



KAW NATION

Drawer 50
Kaw City, OK 74641
(580) 269-2552 Fax (580) 269-1157

November 28, 2017

U.S. Department of Homeland Security
S&T CBD Mail Stop 0201
245 Murray Ln SW
Washington, DC 20528-0201

Re: University Multispectral Laboratory (UML) proposed airborne release (Outdoor Testing) at the Chilocco Campus.

To Whom It May Concern:

The Kaw Nation does not support the proposed airborne release at Chilocco Campus, and believes the entire process undertaken by UML related to the proposed airborne release has at best been flawed, and at the worst been a cynical attempt to circumvent the actual decision makers of the Kaw Nation.

The Kaw Nation zealously protects its historic, cultural and environmental resources. Prior to the date of the publication related to the UML proposed airborne release, the Kaw Nation had not received any type of notification or request for consultation regarding the proposed Tracer Particle and Biological Release for the Hazards of Dynamic Outdoor Release (HODOR) Project at the Chilocco Indian Agricultural School. In fact, the UML attempted to circumvent the discussion of this release by attaching letters from effected Tribes that were related to the rehabilitation of buildings at Chilocco, not the chemical testing at issue. The Kaw Nation considers this a dubious attempt to mislead it as to the true nature of the proposed release. UML cannot point to any evidence of any attempt to consult with the Kaw Nation related to the HODOR Project, **and therefore the UML and Department of Homeland Security has not complied with Section 106 consultation under the National Historic Preservation Act (NHPA).**

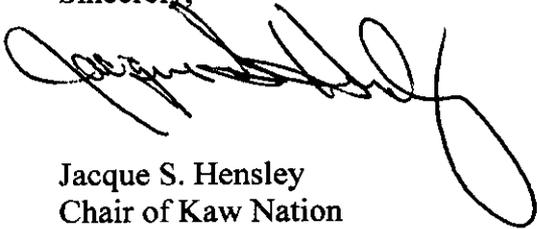
Had the UML undertaken the appropriate steps, including consultation with the Kaw Nation relating to the actual HODOR Project, UML would have discovered that its proposed project was also in violation of the Kaw Nation Environmental Protection Code. Additionally, in accordance with NHPA (16 U.S.C. 470 §§ 470-470w6) 1966, undertakings

subject to the review process are referred to in §101(d)(6)(A), which clarifies that historic properties may have religious and cultural significance to Indian tribes. Section 106 of NHPA requires federal agencies to consider the effects of their actions on historic properties (36 CFR Part 800) as does the National Environmental Policy Act (NEPA) (43 U.S.C. §4321 and §§4331-35 and 40 CFR 1501.7(a) of 1969). NEPA regulations (40 CFR 1508.27(b)(3) and (8)) require a detailed analysis of actions "significantly affecting the quality of the human environment," which includes historic or cultural resources. As there was never any consultation with the Kaw Nation related to the HODOR project, there can be no compliance with Section 106 of NHPA.

Based on information disclosed in the Environmental Assessment of Proposed Tracer Particle and Biological Releases for the Hazards of Dynamic Outdoor Release (HODOR) Project, the proposed project has the probability of affecting Kaw Nation Tribal Trust properties, the Kaw Nation's interest in these properties, and Kaw Nation historic and cultural resources. Pursuant to 36 CFR 800.5, standards for assessing potential adverse effects to historic properties within the Area of Potential Effect require agency officials to consider the views of the effected parties. As an interested party in the Chilocco Campus, the Kaw Nation should have been consulted and afforded the opportunity to comment before publication of proposed HODOR project. Based on the abject failure of the UML to follow applicable regulations and the fact that the proposed HODOR project violates both federal and Kaw Nation regulations, the Kaw Nation requests the denial of any approvals within the purview of your Agency related to the proposed release at the Chilocco Campus.

Therefore it is the Kaw Nation's official stance that the HODOR project should NOT move forward. Further, in accord with the government to government relationship between the federal government and the Kaw Nation, the Kaw Nation demands its right to consultation, and demands that Homeland Security comply with federal and tribal laws and consider the impact of the HODOR project upon the Kaw Nation, its resources, history and culture.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jacquie S. Hensley', written in a cursive style with a large loop at the end.

Jacquie S. Hensley
Chair of Kaw Nation



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KAW NATION TRIBAL COUNCIL

RESOLUTION #17-158

A RESOLUTION APPROVING AND AUTHORIZING EFFORTS TO RESIST THE PROPOSED TESTING BY UML AT THE CHILOCCO CAMPUS AND AUTHORIZING OTHER CONSISTENT ACTION

WHEREAS, The Kaw Nation, established pursuant to the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) and governed pursuant to the Kaw Nation Constitution adopted and ratified on August 20, 2011, is federally recognized by the Secretary of the Interior as a Native American Tribe for the purpose of government to government relations, as evidenced by publication: Federal Register / Vol. 77, No. 155/ Friday, August 10, 2012 on page 47870; and

WHEREAS, Article V of the Constitution of the Kaw Nation empowers the Tribal Council to represent the Kaw Nation and act in all matters that concern the health, peace, safety and general welfare of the Kaw Nation and all persons within its territory, and to make decisions not inconsistent with the Constitution; and

WHEREAS, The Kaw Nation zealously guards its environmental, governmental and economic sovereignty, and the Constitution of the Kaw Nation empowers the Tribal Council to take action related to any activity that effects the well-being of the members and the property of the Kaw Nation; and

WHEREAS, The Kaw Nation along with the Ponca Tribe of Oklahoma, Tonkawa Tribe of Oklahoma, Otoe-Missouria Tribe, and Pawnee Nation hold jointly, land referred to as the Chilocco Indian Reserve, formerly the campus proper of the Chilocco Indian School; which is the subject of a proposed airborne test by the Lessee of the Chilocco Campus property the University Multispectral Laboratory (UML) and

WHEREAS, The UML in regard to the proposed airborne test at the Chilocco Campus, abjectly failed to follow any reasonable efforts to properly notice and consult with the Kaw Nation regarding the proposed airborne release to be conducted at the Chilocco Campus Kaw Nation nor did they consider the long term environmental effects the proposed release would have on the land in and around the Chilocco Campus; and

WHEREAS, The Kaw Nation as a steward of its lands and of its sovereignty in general has determined that the procedures followed by UML related to this proposed airborne release at Chilocco violates the language and the spirit of the terms of the lease of the Chilocco Campus lands and generally shows a disregard for the Kaw Nation and for the environment of the lands owned by the Kaw Nation, the lands owned by the other Tribes with an interest in the Chilocco Campus and a disregard for the public as a whole who live around Chilocco; and

WHEREAS, The Kaw Nation has determined that the proposed airborne release by the UML at the Chilocco Campus is a violation of the environmental regulations of the Kaw Nation and is not authorized under Kaw Nation laws and regulations; and

NOW THEREFORE BE IT RESOLVED that the Kaw Nation specifically authorizes the submission of comments or other correspondence in opposition to the proposed airborne testing by the UML at the Chilocco Campus, and

BE IT FURTHER RESOLVED that the Kaw Nation finds the proposed testing by UML at the Chilocco Campus to be in violation of Kaw Nation's Environmental Law constituting an unauthorized release of hazardous substances. The Kaw Nation Attorney General is hereby authorized to commence proceedings to stop this unauthorized discharge; and

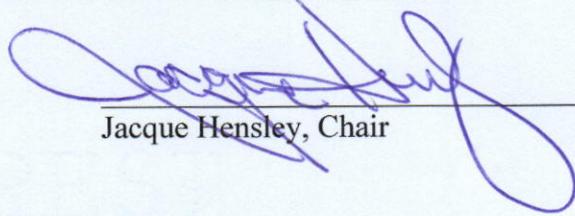
BE IT FURTHER RESOLVED that the Kaw Nation authorizes all action necessary to protect the integrity of the environment of the Kaw Nation which may include actions to terminate the lease the Kaw Nation has with the UML related to the Chilocco Campus for breach of the terms of the lease; and

BE IT FURTHER RESOLVED that the Kaw Nation by this Resolution is authorized to notify the UML and the Bureau of Indian Affairs that the Kaw Nation for good cause will not be renewing the lease with UML for its interest in its lands at Chilocco past the stated Lease expiration date of December 31, 2018, provided the lease has not been terminated earlier; and.

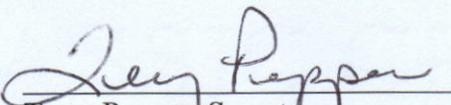
BE IT FURTHER RESOLVED, that the Tribal Council of the Kaw Nation hereby authorizes the Kaw Nation Chair with the approval of the Kaw Nation Tribal Council to take any and all actions consistent with this Resolution. This Resolution is effective immediately.

CERTIFICATION

I, Jacque Hensley, Chair of the Kaw Nation Tribal Council, do hereby certify that said resolution was approved and adopted on the 1st day of December, 2017, as an official act by quorum vote of the Kaw Nation Tribal Council and that the vote was: 6 for; 0 against; 0 abstentions; and 0 absent.



Jacque Hensley, Chair

ATTEST 

Terry Pepper, Secretary

	For	Against	Abstain	Absent
Erin Kekahbah	✓			
Cheri Dunn	✓			
Gena Warren	✓			
Lynn Dunson	✓			
Terry Pepper	✓			
Cruz Maldonado	✓			