side of that like it ought to be, and she paid the money out.
- Q Then you received the \$14.40 at that time? A Yes sir.
- Q Do you know how long that was after you father drew his \$14.40?
- A No sir.
- Q Can you tell about, give us an idea?
- A Two or three months or something like that.
- Q Have you ever heard of your citizenship in the Creek nation questioned? A No sir.

Department of the Interior,

Commission to the Five Civilized Tribes.

I hereby certify, upon my official oath as stenographer to above named Commission, that this transcript is a true, full and correct translation of my stenographic notes.

Stastain

DEPARTMENT OF THE INTERIOR.
COMMISSION TO THE FIVE CIVILIZED TRIBES?
MUSCOGEE, I. T., NOV. 14th, 1899.

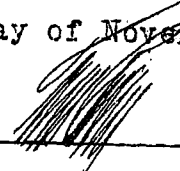
JOAN MORTON, being sworn and examined, testified as follows:

- Q. What is your name? A. Joan Morton.
Q. Are you a citizen of the Muscogee Nation? A. Yes sir.
Q. What town do you belong to? A. Broken Arrow.
Q. How did you become a citizen? A. By blood.
Q. How long have you lived in the Creek Nation?
A. Fourteen years.
Q. Have you been outside of the Indian Territory during the last two years?
A. No sir.
Q. Do you own a home of your own in the Creek Nation? A. Yes sir.
Q. Are all the persons named in this application now living?
A. Yes sir.
Q. What is your Postoffice address? A. Stone, Bluff, I. T.
Q. Do the persons you represent live with you? A. Yes sir.
Q. You make application for yourself for the north west quarter of section 35, township 17, range 15, is that correct? A. Yes sir.
Q. Are there any improvements on that tract of land? A. Yes sir.
Q. Is there a house on it? A. Yes sir.
Q. Do you live in the house? A. Yes sir.
Q. How many acres are there under cultivation on that land?
A. Forty-five (45)
Q. Is the improved land fenced? A. Yes sir.
Q. Does any one else claim this land or any part of it? A. No sir.
Q. Has any one else any improvements on it? A. No sir.
Q. Do you know where this land is? A. Yes sir.
Q. Have you seen it and been over it? A. Yes sir.
Q. Is it prairie or timber land? A. Prairie land.
Q. You also make application for your son, George F. Morton, for the north east quarter of section 17, township 14, range 14, is that correct?
A. Yes sir.
Q. Are there any improvements on that tract of land? A. Yes sir.
Q. Is there a house on it? A. Yes sir.
Q. Do you live in the house? A. No sir.
Q. Who lives in the house? A. renter.
Q. Does he live there under contract with you? A. Yes sir.
Q. How many acres are there under cultivation on that land?
A. About sixty five acres.
Q. Is the improved land fenced? A. Yes sir.
Q. Does any one else claim this land or any part of it? A. No sir.
Q. Do you know where this land is? A. Yes sir.
Q. Have you seen it and been over it? A. Yes sir.
Q. Have you examined it with a view to making this application for it?
A. Yes sir.
Q. Is it prairie or timber land? A. Prairie land.
Q. You also make application for your daughter, Airy Ethel Morton, for the south east quarter of section 17, township 14, range 14, is that correct?
A. Yes sir.
Q. Are there any improvements on that tract of land? A. Yes sir.
Q. Is there a house on it? A. No sir.
Q. How many acres are there under cultivation on that land?
A. About sixty five acres.
Q. Is the improved ~~and~~ land fenced? A. Yes sir.
Q. Does any one else claim this land or any part of it? A. No sir.
Q. Do you know where this land is? A. Yes sir.
Q. Have you seen it and been over it? A. Yes sir.
Q. Have you examined it with a view to making this application for it?
A. Yes sir.

- Q. Is it prairie or timber land? A. Prairie land.
Q. Are each of these tracts of land suitable for homes for yourself and children? A. Yes sir.
Q. Are you making these applications in good faith in all respects? A. Yes sir.
Q. Will you accept these lands as final allotments in part for the persons named in this application? A. Yes sir.
Q. Are there any churches, school-houses, courthouses or burial grounds on this land? A. Yes sir, private school.
Q. On which place? A. On place taken from George.

Joann Mortan

Sworn to and subscribed before me this 14th day of November, 1899,
at Muscogee, I. T.



COMMISSIONER.

Stone Bluff Inst Len

Application No. 3003

DEPARTMENT OF THE INTERIOR.
COMMISSION TO THE FIVE CIVILIZED TRIBES.

CREEK NATION.

To the Clerk of the Land Office at Muskogee:

This is to certify that the name of Joan Morton Age 29
and the names of the following two persons, whom she represents, to-wit:

NAMES.	Relationship to Person First Named.	AGE.
<u>George F. Morton</u>	<u>Son</u>	<u>6</u>
<u>Mary Ethel "</u>	<u>Daughter</u>	<u>3</u>

~~It~~ appear on Creek Census Card of the Creek Nation, Field No. 1131
of record in the office of the Commission to the Five Civilized Tribes.
Muskogee, Indian Territory, Nov. 14, A. D. 1899

G. L. V. E.

[Signature]
Acting Chairman.

APPLICATION FOR ALLOTMENT.

CREEK NATION.

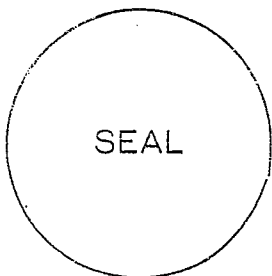
MUSKOGEE LAND OFFICE.

I, Joan Morton do hereby make application to have set apart to me, and to those whom I lawfully represent, lands selected by me, as follows:

Roll Number	NAMES	Relationship to Person First Named	SUBDIVISION OF	Section	Town	Range	Acres	10f
23663	Joan Morton	✓	NW 1/4 of	36	17	15	160	---
23664	George F. Morton	Son ✓	NE 1/4 of	17	14	14	160	---
23665	Mary Ethel Morton	Daughter ✓	SE 1/4 of	17	14	14	160	---

I, Joan Morton, do solemnly swear, that I have in person actually been upon the lands so selected by me for myself and for those whom I represent, as above described, and am fully informed as to the location of the same, and the character of the soil; that said lands are suitable for homes, and that I have in good faith selected such lands, and will accept the same in allotment to myself, and to those whom I represent, and that no part of said lands is lawfully held by any other member of the Creek Tribe.

Joan Morton



Subscribed and sworn to before me at Muskogee, I. T.,
this 1st day of Nov 1899

_____ son

APPLICATION FOR ALLOTMENT.

CREEK NATION.

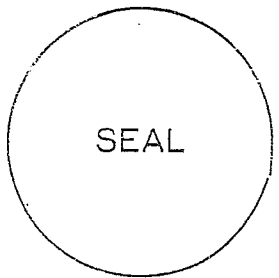
MUSKOGEE LAND OFFICE.

I, Joan Morton do hereby make application to have set apart to me, and to those whom I lawfully represent, lands selected by me, as follows:

Roll Number	NAMES	Relationship to Person First Named	SUBDIVISION OF	Section	Town	Range	Acres	10'
93663	Joan Morton	✓	NE 1/4 of	36	17	15	160	—
93664	George F. Morton	Son ✓	NE 1/4 of	17	14	14	160	—
93665	Airy Ethel Morton	Daughter ✓	SE 1/4 of	17	14	14	160	—

I, Joan Morton, do solemnly swear, that I have in person actually been upon the lands so selected by me for myself and for those whom I represent, as above described, and am fully informed as to the location of the same, and the character of the soil; that said lands are suitable for homes, and that I have in good faith selected such lands, and will accept the same in allotment to myself, and to those whom I represent, and that no part of said lands is lawfully held by any other member of the Creek Tribe.

Joan Morton



Subscribed and sworn to before me at Muskogee, I. T.,
this 1st day of Nov A. D. 1899

_____ Joan

ence: Bud Hill

CREEK NATION CREEK ROLL

Card No. 1123

Office: St. Paul, Ind. Dec.

Field No. 1131

No.	NAME	Relation to ship to Person	AGE	SEX	BLOOD	TRIBAL ENROLLMENT		TRIBAL ENROLLMENT OF PARENTS						
						Year	No.	Name of Father	Year	Name of Mother	Year			
1	Morton, Joann	Named	59	F	1/8	1890	225	G. H. Berryhill	1890	From Morton	1890	Joann	1890	From Berryhill
2	"	Son	6	M	1/16	1895		Thomas Morton	1895	Joann				
3	"	Young's												
4	"	Young's	3	F	1/16									
5	"													
6	"													
7	"													
8	"													
9	"													
10	"													
11	"													
12	"													
13	"													
14	"													
15	"													
16	"													
17	"													
18	"													

Approved by the Secretary of Interior March 13 1902

No. 1 on 1890 roll as Jo Shelly Berryhill

Clara P. Correll
Approved
Nov 26-1899

DEPARTMENT OF THE INTERIOR

COMMISSION TO THE FIVE CIVILIZED TRIBES,

MUSKOGEE LAND OFFICE

APPLICATION FOR HOMESTEAD ALLOTMENT.

John Martin, do hereby make application to have the lands hereinafter described set apart as homesteads for myself and those whom I lawfully represent, the same being a part of the lands already selected by me as allotments for myself and those whom I lawfully represent, as follows:

Roll No.	NAME	Residence of First Named Person	SUBDIVISION OF	Sec.	Town	Range	Acres	100ths
3663	<i>John Martin</i>		<i>S. 1/4 14th 17th 40</i>	26	17	15	40	
3664	<i>George B. Martin</i>		<i>S. 1/4 14th 17th 40</i>	17	14	14	40	
3665	<i>Raymond Martin</i>		<i>S. 1/4 14th 17th 40</i>	17	14	14	40	

Dated at *Stans Bluff*, Indian Territory, this *18* day of *April*, 1902

WITNESSES TO MARK:

John Martin

5827
5828
5829

John Martin

Commission to the Five Civilized Tribes.

Township No. *14 N.* Range No. *14 E*

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
10	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

East 1/2 of Sec. 17 T. 14 N. R. 14 E.

Commission to the Five Civilized Tribes.

Township No.

17

Range No.

5 E

7	8	9	10	11	12				
10	17	16	15	14	13				
10	20	21	22	23	24				
30	29	28	27	26	25				
31	32	33	34	35	36				

Josie Moxleton The next of kin of
Sec 36.

COPY

National Archives

RG 75 DAWES CARD

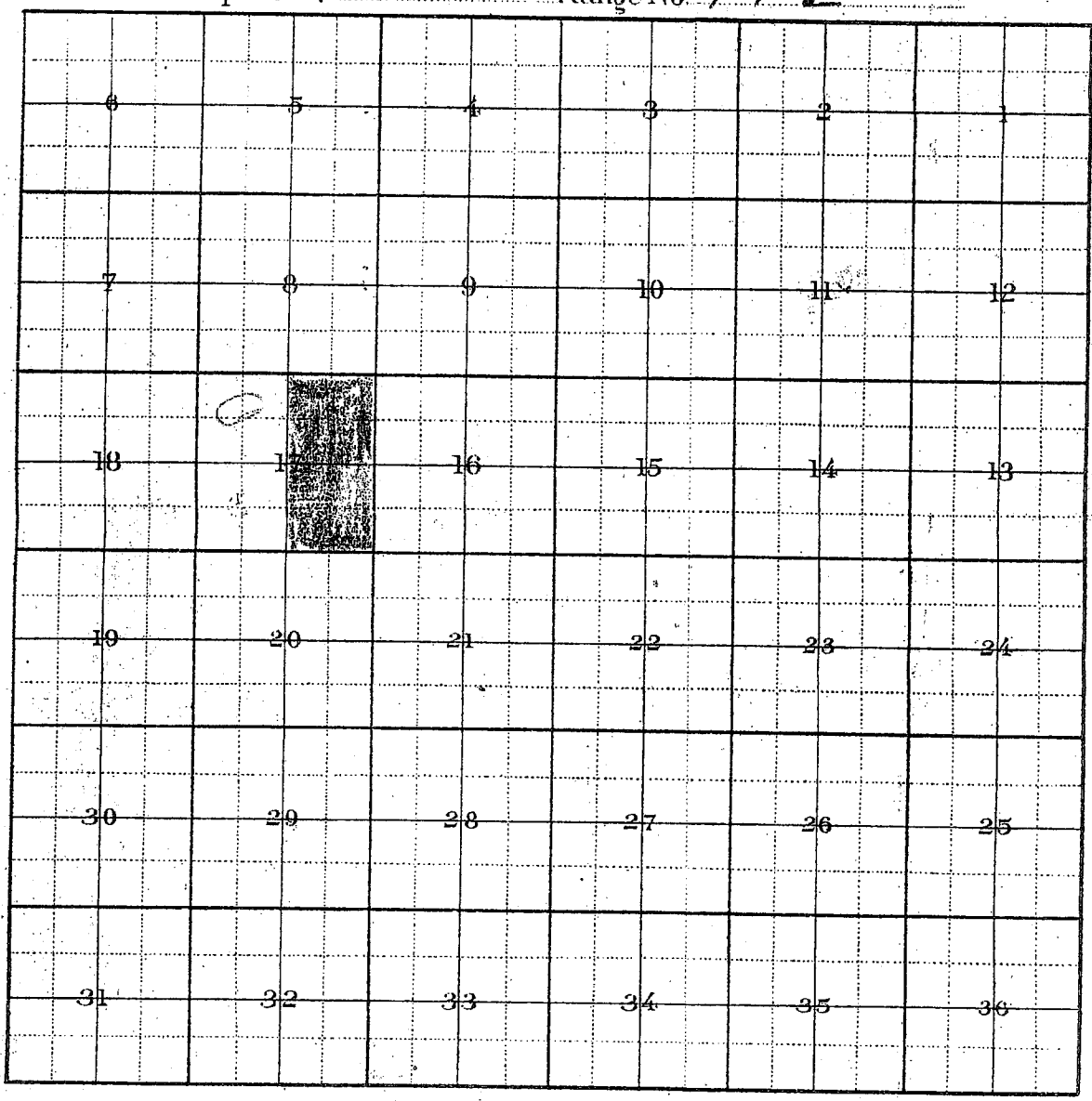
ENROLLMENT # _____

CARD # _____

TRIBE _____

Commission to the Five Civilized Tribes.

Township No. 14 N. Range No. 14 E

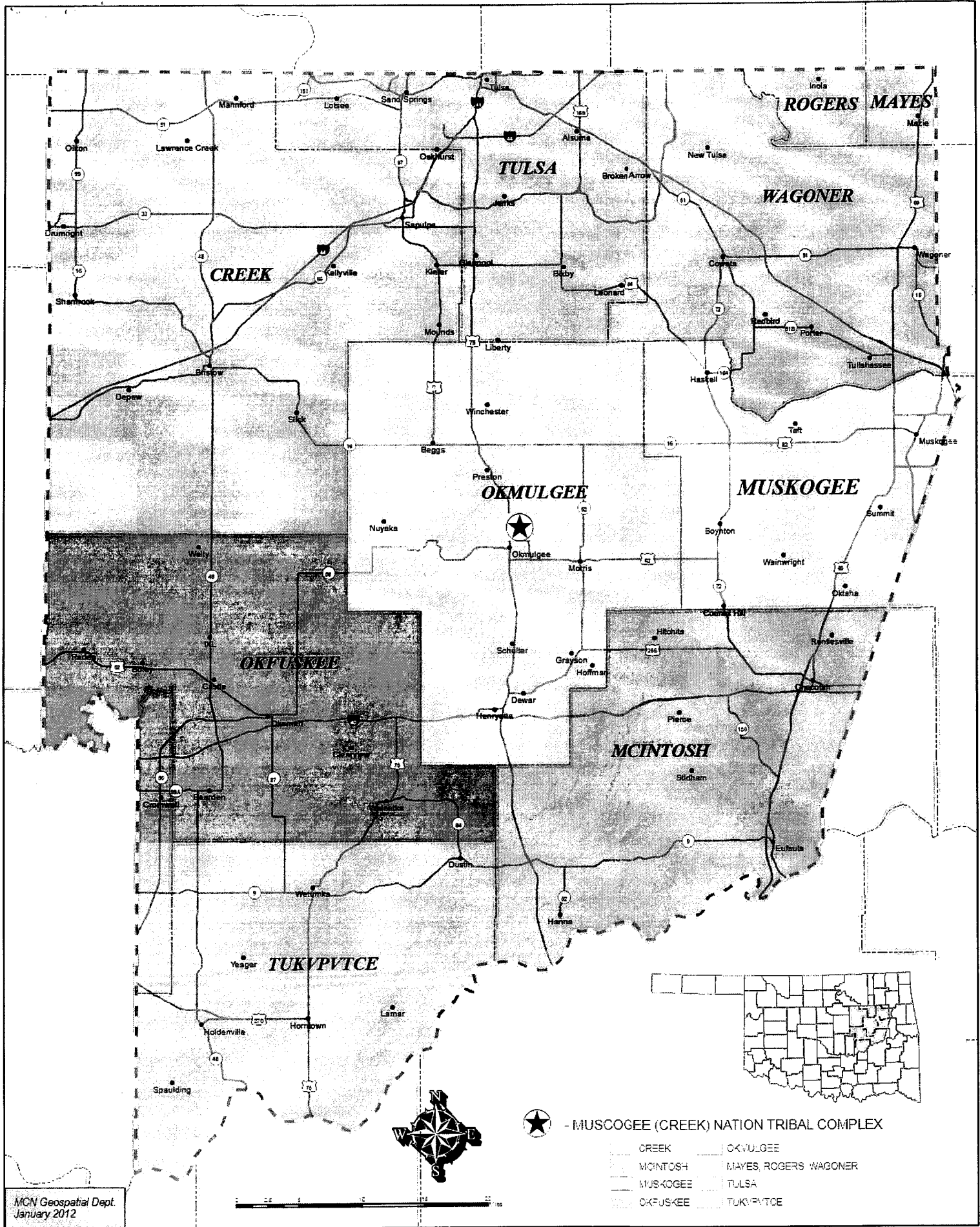


East 1/2 of Sec. 17 T. 14 N. R. 14 E.

Ex. B

Map of the Muscookee (Creek) Nation

http://mcngis.com/images/stories/maps/MCN_JURISDICTION_2016.pdf



MCN Geospatial Dept.
January 2012

★ - MUSKOGEE (CREEK) NATION TRIBAL COMPLEX

- CREEK
- OKFUSKEE
- MCINTOSH
- MAYES, ROGERS, WAGONER
- MUSKOGEE
- TULSA
- OKFUSKEE
- TUKVPTCE



MUSKOGEE (CREEK) NATION



ELEVEN COUNTY TRIBAL JURISDICTION

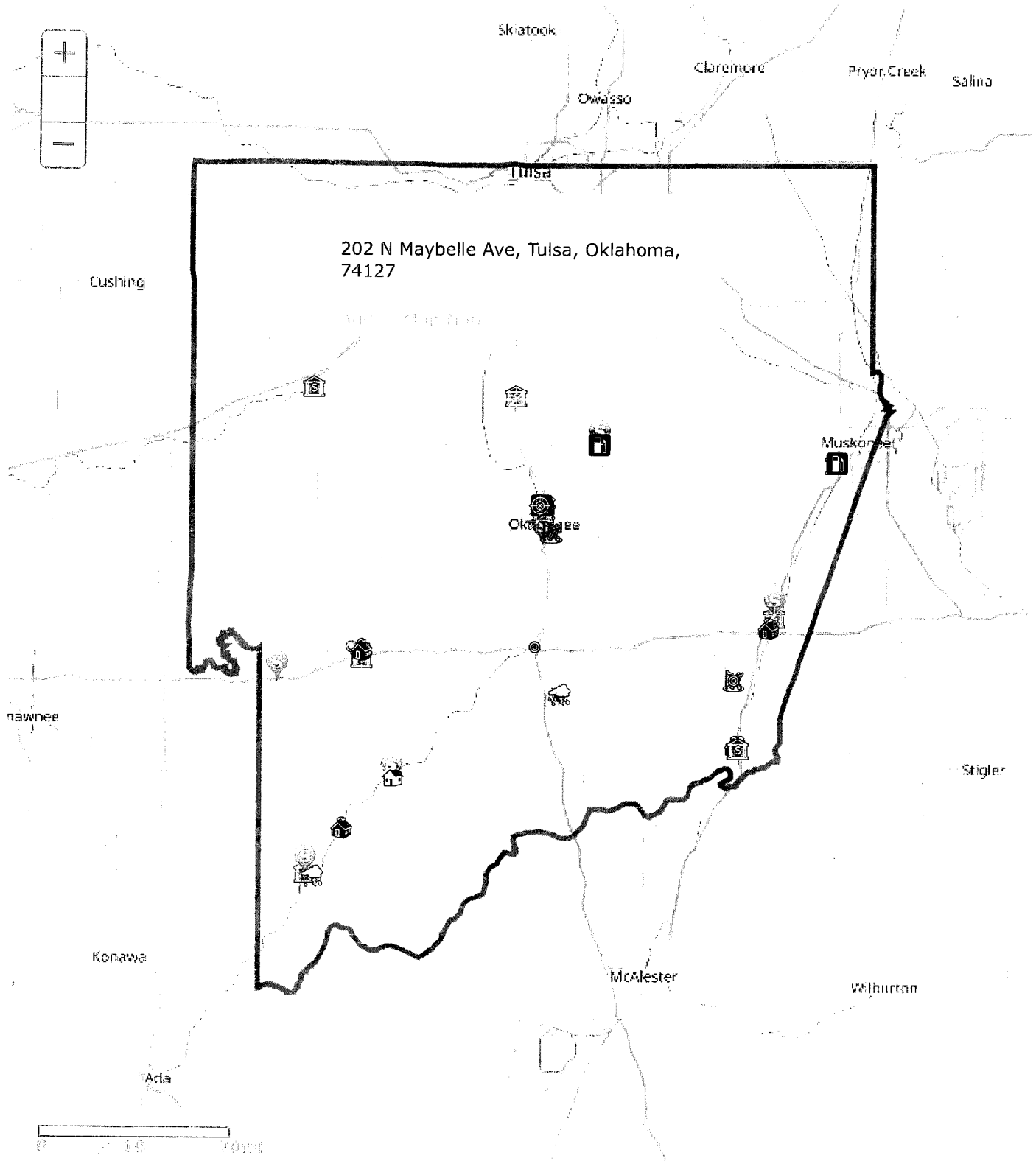
PRINCIPAL CHIEF
JAMES FLOYD

SECOND CHIEF
LOUIS HICKS

Details

Basemap

202 N Maybelle Ave, Tulsa, OK,  



Map data © OpenStreetMap contributors, CC-BY-SA

Details Basemap

202 N Maybelle Ave, Tulsa, OK, 