

1 Draft Date: September 15, 2011

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3

AGREEMENT

4 This AGREEMENT, dated as of [October 14, 2011], is entered into between the United States of
5 America and the Osage Tribe.¹

6 **1. RECITALS.**

7 **a.** Whereas the Osage Tribe Allotment Act of 1906 and the amendments thereto
8 (“1906 Act”) reserved the mineral estate of the Osage Reservation to the Osage
9 Tribe (“Osage Mineral Estate”);

10 **b.** Whereas pursuant to the 1906 Act the revenues from the Osage Mineral Estate are
11 to be placed in the Osage Tribe’s tribal trust account (“Osage Tribal Trust
12 Account”);

13 **c.** Whereas pursuant to the 1906 Act the revenues placed in the Osage Tribal Trust
14 Account are to be distributed to the Headright Holders;

15 **d.** Whereas the Osage Tribe, acting through the Osage Minerals Council, has the
16 authority to act for, to protect the interests of, and to bind Headright Holders with
17 respect to matters relating to the Osage Mineral Estate, including the initiation,
18 prosecution and settlement of claims relating to the Osage Mineral Estate;

19 **e.** Whereas the Osage Tribe initiated proceedings in the U.S. Court of Federal
20 Claims (“CFC”) to seek money damages from the United States for alleged
21 breaches and failures on the part of the United States in the collection of revenues
22 due to the Osage Tribal Trust Account, and the United States’ subsequent
23 management and disbursement of such revenues, among other claims (“CFC
24 Action”);

¹ Capitalized terms shall have the definitions set forth in Section 2.

- 1 **f.** Whereas the CFC has held that under the 1906 Act the Osage Tribe is the only
2 proper party with standing to seek money damages for the breaches and failures
3 alleged in the CFC Action;
- 4 **g.** Whereas the Osage Tribe has created a team of representatives from the Osage
5 Minerals Council, the Osage Nation Congress, and the Osage Nation Executive
6 Branch to manage and direct litigation relating to the Osage Mineral Estate and
7 the Osage Tribal Trust Account, including the CFC Action (“Osage Trust Team”);
- 8 **h.** Whereas the United States has initiated settlement negotiations with the Osage
9 Tribe acting through the Osage Trust Team;
- 10 **i.** Whereas the United States and the Osage Tribe acting through the Osage Trust
11 Team have negotiated in good faith to obtain a settlement of litigation relating to
12 the Osage Mineral Estate and the Osage Tribal Trust Account, including the CFC
13 Action, and other trust related claims, and to address means of improving the trust
14 management of the Osage Mineral Estate, the Osage Tribal Trust Account, and the
15 Other Osage Accounts, as well as improving the trust relationship between the
16 Osage Tribe and the United States;
- 17 **j.** Whereas the Osage Minerals Council has considered and approved this
18 Agreement and authorized its members on the Osage Trust Team to execute this
19 Agreement, by resolution dated [September 26, 2011], a copy of which is attached
20 as Exhibit 4;
- 21 **k.** Whereas the Osage Nation Congress has considered and approved this Agreement
22 and authorized the Principal Chief and the Speaker of the Osage Nation Congress,
23 both of whom are members of the Osage Trust Team, to execute this Agreement,
24 by resolution dated [September 26, 2011], a copy of which is attached as Exhibit
25 5;
- 26 **l.** Whereas the Osage Trust Team has consulted with Osage Headright Holders, by:

1 i. the transmission of written materials explaining the settlement set forth in
2 this Agreement;

3 ii. holding a series of meetings with Osage Headright Holders at which
4 representatives of the Osage Trust Team and its lawyers have explained
5 the settlement set forth in this Agreement, and provided a summary of this
6 Agreement to Osage Headright Holders for review;

7 m. Whereas, in cooperation with the Osage Trust Team, the United States has
8 canvassed the Osage Headright Holders to confirm support for the actions of the
9 Osage Tribe acting through the Osage Minerals Council in approving the terms of
10 this settlement as set forth in this Agreement, using the canvass language set forth
11 in Exhibit 2;

12 n. Whereas in the canvass a majority of the Osage Headright interests held by the
13 Osage Headright Holders who participated in the canvass expressed support for
14 the actions of the Osage Tribe acting through the Osage Minerals Council in
15 approving the terms of this settlement as set forth in this Agreement; and,

16 o. Recognizing that final adjudication of these claims may take many years and
17 entail great expense, and taking account of the legal risks to both Parties in
18 connection with the further prosecution of litigation relating to the Osage Mineral
19 Estate and the Osage Tribal Trust Account, including the CFC Action (at both the
20 trial and appellate levels);

21 **NOW THEREFORE**, the Parties agree as follows:

22 **2. DEFINITIONS.** For purposes of this agreement, the following definitions shall apply: “**1906**
23 **Act**” shall mean the Act of June 28, 1906, ch. 3572, 34 Stat. 539, as amended
24 through the Effective Date.

25 b. “**Agreement**” shall mean this agreement and all Exhibits attached hereto.

26 c. “**CFC**” shall mean the United States Court of Federal Claims.

- 1 **d. “CFC Action”** shall mean the consolidated cases Nos. 99-550 and 00-169 in the
2 CFC.
- 3 **e. “Date of Payment”** shall mean the date on which the United States has made the
4 payments required by both Subsections 5(a) and (b).
- 5 **f. “Effective Date”** shall mean the date on which this Agreement is executed by the
6 Parties.
- 7 **g. “Exhibit”** shall mean any Exhibit to this Agreement, each of which is hereby
8 incorporated by reference.
- 9 **h. “Future Trust Fund Mismanagement Claims”** shall mean claims by the Osage
10 Tribe, for harms or violations occurring after September 30, 2011, including but
11 not limited to claims that:
- 12 (1) the United States failed to invest funds in the Osage Tribal Trust
13 Account and/or Other Osage Accounts in a timely manner or that
14 the United States maintained excessive cash balances in the Osage
15 Tribal Trust Account and/or Other Osage Accounts;
- 16 (2) the United States failed to obtain an appropriate investment return
17 on funds in the Osage Tribal Trust Account and/or Other Osage
18 Accounts;
- 19 (3) the United States failed to deposit monies into the Osage Tribal
20 Trust Account and/or Other Osage Accounts or to disburse funds
21 from the Osage Tribal Trust Account and/or Other Osage Accounts
22 in a proper and timely manner; and
- 23 (4) the United States disbursed monies from the Osage Tribal Trust
24 Account and/or Other Osage Accounts without the Osage Tribe’s
25 proper authorization; and,
- 26 (5) the United States failed to report or provide information about the
27 United States’ actions or decisions relating to the Osage Tribal
28 Trust Account and/or Other Osage Accounts.

1 Future Trust Fund Mismanagement Claims shall not include claims by the Osage
2 Tribe, for harms or damages incurred or suffered by the Osage Tribe after
3 September 30, 2011, resulting from allegations that:

- 4 (1) the United States failed to collect revenues that are due to the
5 Osage Tribe, based on the terms of leases, agreements, or other
6 form of contracts,
7 (2) The United States failed to collect revenues that are due to the
8 Osage Tribe based on the regulations governing the Osage Mineral
9 Estate; or that
10 (3) the United States mismanaged the Osage Mineral Estate or other
11 non-monetary trust resources of the Osage Tribe (for purposes of
12 this category of claim, claims that the United States mismanaged
13 the Osage Mineral Estate would include all claims and allegations
14 enumerated in Subsection 7(a)(i)(1)(c)).

15 **i. “Headright”** shall mean the right to a distribution of a portion of the proceeds of
16 the Osage Mineral Estate, as provided by the 1906 Act and the tribal roll created
17 pursuant to the 1906 Act.

18 **j. “Headright Acquisition Notice”** shall have the meaning set forth in Subsection
19 9(f).

20 **k. “Headright Holder”** shall mean the lawful owner of any interest in any
21 Headright, including fractional interests.

22 **l. “Interior Department” or “Department of the Interior”** shall mean the United
23 States Department of the Interior, including any and all of the Bureaus or agencies
24 thereof.

25 **m. “Osage Headright Holder”** shall mean a Headright Holder who is eligible to
26 vote for the Osage Minerals Council, as determined by the records of the Bureau
27 of Indian Affairs.

- 1 **n. “Osage Minerals Council”** shall mean the Osage Minerals Council in Article
2 XV, section 4 of the Osage Constitution dated March 11, 2006, as the successor to
3 all the powers and rights of the former Osage Tribal Council to act with respect to
4 the Osage Mineral Estate on behalf of itself and Headright Holders.
- 5 **o. “Osage Mineral Estate”** shall mean the mineral estate, as reserved by the 1906
6 Act, of the Osage Reservation, as defined in the Act of June 5, 1872, 17 Stat. 228,
7 comprising all of Osage County, Oklahoma.
- 8 **p. “Osage Tribal Trust Account”** shall mean the account in the United States
9 Treasury designated PL7386706, “Osage Tribe—Proceeds of Oil & Gas Leases
10 Royalties Etc.—Osage Reservation—7386” and the associated interest account
11 designated PL7886706 which was combined with PL7386706 in 1985.
- 12 **q. “Osage Tribe”** shall mean the Osage Tribe of Indians of Oklahoma, the tribal
13 government established by the 1906 Act and now federally recognized as the
14 Osage Nation, and its predecessors and successors in interest.
- 15 **r. “Osage Trust Team”** shall mean the team of representatives that has been created
16 by the Osage Tribe from the Osage Minerals Council, the Osage Nation Congress,
17 and the Osage Nation Executive Branch and that has been authorized to manage
18 and direct litigation and settlement relating to the Osage Mineral Estate and the
19 Osage Tribal Trust Account, including the CFC Action.
- 20 **s. Other Osage Accounts** shall mean the Osage Tribe’s accounts, other than the
21 Osage Tribal Trust Account, including but not limited to any of the following
22 kinds of accounts held by the United States on behalf of the Osage Tribe:
23 Proceeds of Labor Accounts; any Tribal Individual Indian Money (Tribal-related
24 IIM) accounts; any Indian Money Proceeds of Labor (IMPL) Accounts; any
25 Treasury accounts; any legislative settlement or award accounts; and any
26 judgment accounts, including the accounts designated with the following account
27 numbers: JA9271121 (judgment fund for Indian Claims Commission Dockets
28 105, 106, 107, 108); PL7385708 (Osage Fund); PL7387704 (Proceeds from Non-

1 Oil & Gas—Osage Reservation); PL7469700 (Restored Funds Osage Tribe
2 Holding Account); PL7549701 (Commencement Money and Other Damages to
3 Tribal Trust Land as the Result of Drilling Operations 25 CFR 19); 930T000000
4 (Minerals Pass Thru Account for TAAMS Distributions for Mineral Interest);
5 930N007753 (Distributions for Osage Tribe’s Acquired Headright Interest); and
6 930N013264 (Education Fund).

- 7 **t. “Party”** shall mean a party to this Agreement.
- 8 **u. “Parties”** shall mean all parties to this Agreement.
- 9 **v. “Periodic Statement”** shall mean the document that the United States provides to
10 the Osage Tribe through the Osage Minerals Council, on at least a quarterly basis,
11 providing the following account information as to the Osage Tribal Trust Account
12 and each of the Other Osage Accounts:
- 13 **i.** The source, type and status of the funds in each account;
 - 14 **ii.** The beginning and ending balances of each account;
 - 15 **iii.** All gains and losses in each account; and
 - 16 **iv.** All receipts and disbursements for each account.
- 17 The form of a Periodic Statement shall be as set forth in Exhibits 6 and 7.
- 18 **w. “Section”** shall mean a section of this Agreement.
- 19 **x. “Stipulation of Dismissal”** shall mean the stipulation of dismissal of the CFC
20 Action that, pursuant to Section 6, the Parties are to jointly file in the CFC within
21 seven (7) calendar days of the Date of Payment.
- 22 **y. “Subsection”** shall mean a subsection of this Agreement.

1 **z. “Total Settlement Amount”** shall mean the sum of three hundred eighty million
2 dollars (\$380,000,000), which shall constitute the entire amount of money to be
3 paid by the United States in settlement of the claims described in Section 7(a).

4 **3. EXHIBITS.**

5 The following Exhibits are attached to, and incorporated in this Agreement:

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|----|--|-----------|
| 6 | a. Draft Form of Stipulation of Dismissal With Prejudice | |
| 7 | of CFC Action | Exhibit 1 |
| 8 | b. Canvass Language | Exhibit 2 |
| 9 | c. Resolution of Approval of Agreement by the | |
| 10 | Osage Minerals Council | Exhibit 3 |
| 11 | d. Resolution of Approval of Agreement by the | |
| 12 | Osage Nation Congress | Exhibit 4 |
| 13 | e. Expert Agreements | Exhibit 5 |
| 14 | f. Periodic Statement for Osage Tribal Trust Account | |
| 15 | through September 30, 2011 (not including the payment | |
| 16 | required by <u>Subsection 5(b)</u>) | Exhibit 6 |
| 17 | g. Periodic Statements for Other Osage Accounts | |
| 18 | through September 30, 2011 | Exhibit 7 |
| 19 | h. Memorandum regarding determination of need for | |
| 20 | negotiated rulemaking | Exhibit 8 |
| 21 | i. Letter regarding the Interior Department’s annual audit of | |
| 22 | all funds held in trust for the benefit of Tribes | |
| 23 | pursuant to the Act of June 24, 1938 (25 U.S.C. § 162a) | Exhibit 9 |

1 **4. NO ADMISSION.** This Agreement is the result of compromise and settlement
2 between the Parties. It shall not constitute nor be construed as an admission by
3 either Party, and it shall not be cited, used, admissible or relied upon as
4 precedent, evidence, or argument in any proceeding, except as may be
5 necessary to ensure compliance with its terms and conditions, or to carry out
6 the terms and conditions hereof. The payment of the Total Settlement Amount
7 does not represent an admission of any liability by the United States as to any
8 or all of the claims asserted or waived by the Osage Tribe on behalf of itself
9 and the Headright Holders and no amount is attributable to any particular
10 claim, waiver, release or covenant.

11 **5. PAYMENT OF THE TOTAL SETTLEMENT AMOUNT.** In consideration
12 of (1) the filing of the Stipulation of Dismissal required pursuant to Section 6,
13 (2) the waivers, releases and covenants not to sue set forth in Subsection 7(a),
14 and (3) the other commitments and covenants made by the Osage Tribe in this
15 Agreement, the United States shall pay the Total Settlement Amount, as
16 follows:

17 **a.** The United States shall deduct proper expenses as authorized by the Osage Tribe
18 through the Osage Minerals Council in the amount of thirty four million two
19 hundred thousand dollars (\$34,200,000) from the Total Settlement Amount, and
20 pay the sum of those deducted expenses, no later than midnight Eastern Standard
21 Time on [November 14, 2011], to the following payees in the following amounts:

22 i. Eight million one hundred thousand dollars (\$8,100,000) to Pipestem Law
23 Firm PC; and

24 ii. Twenty six million one hundred thousand dollars (\$26,100,000) to Akin
25 Gump Strauss Hauer & Feld LLP; and

26 **b.** Pay into the Osage Tribal Trust Account, an amount equal to three hundred forty-
27 five million eight hundred thousand dollars (\$345,800,000) no later than midnight
28 Eastern Standard Time on [November 14, 2011]; and,

1 c. Distribute from the Osage Tribal Trust Account the entirety of the amount
2 identified in Subsection 5(b) above to all Headright Holders pursuant to the 1906
3 Act no later than December 5, 2011.

4 **6. FILING OF STIPULATION OF DISMISSAL OF PENDING CASES.** Within
5 seven (7) calendar days of the Date of Payment, the Parties shall jointly file the
6 Stipulation of Dismissal, substantially in the form of the draft set forth in Exhibit
7 1.

8 **7. WAIVERS AND RESERVATION OF RIGHTS BY OSAGE TRIBE, ON**
9 **BEHALF OF ITSELF AND THE HEADRIGHT HOLDERS.**

10 **a. Waivers and Releases.**

11 i. Except as provided in Subsection 7(a)(ii), the Osage Tribe, on behalf of
12 itself and the Headright Holders, hereby waives and releases, and
13 covenants not to sue on, any and all claims and/or liabilities of any kind or
14 nature whatsoever, known or unknown, suspected or unsuspected,
15 regardless of legal theory, for any damages, equitable or specific relief,
16 that are based on harms or violations occurring on or before September 30,
17 2011, and that relate to the Osage Tribe's monetary or non-monetary trust
18 assets or resources that have been or could have been asserted by the
19 Osage Tribe on behalf of itself and/or the Headright Holders on or before
20 September 30, 2011, including but not limited to the following:

- 21 **1.** all claims asserted, or that could have been asserted by the Osage
22 Tribe in the CFC Action;
- 23 **2.** all claims regarding the United States' obligation to provide a
24 historical accounting or reconciliation of the Osage Tribal Trust
25 Account and the Other Osage Accounts or the United States'
26 fulfillment of such obligation;

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- 3.** all claims regarding the United States’ alleged mismanagement of the Osage Mineral Estate, including but not limited to any claim or allegation that:
 - a.** the United States failed to make the Osage Mineral Estate productive;
 - b.** the United States failed to obtain an appropriate return on, or appropriate consideration for, the Osage Mineral Estate;
 - c.** the United States failed to record or collect, fully or timely, or at all, rents, fees, royalties, or other payments for the transfer, sale, encumbrance, or use of the Osage Mineral Estate;
 - d.** the United States failed to preserve, protect, safeguard, or maintain the Osage Mineral Estate;
 - e.** the United States permitted the misuse or overuse of the Osage Mineral Estate;
 - f.** the United States failed to manage the Osage Mineral Estate properly, including the approval of agreements for the use and extraction of natural resources that are part of the Osage Mineral Estate, and other grants to third parties of authority to use the Osage Mineral Estate;
 - g.** the United States failed to enforce the terms of any permits, leases or contracts for the transfer, sale, encumbrance, or use of the Osage Mineral Estate;
 - h.** the United States failed to prevent trespass on the Osage Mineral Estate;

- 1 **i.** the United States failed to report or to provide information
 - 2 about the United States' actions or decisions relating to, or
 - 3 to prepare an accounting of the Osage Mineral Estate;

 - 4 **j.** the United States transferred, sold, encumbered, allotted,
 - 5 managed, or used the Osage Mineral Estate; and,

 - 6 **k.** the United States failed to manage the Osage Mineral
 - 7 Estate properly by failing to undertake prudent transactions
 - 8 for the sale lease, use, or disposal of the Osage Mineral
 - 9 Estate.
- 10 **4.** All claims regarding the United States' alleged mismanagement of
- 11 the Osage Tribal Trust Account and Other Osage Accounts up
- 12 through and including September 30, 2011, including but not
- 13 limited to any claim or allegation that:
- 14 **a.** the United States failed to invest revenue in the Osage
 - 15 Tribal Trust Account and/or Other Osage Accounts in a
 - 16 timely manner;

 - 17 **b.** the United States maintained excessive cash balances in the
 - 18 Osage Tribal Trust Account and/or Other Osage Accounts;

 - 19 **c.** the United States failed to obtain an appropriate return on
 - 20 funds in the Osage Tribal Trust Account and/or Other
 - 21 Osage Accounts;

 - 22 **d.** the United States failed to deposit monies into the Osage
 - 23 Tribal Trust Account and/or Other Osage Accounts or
 - 24 disburse monies from the Osage Tribal Trust Account
 - 25 and/or Other Osage Accounts in a proper and timely
 - 26 manner;

- e. the United States disbursed monies from the Osage Tribal Trust Account and/or Other Osage Accounts without the Osage Tribe's proper authorization; and,
- f. the United States failed to report or provide information about the United States' actions or decisions relating to the Osage Tribal Trust Account and/or Other Osage Accounts.

5. Any claims arising out of or relating in any manner to the negotiation or execution of this Agreement.

b. Reservation of Rights. Notwithstanding the waiver of claims, release and covenant not to sue described in Subsection 7(a) above, the Osage Tribe shall retain any right to:

- i. subject to Subsection 8(h), assert any claim for harms or damages incurred or suffered after September 30, 2011;
- ii. receive payment of any balance shown on the Periodic Statements provided to the Tribe in accordance with Subsection 8(a) for any of the Other Osage Accounts (copies of which are attached as Exhibit 7); and
- iii. assert any claims not otherwise waived herein.

c. No effect. This Agreement shall have no effect on any claim that any individual might have deriving from his or her ownership of the surface estate of lands.

d. Date of effectiveness of waivers. The waivers, release and covenant not to sue set forth in this Section 7 shall take effect upon the Date of Payment.

8. ACCOUNTING MATTERS.

a. The United States has provided to the Osage Tribe a Periodic Statement for the period through September 30, 2011, for the Osage Tribal Trust Account, a copy of which is attached as Exhibit 6. This Periodic Statement reflects the balance of

1 funds in Osage Tribal Trust Account as of September 30, 2011, prior to the receipt
2 into said account of the payment required by Subsection 5(b). Upon receipt of the
3 payment required by Subsection 5(b) into the Osage Tribal Trust Account, the
4 Osage Tribe accepts as accurate, as a matter of settlement and compromise, the
5 balance of the Osage Tribal Trust Account as set forth in the Periodic Statement
6 attached as Exhibit 6. Upon receipt of the payment required by Subsection 5(b)
7 into the Osage Tribal Trust Account, the Osage Tribe accepts, as a matter of
8 settlement and compromise, Exhibit 6 as constituting the accounting of the Osage
9 Tribal Trust Account that is required by law through September 30, 2011.

10 **b.** The United States has provided to the Osage Tribe a Periodic Statement for the
11 period through September 30, 2011, for each of the following Other Osage
12 Accounts: JA9271121, PL7385708, PL7387704, PL7549701, PL 7469700,
13 930T000000, 930N007753, and 930N013264. The United States represents and
14 warrants that these are all of the Other Osage Accounts open as of the Effective
15 Date. Each of these Periodic Statements reflects the balance of funds in each of
16 these Other Osage Accounts as of September 30, 2011. A copy of the Periodic
17 Statements provided for each of these Other Osage Accounts is attached hereto as
18 Exhibit 7. Upon receipt of the payment required by Subsection 5(b) into the
19 Osage Tribal Trust Account, the Osage Tribe accepts as accurate, as a matter of
20 settlement and compromise, the balance of these Other Osage Accounts as set
21 forth in the Periodic Statements attached hereto as Exhibit 7. Upon receipt of the
22 payment required by Subsection 5(b) into the Osage Tribal Trust Account, the
23 Osage Tribe accepts, as a matter of settlement and compromise, Exhibit 7 as
24 constituting the accounting of the Other Osage Accounts that is required by law
25 through September 30, 2011.

26 **c.** The United States shall provide to the Osage Tribe through the Osage Minerals
27 Council a Periodic Statement for the Osage Tribal Trust Account and each of the
28 Other Osage Accounts on a quarterly or, on request by the Osage Tribe through
29 the Osage Minerals Council, a monthly basis. The Periodic Statement shall be
30 substantially in the form of Exhibits 6 and 7. The Osage Tribe agrees that the

1 United States' provision of a Periodic Statement on at least a quarterly basis
2 fulfills the Secretary of the Interior's obligation pursuant to 25 U.S.C. § 4011(b)
3 and 25 U.S.C. § 4043 (b)(2)(B)(ii).

4 **d.** The United States has provided the Osage Tribe with a letter that relates to the
5 Interior Department's annual audit of all funds held in trust for the benefit of
6 Tribes pursuant to the Act of June 24, 1938 (25 U.S.C. § 162a), a copy of which
7 letter is attached as Exhibit 9. The United States currently posts audit information
8 relating to fulfillment of its obligation under 25 U.S.C. § 4011(c) on a public
9 website maintained by the Office of the Special Trustee. Conditioned upon the
10 Interior Department's continued posting of annual audit information in like
11 manner on the public website maintained by the Office of the Special Trustee and
12 its compliance with Subsections 8(e) and (f), the Osage Tribe agrees that its
13 receipt of a letter that provides the same information as that set forth in Exhibit 9
14 satisfies the requirements of 25 U.S.C. § 4011(c), as such provision exists as of
15 the Effective Date.

16 **e.** Upon written request from the Osage Tribe acting through the Osage Minerals
17 Council, the Interior Department shall provide the Osage Tribe or its specified
18 agent with access to or an electronic copy of all accounting data in the Trust Fund
19 Accounting System for the Osage Tribal Trust Account and the Other Osage
20 Accounts.

21 **f.** Upon written request from the Osage Tribe, the Interior Department shall provide
22 the Osage Tribe or its specified agent with on-site access to all relevant records in
23 the Office of the Special Trustee (including but not limited to records located in
24 Pawhuska, Oklahoma and Albuquerque, New Mexico) at least once a year for the
25 purpose of conducting an audit of the Osage Tribal Trust Account and the Other
26 Osage Accounts. Such access shall include access to the documents, a work area
27 for the Osage Tribe or its specified agent, and copies of specified documents upon
28 request.

29 **g.** After the Date of Payment, the following provisions shall apply:

- 1 **i.** Any objections that the Osage Tribe has regarding the completeness or
2 accuracy of information provided by the United States in a Periodic
3 Statement must be presented in writing within two (2) years after the close
4 of the calendar year in which the reported period occurs or one year after
5 the Periodic Statement is received by the Osage Tribe, whichever is later.
6 The written objection shall include a reasonably particular description of
7 the grounds for the objection. The Osage Tribe acting through the Osage
8 Minerals Council shall present the written objection to the U.S.
9 Department of the Interior, by U.S. certified mail, at the following address:

10 United States Department of the Interior
11 Office of the Special Trustee for American Indians
12 1849 C Street, N.W., Mail Stop 2603
13 Washington, D.C. 20240
14 Attn: Director, Office of Trust Review and Audit

15 A copy of the written objection shall also be provided to the Regional
16 Director of the Eastern Oklahoma Regional Office of the Bureau of Indian
17 Affairs. Within sixty (60) days after receiving the Osage Tribe's written
18 objection, the Interior Department shall:

- 19 (a) provide the Osage Tribe through the Osage Minerals Council
20 with a revised Periodic Statement, if applicable;
- 21 (b) explain in writing why the original Periodic Statement was
22 correct; or
- 23 (c) advise the Osage Tribe through the Osage Minerals Council in
24 writing that additional time is needed to respond to the
25 objection.

- 26 **ii.** The Osage Tribe through the Osage Minerals Council can request
27 additional information in the possession or control of the Department of
28 the Interior regarding the Osage Tribal Trust Account or the Other Osage

1 Accounts at any time. The Osage Tribe shall direct such requests in
2 writing to the following address:

3 United States Department of the Interior
4 Office of the Special Trustee for American Indians
5 1849 C Street, N.W., Mail Stop 2603
6 Washington, D.C. 20240
7 Attn: Director, Office of Trust Review and Audit
8

9 The United States will make best efforts to comply with additional
10 information requests submitted under this Section.

11 **iii.** The information reported in a Periodic Statement mailed by the Interior
12 Department to the Osage Tribe through the Osage Minerals Council, to
13 which no objection in writing is made to the Interior Department within
14 two (2) years after the close of the calendar year in which the reported
15 period occurs or one year after the Periodic Statement is received by the
16 Osage Tribe, whichever is later, shall be presumed to be accurate and
17 correct; provided that such presumption shall apply only to Future Trust
18 Fund Mismanagement Claims. A failure by the Osage Tribe acting
19 through the Osage Minerals Council to make a timely written objection to
20 information reported in a Periodic Statement shall have no other legal
21 effect or consequence, except for the foregoing presumption and the
22 conditional waiver of Future Trust Fund Mismanagement Claims set forth
23 in Subsection 8(h). This limitation of legal effect shall not apply to other
24 acts and omissions of the Parties, if any, with regard to any future claims
25 or defenses of the Parties.

26 **h.** Excepting claims of fraud or gross negligence, the Osage Tribe conditionally
27 waives and covenants not to sue the United States, its agencies (including but not
28 limited to the Interior Department and the Treasury Department), its officials, its
29 employees, or its agents, for Future Trust Fund Mismanagement Claims relating
30 to the Osage Tribal Trust Account and Other Osage Accounts for a particular
31 calendar year, if the Osage Tribe acting through the Osage Minerals Council does
32 not present an objection in writing to the Department of the Interior, as specified

1 in Subsection 8(g). This waiver and covenant not to sue is conditioned on (i) the
2 Interior Department continuing in the future, at a minimum, to provide the Osage
3 Tribe through the Osage Minerals Council with the Periodic Statements described
4 herein and (ii) the Interior Department's compliance with Subsections 8(e) and
5 (f).

6 **9. MANAGEMENT OF MINERAL ESTATE.**

7 **a. Oil and Gas.** After the Effective Date, the United States shall provide the
8 following information to the Osage Minerals Council regarding the United States'
9 management of the oil and gas deposits within the Osage Mineral Estate.

10 **i. Oil.** For all oil produced from the Osage Mineral Estate:

- 11 1. Upon written request by the Osage Minerals Council, the United
12 States shall provide to the Osage Minerals Council scanned copies
13 of each run ticket left by each purchaser at the tank battery for each
14 sale, showing the date of sale, well or lease identity, lease operator,
15 purchaser, gravity of oil sold, and the temperature of the oil sold.
16 The United States shall also provide table tank data in order to
17 determine the volume of oil sold. The United States shall provide
18 the scanned copies of each run ticket and the table tank data within
19 thirty (30) days of its receipt of the written request.
- 20 2. On a quarterly basis, the United States shall provide the Osage
21 Minerals Council with scanned copies of each monthly purchaser
22 statement issued by the purchaser to the producer, containing the
23 date of the sale, well or lease identity, lease operator, purchaser,
24 volume of oil sold, gravity of oil sold, price paid per barrel for the
25 sale, 40-degree price used for the sale, gravity adjustment scale
26 used for the sale, and total amount paid for the sale.

1 3. On a quarterly basis, within thirty (30) days of the close of the
2 quarter being reported, the Osage Agency shall provide the Osage
3 Minerals Council with a report detailing the following information
4 for the quarter being reported:

- 5 a. The total amount of severance tax deducted from sales of
6 oil;
- 7 b. the number of gaugers employed by the Osage Agency;
- 8 c. the number of gaugings performed at each tank battery ,
9 and any discrepancies discovered; and,
- 10 d. any measures taken by the Osage Agency to detect,
11 measure, and recover royalties for volumes of oil lost
12 through theft, spillage, mis-measurement, or any other
13 means.

14 **ii. Gas.** For all gas produced on the Osage Mineral Estate, the United States
15 shall provide the Osage Minerals Council the following documents and
16 information on a quarterly basis:

- 17 1. For all production of gas at each oil or gas well during the quarter
18 being reported, scanned copies of documents showing the total
19 volume of raw gas measured at the well;
- 20 2. For all production of gas at each oil or gas well during the quarter
21 being reported, scanned copies of documents showing the BTU
22 value of raw gas produced at the well;
- 23 3. For each sale of gas during the quarter being reported, a scanned
24 copy of the periodic gas analysis report taken by the purchaser,
25 showing the components of raw natural gas, and the purchaser
26 statement showing the volume of gas produced at the well, the total

1 value paid for the raw gas, BTU content, percentage of residue gas
2 paid to or returned to the producer, percentage of residue gas
3 retained by the purchaser, volume of natural gas liquids (“NGLs”)
4 recovered from the raw gas stream, the percentage of NGLs paid to
5 or returned to the producer, percentage of NGLs retained by the
6 purchaser, deductions for gathering, deductions for compression,
7 deductions for dehydration, price used to value the residue gas,
8 price used to value the NGLs;

9 **4.** A copy of each gas sale and purchase contract; and

10 **5.** A report from the Osage Agency detailing its efforts to detect or
11 prevent the release, venting, flaring, theft, or production of gas
12 from the Osage Mineral Estate without the payment of royalties
13 thereon.

14 **iii. Manner, Type, Format, or Source of Information To Be Superseded.**

15 Upon the effective date of the rules or regulations adopted through the
16 negotiated rulemaking described in Subsection 9(b) below, the information
17 that the United States shall provide to the Osage Tribe, through the Osage
18 Minerals Council, regarding the United States’ management of the oil and
19 gas deposits within the Osage Mineral Estate, as described in this
20 subsection above, shall then be provided in accordance with the effective
21 rules or regulations.

22 **b. Negotiated Rulemaking.** To improve the management of the Osage Mineral
23 Estate, at the earliest date practicable after the Effective Date, the Department of
24 the Interior agrees to engage in a negotiated rulemaking with the Osage Tribe
25 pursuant to 5 U.S.C. §§ 561-570a, in accordance with the terms of that Act and in
26 accordance with the Determination of Need under 5 U.S.C. § 563 attached hereto
27 as Exhibit 9. The scope of the negotiated rule-making should include, but need
28 not be limited to, the following:

1 i. Identifying the appropriate information needed from all operators,
2 purchasers and payers who are associated with the Osage mineral estate
3 and developing and implementing standardized reporting to manage
4 diligently production and accounting;

5 ii. Identifying the source, manner, and format of transmission whereby the
6 information required by Subsection 9(a) will be provided to the Osage
7 Minerals Council;

8 iii. Identifying appropriate revisions to the methods for calculating royalties
9 and rentals for oil and gas, including but not limited to royalty rates,
10 royalty value (pricing), and rental rates;

11 iv. Identifying the best feasible practices for developing and conducting
12 onsite inspection programs;

13 **iv.** Identifying the feasibility of implementing technological enhancements
14 for generating run tickets and other production data for reporting that
15 information to the Osage Tribe and the United States;

16 **v.** Identifying the best feasible practices for gauging oil and gas production
17 and the resources needed to implement the strategy selected;

18 **vi.** Identifying and implementing the best feasible practices for tank battery
19 gauging;

20 Determining and documenting the formal communication needed to
21 manage diligently the Osage mineral estate between the Osage Nation, the
22 Osage Minerals Council and the United States.

23 **c. Consultation.** The United States shall meet with the Osage Minerals Council at
24 least twice each year to review issues identified in writing by the Osage Minerals
25 Council relating to the management and administration of the Osage Mineral
26 Estate. The Parties shall establish the annual schedule for such meetings in

1 January of each year. The first such meeting shall take place in January 2012 on a
2 date that is mutually agreed. The Osage Minerals Council shall submit its agenda
3 of issues to be discussed in the upcoming consultation meeting in writing at least
4 thirty (30) days in advance of the meeting. The United States and the Osage
5 Mineral Council agree that the agenda for the first consultation will address a plan
6 to undertake a review of gauging activities on the Osage Mineral Estate and make
7 recommendations to the Parties as to how to improve the procedure and frequency
8 of gauging, including the means, techniques and tools for measurement used for
9 gauging sufficient to meet industry standards. The Osage Minerals Council
10 agenda of issues to be discussed may include reasonable requests for information
11 from the Osage Agency relating to topics that are to be discussed during the
12 upcoming meeting. The Osage Agency shall make best efforts to provide the
13 information requested by the Osage Minerals Council in advance of the meeting
14 in which the information is to be discussed. The purpose of these meetings shall
15 be to identify and recommend in writing to the United States and the Osage Tribe
16 improvements that could be made in the overall management and administration
17 of the Osage Mineral Estate. At least one representative from the United States in
18 these meetings shall be a representative from the Office of the Director of the
19 Bureau of Indian Affairs. The United States and the Osage Tribe agree to
20 consider and pursue in good faith any recommendations made as a result of these
21 consultations. The United States and the Osage Minerals Council shall prepare a
22 joint written annual report setting forth the topics of issues discussed during the
23 preceding year, the recommendations and actions agreed upon, and the outcomes
24 identified, if any. The report shall also include a list of additional topics and
25 issues that the Parties have identified for further review and consideration in
26 future meetings. If the Parties are unable to agree upon the language of any part
27 of such annual report, each Party may include its own written views on the topic
28 in question. The Parties shall submit the annual report to the Secretary of the
29 Interior and the Principal Chief of the Osage Tribe no later than February 15 of
30 each year, beginning in 2012.

1 **d. Restoration of Unclaimed Distributions and Payments.**

2 As soon as practicable after the Effective Date [but not later than one (1) year
3 after the Effective Date], the United States shall identify all funds that are
4 “unclaimed” within the meaning of 25 U.S.C. § 164 (75 Stat. 584) that are derived
5 from the Osage Tribal Trust Account and all Other Osage Accounts. The United
6 States shall promptly restore to the Osage Tribal Trust Account any unclaimed
7 funds so identified that are eligible for such restoration pursuant to 25 U.S.C. §
8 164, whereupon such funds will be re-distributed in accordance with Section 4 of
9 the 1906 Act.

10 **e. Notice of desire to purchase Headrights.** Upon written request from the Osage
11 Minerals Council, the United States shall transmit no more than once annually for
12 the years 2012 and 2013, a written notice to all non-Osage Headright Holders
13 notifying such Headright Holders of the Osage Tribe’s interest in acquiring
14 Headrights by purchase or otherwise in accordance with Pub. L. No. 98-605,
15 October 30, 1984, 98. Stat. 313 (“Headright Acquisition Notice”). The Headright
16 Acquisition Notice shall be in a form provided to the United States by the Osage
17 Minerals Council, and shall be subject to the United States’ approval, such
18 approval not to be unreasonably withheld. The Headright Acquisition Notice
19 shall set forth the Osage Tribe’s interest in having Headrights transferred in
20 accordance with Pub. L. No. 98-605, October 30, 1984, 98. Stat. 313; any
21 background information that the Osage Minerals Council considers relevant to
22 that interest; and the procedure for a Headright Holder to follow if he or she is
23 interested in transferring ownership of his or her Headright in accordance with
24 Pub. L. No. 98-605, October 30, 1984, 98. Stat. 313. The United States’
25 obligation under this Subsection shall be limited to the following: (i) reviewing
26 and approving the Headright Acquisition Notice; and (ii) transmitting the
27 Headright Acquisition Notice to non-Osage Headright Holders by U.S. mail, or
28 other reasonable means of transmission. Beginning in 2014, should the Osage
29 Tribe elect to continue with the transmission of such mailings to non-Osage
30 Headright Holders, the Osage Minerals Council may request no more than once

1 annually that the Osage Agency affix mailing labels for such non-Osage
2 Headright Holders to letters prepared and stamped by the Osage Tribe and place
3 such letters in the U.S. mail for delivery.

4 **10. EFFECTIVE DATE.** This Agreement shall be effective on the Effective Date.

5 In the event the United States fails for any reason to make the payment required
6 by Subsection 5(b) within sixty (60) days of the execution of this Agreement, this
7 Agreement, including its terms, conditions, waivers, releases, covenants not to
8 sue, and dismissals, shall voidable by the Osage Tribe in its sole discretion.

9 **11. OTHER PROVISIONS.**

10 **a. Entire Agreement Between Parties.** This Agreement is the entire agreement
11 between the Parties with respect to the matters set forth herein. All prior
12 conversations, meetings, discussions, drafts, and writings of any kind are
13 specifically superseded by this Agreement.

14 **b. Modification.** The terms of this Agreement may not be changed, revised, or
15 modified, except as provided by a written instrument that is signed by the Parties.

16 **c. Compliance with Anti-Deficiency Act.** No term or provision of this Agreement
17 will constitute or will be construed as a commitment or a requirement that the
18 United States obligate or pay funds in contravention of the Anti-Deficiency Act,
19 31 U.S.C. § 1341, or any other applicable law or regulation.

20 **d. No Modification of Trust Relationship.** Nothing in this Agreement shall have
21 the effect of altering existing federal law or regulations relating to the trust
22 relationship and dealings between the Parties.

23 **e. Authority of Parties to Enter Into Agreement.** The undersigned
24 representative(s) for each Party certifies that he or she is fully authorized by the
25 Party whom he or she represents to enter into the terms and conditions of this
26 Agreement and to bind legally such Party to it. The Osage Tribe enters this
27 Agreement on behalf of itself and Headright Holders.

- 1 **f. Required Party.** The Parties agree that the Osage Tribe is the only party with
2 standing and interest to bring claims relating to the accounting and management
3 of funds in the Osage Tribal Trust Account and Other Osage Accounts or claims
4 relating to the management of the Osage Mineral Estate. The Parties further agree
5 that the Osage Tribe’s interest in any such claim is such that the Osage Tribe
6 would be a required party for purposes of Federal Rule of Civil Procedure 19(a)
7 and for purposes of the Rules of the Court of Federal Claims 19(a).
- 8 **g. No Cooperation.** The Osage Tribe, its officers or employees, including the
9 Osage Mineral Council, shall not aid, assist, or support in any way any individual
10 or party in the development, initiation, or litigation of a claim against the United
11 States that the Osage Tribe has otherwise waived in this Agreement, including in
12 the form of sharing evidence documents, materials, or other information the
13 Osage Tribe, their counsel, consultants, experts, or contractors possess relating to
14 the claims in the CFC Action. The Osage Tribe has obtained contractual
15 commitments from its experts and consultants in the CFC Action that these
16 experts and consultants will not advise, assist, or support in any way any
17 individual or party in the development, initiation, or litigation of a claim against
18 the United States that the Osage Tribe has otherwise waived in this Agreement, a
19 list of which experts and consultants is attached as Exhibit 5. Copies of these
20 contractual commitments are also attached as Exhibit 5.
- 21 **h. Execution of Agreement in Counterpart.** This Agreement may be executed in
22 one or more counterparts, each of which shall constitute an original, and all of
23 which, taken together, shall constitute one and the same instrument. Facsimile
24 signatures shall have the same effect as original signatures in binding the Parties
25 hereto.
- 26 **i. Informed Consent.** The Parties agree that they negotiated this Agreement in good
27 faith and that they were represented by competent counsel throughout the
28 settlement negotiations, leading up to and including the final execution of the
29 Agreement. The Parties further agree that, prior to executing the Agreement, their

1 respective counsel fully informed them of the contents and consequences of the
2 Agreement and that each Party independently concluded that entering into the
3 Agreement was a fair and reasonable disposition of the factual and legal disputes
4 described herein.

5 **j. Alternative Dispute Resolution Process Relating to Agreement.** After the
6 Effective Date, if there is a dispute over compliance with any term or provision of
7 this Agreement, the disputing Party will notify the other Party in writing of the
8 dispute. The Parties will attempt to work out the dispute informally, as set forth
9 below, before seeking judicial review.

10 The disputing Party will engage the other Party in informal dispute resolution.
11 During this informal dispute resolution period, which will not exceed ninety (90)
12 calendar days (unless the Parties agree to an extension of the period), the Parties
13 shall meet as many times as both Parties deem necessary to discuss and attempt to
14 resolve the dispute.

15 At the end of the informal dispute resolution period, if the Parties are unable to
16 resolve the dispute through informal dispute resolution, either Party may take
17 such action as it deems appropriate, including but not limited to filing an action in
18 a federal court of competent jurisdiction.

19 [PROVISION STILL UNDER NEGOTIATION: The parties are still negotiating
20 a provision that would specify the court and procedure for enforcing the United
21 States' obligations.]

22

1 **IN WITNESS WHEREOF**, the Parties have executed this Agreement dated as of the day and
2 year first written above.

3 **FOR THE OSAGE TRIBE**

4

5

6 _____
7 Dudley Whitehorn
8 Chairman of the Osage Trust Team and Member of the Osage Minerals Council

8

9

10 _____
11 Galen Crum
12 Chairman of the Osage Minerals Council and Member of the Osage Trust Team

12

13

14

15 _____
16 Cynthia Boone
17 Member of the Osage Trust Team and Member of the Osage Minerals Council

17

18

19 _____
20 Jerri Jean Branstetter
21 Speaker of the Osage Nation Congress and Member of the Osage Trust Team

21

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23 _____
24 John D. Red Eagle
25 Principal Chief and Member of the Osage Trust Team

25

26

1

2 **FOR THE UNITED STATES**

3

4

5 Ignacia S. Moreno
6 Assistant Attorney General, Environment and Natural Resources Division
7 U.S. Department of Justice

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9

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11 Hilary Tompkins
12 Solicitor
13 U.S. Department of the Interior

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16 George W. Madison
17 General Counsel
18 U.S. Department of the Treasury

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EXHIBIT 1
FORM OF STIPULATION OF DISMISSAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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3	THE OSAGE TRIBE OF INDIANS)	
4	OF OKLAHOMA,)	
5)	No. 99-550L
6	Plaintiff,)	(into which has been consolidated
7)	No. 00-169L)
8	v.)	Chief Judge Emily C. Hewitt
9)	
10)	
11	THE UNITED STATES OF AMERICA,)	
12)	
13	Defendant.)	
14	_____)	

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Court of Federal Claims Rule 41(a)(1)(A)(ii), Plaintiff Osage Nation and/or Tribe of Indians of Oklahoma and Defendant United States of America jointly stipulate that these consolidated cases are dismissed with prejudice, in accordance with a settlement agreement dated XXXXXXXX.

Respectfully submitted this XX day of XXXXXXXX, 2011,

IGNACIA S. MORENO
Assistant Attorney General

s/ Wilson K. Pipestem
WILSON K. PIPESTEM
Pipestem Law Firm, P.C.
1333 New Hampshire Ave., NW
Washington, D.C. 20036
Tel: 202-419-3526
Fax: 202-659-4931
wkpipestem@pipestemlaw.com
ATTORNEY FOR PLAINTIFF

s/ Joseph H. Kim
JOSEPH H. KIM, IL Bar #6243249
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Tel: 202-305-0207
Fax: 202-353-2021
joseph.kim@usdoj.gov
ATTORNEYS FOR DEFENDANT
UNITED STATES OF AMERICA

OF COUNSEL:

ROMNEY PHILPOTT, CO Bar # 35112
BRIAN COLLINS, TX Bar # 24038827
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Tel: 202-305-0258
Tel: 202-305-0428

ERICKA HOWARD
HOLLY CLEMENT
DONDRAE MAIDEN
Office of the Solicitor
United States Department of the Interior
Washington, D.C. 20240

REBECCA SALTIEL
THOMAS KEARNS
Office of the Chief Counsel
Financial Management Service
United States Department of the Treasury
Washington, D.C. 20227

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EXHIBIT 2

BALLOT INSTRUCTIONS

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- 1. Each ballot is numbered and is not transferable. Only the person named on the envelope may complete the enclosed ballot.
- 2. Use ink.
- 3. Mark only one box. Shade the box next to your choice, or place an X or a check mark in the box.
- 4. If you make a mistake and mark the wrong box, you may write on the ballot to make a correction clearly indicating your choice.
- 5. Sign and date the ballot.
- 6. Print your name and address in the lower right corner of the ballot.
- 7. Return your ballot in the enclosed envelope. If you did not receive an envelope or have lost the envelope, mail your ballot by U.S. Mail to:

Bureau of Indian Affairs
Osage Agency
P.O. Box 1046
Pawhuska, OK 74056
- 8. DO NOT HAND DELIVER YOUR BALLOT. Ballots must be mailed to the Osage Agency by U.S. Mail to ensure consideration.
- 9. To ensure consideration, ballots should postmarked no later than **September 19, 2011**.
- 10. If you have questions about the ballot or about the settlement, you are encouraged to raise those questions at one of the remaining informational meetings with the Osage Trust Team and its outside counsel:

Friday, September 2 7:00 p.m. local time	Osage Event Center Located in the Tulsa Casino 951 West 36th Street North Tulsa, OK 74127
Saturday, September 3 1:00 p.m. local time	Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue, Suite 4100 Dallas, TX 75201

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If you cannot attend a meeting and still have questions, please call the Osage Minerals Council at (918) 287-5433.

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CANVASS LANGUAGE

BALLOT

Mark ONE Only

I SUPPORT the actions of the Osage Minerals Council in approving settlement of claims regarding the United States' alleged mismanagement of the Osage Tribal Trust Account and other Osage Trust Accounts and the Osage Mineral Estate.

I DO NOT SUPPORT the actions of the Osage Minerals Council in approving settlement of claims regarding the United States' alleged mismanagement of the Osage Tribal Trust Account and other Osage Trust Accounts and the Osage Mineral Estate.

SIGNATURE: _____

PRINT NAME: _____

DATE: _____

ADDRESS: _____

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EXHIBIT 3
Resolution of Approval of Agreement by the
Osage Minerals Council

1 RESOLUTION OF

2 THE OSAGE MINERALS COUNCIL

3 WHEREAS,

- 4 1. The Osage Tribe Allotment Act of 1906 and the amendments thereto (“1906 Act”)
5 reserved the mineral estate of the Osage Reservation to the Osage Tribe (“Osage Mineral
6 Estate”);
- 7 2. Pursuant to the 1906 Act, the revenues from the Osage Mineral Estate are to be placed in
8 the Osage Tribe’s tribal trust account (“Osage Tribal Trust Account”);
- 9 3. Pursuant to the 1906 Act, the revenues placed in the Osage Tribal Trust Account are to be
10 distributed to the holders of Headrights;
- 11 4. The Osage Minerals Council, established pursuant to Article XV of the Osage Nation
12 Constitution, is an independent agency within the Osage Nation;
- 13 5. The Osage Nation Constitution vests the Osage Minerals Council with the power to
14 administer and develop the Osage Mineral Estate in accordance with 1906 Act,
15 previously vested in the Osage Tribal Council;
- 16 6. The Osage Minerals Council has the authority to act for, to protect the interests of, and to
17 bind Headright Holders with respect to matters relating to the Osage Mineral Estate,
18 including the initiation, prosecution and settlement of claims relating to the Osage
19 Mineral Estate;
- 20 7. The Osage Tribe initiated proceedings in the U.S. Court of Federal Claims (“CFC”) to
21 seek money damages from the United States for alleged breaches and failures on the part
22 of the United States in the collection of revenues due to the Osage Tribal Trust Account,
23 and the United States’ subsequent management and disbursement of such revenues,
24 among other claims (“CFC Action”);
- 25 8. The CFC has held that under the 1906 Act, the Osage Tribe is the only proper party with
26 standing to seek money damages for the breaches and failures alleged in the CFC Action;
- 27 9. A team of five representatives from the Osage Minerals Council, the Osage Nation
28 Congress, and the Osage Nation Executive Branch have been designated to manage and
29 direct litigation relating to the Osage Mineral Estate and the Osage Tribal Trust Account,
30 including the CFC Action (“Osage Trust Team”);
- 31 10. The United States has initiated settlement negotiations with the Osage Trust Team;
- 32 11. The United States and the Osage Trust Team have negotiated in good faith and have
33 arrived at a proposed settlement of litigation relating to the Osage Mineral Estate and the
34 Osage Tribal Trust Account, including the CFC Action, for an amount totaling
35 \$380,000,000, and other valuable consideration;

- 1 **12.** The Osage Trust Team has consulted with Osage Headright Holders, by:
- 2 **a.** The transmission of written materials explaining the proposed settlement;
- 3 **b.** Holding a series of meetings with Osage Headright Holders at which
- 4 representatives of the Osage Trust Team and its lawyers have explained the
- 5 proposed settlement; and,
- 6 **c.** In cooperation with the Osage Trust Team, the United States has conducted a
- 7 canvass of Osage Headright Holders for approval of the terms of the settlement;
- 8 **13.** A majority of the voting Osage Headright interests agree that the proposed settlement
- 9 should be approved;
- 10 **14.** The Osage Minerals Council has carefully considered the proposed settlement;

11 THEREFORE, BE IT RESOLVED,

12 The Osage Minerals Council approves the proposed settlement, authorizes the payment of

13 attorneys' fees in accordance therewith, and authorizes the Trust Team and the members thereof

14 to execute the settlement agreement.

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EXHIBIT 4
Resolution of Approval of Agreement by the
Osage Congress

OSAGE NATION CONGRESS

A Resolution

To approve the proposed settlement of litigation against the United States relating to the Osage Mineral Estate, and to authorize the Principal Chief and the Speaker of the Congress to execute the settlement agreement

WHEREAS,

1. The Osage Tribe Allotment Act of 1906 and the amendments thereto (“1906 Act”) reserved the mineral estate of the Osage Reservation to the Osage Tribe (“Osage Mineral Estate”);
2. Pursuant to the 1906 Act, the revenues from the Osage Mineral Estate are to be placed in the Osage Tribe’s tribal trust account held by the U.S. Treasury (“Osage Tribal Trust Account”);
3. Pursuant to the 1906 Act, the revenues placed in the Osage Tribal Trust Account are to be distributed to the holders of Headrights;
4. The Osage Minerals Council has the authority to act for, to protect the interests of, and to bind Headright Holders with respect to matters relating to the Osage Mineral Estate, including the initiation, prosecution and settlement of claims relating to the Osage Mineral Estate;
5. The Osage Tribe initiated proceedings in the U.S. Court of Federal Claims (“CFC”) to seek money damages from the United States for alleged breaches and failures on the part of the United States in the collection of revenues due to the Osage Tribal Trust Account, and the United States’ subsequent management and disbursement of such revenues, among other claims (“CFC Action”);
6. The CFC has held that under the 1906 Act, the Osage Tribe is the only proper party with standing to seek money damages for the breaches and failures alleged in the CFC Action;
7. A team of five representatives from the Osage Minerals Council, the Osage Nation Congress, and the Osage Nation Executive Branch have been designated to manage and direct litigation relating to the Osage Mineral Estate and the Osage Tribal Trust Account, including the CFC Action (“Osage Trust Team”);
8. The United States has initiated settlement negotiations with the Osage Trust Team;
9. The United States and the Osage Trust Team have negotiated in good faith and have arrived at a proposed settlement of litigation relating to the Osage Mineral Estate and the Osage Tribal Trust Account, including the CFC Action, for an amount totaling \$380,000,000, and other valuable consideration;
10. The Osage Trust Team has consulted with Osage Headright Holders, by:

- 1 **a.** The transmission of written materials explaining the proposed settlement;
- 2 **b.** Holding a series of meetings with Osage Headright Holders at which
- 3 representatives of the Osage Trust Team and its lawyers have explained the
- 4 proposed settlement; and,
- 5 **c.** In cooperation with the Osage Trust Team, the United States has conducted a
- 6 canvass of Osage Headright Holders for approval of the terms of the settlement;

7 **11.** A majority of the voting Osage Headright interests agree that the proposed settlement
8 should be approved;

9 **12.** The Osage Minerals Council has considered and approved the proposed settlement and
10 authorized its members on the Osage Trust Team to execute this Agreement, by resolution
11 dated [];

12 NOW, THEREFORE, BE IT RESOLVED,

13 The Osage Nation Congress approves the proposed settlement, authorizes the payment of
14 attorneys' fees in accordance therewith, and authorizes the Principal Chief and the Speaker of the
15 Osage Nation Congress, both of whom are members of the Osage Trust Team, to execute the
16 settlement agreement.

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EXHIBIT 5

List of Experts and Consultants and Consultant Contracts

- 1
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- 5 Dan Reineke
- 6 Joseph Harry
- 7 Jim Parris
- 8 Stephen Jay
- 9 Tranche 2 historical oil royalty expert
- 10 Tranche 2 investment and accounting expert
- 11 Tranche 2 investment and accounting consulting firm
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AGREEMENT

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This AGREEMENT, dated as of [], is entered into between [TESTIFYING EXPERT’S NAME] and the Osage Tribe (meaning the Osage Tribe of Indians of Oklahoma, the tribal government established by the 1906 Act and now federally recognized as the Osage Nation, and its predecessors and successors in interest) (collectively, the “Parties”).

1. RECITALS.

- a. WHEREAS the Osage Tribe initiated proceedings in the U.S. Court of Federal Claims (“CFC”) to seek money damages from the United States for alleged breaches and failures on the part of the United States in the collection of revenues due to the Osage Tribal Trust Account, and the United States’ subsequent management and disbursement of such revenues, among other claims (“CFC Action”);
- b. WHEREAS the Osage Tribe engaged [EXPERT] to provide expert witness testimony in the CFC Action, and [EXPERT] provided such testimony;
- c. WHEREAS the Osage Tribe and the United States have negotiated a proposed settlement agreement that would settle the claims in the CFC case;
- d. WHEREAS the Osage Tribe and the United States have agreed that no other party has standing to raise such claims;
- e. WHEREAS the proposed settlement agreement includes a provision that the Osage Tribe shall not aid, assist, or support in any way any individual or party in the development, initiation, or litigation of a claim against the United States that the Osage Tribe waives in the settlement agreement, including in the form of sharing evidence documents, materials, or other information the Osage Tribe, their counsel, consultants, experts, or contractors possess relating to the claims in the CFC Action;

1 **f.** WHEREAS the proposed settlement agreement requires the Osage Tribe to
2 represent that it has obtained contractual commitments from the experts who
3 testified for the Osage Tribe in the CFC Action that these experts will not advise,
4 assist, or support in any way any individual or party in the development,
5 initiation, or litigation of a claim against the United States that the Osage Tribe
6 waives in the settlement agreement,

7 **NOW THEREFORE**, the Parties agree that

8 1. [EXPERT] will not advise, assist, or support in any way any individual or party in the
9 development, initiation, or litigation of a claim against the United States that the Osage Tribe
10 waives in the settlement agreement.

11 2. The United States is a third party beneficiary to this agreement and may enforce the covenant
12 set forth in Section 1 against [expert].

13 [SIGNATURES]

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EXHIBIT 6
Periodic Statement for Osage Tribal Trust Account
Through 8/31/11
(exclusive of payment required by Section 5(b))

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EXHIBIT 7

Periodic Statements for Certain Other Osage Accounts

Through 8/31/11

**(Account nos. JA9271121, PL7385708, PL7387704, PL754901, PL 7469700, 930T000000,
930S090248, and 930S090718)**

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EXHIBIT 8
Determination of Need for Negotiated Rulemaking

1 SUBJECT: Determination of Need for Negotiated Rulemaking on Leasing of Osage
2 Lands for Oil and Gas Mining
3

4 FROM: Assistant Secretary – Indian Affairs
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6 TO: Director, Bureau of Indian Affairs
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8

9 In accordance with 5 U.S.C. § 563, I have determined that there is a need for regulatory
10 negotiation with respect to the management of the Osage Mineral Estate currently addressed
11 under 25 C.F.R. Part 226. After 11 years of litigation, the United States reached a settlement
12 with the Osage Nation, Oklahoma (formerly known as the Osage Tribe) (“Osage Tribe”) for
13 alleged mismanagement of its oil and gas mineral estate, among other claims. As part of the
14 Settlement Agreement, the parties agreed that it would be mutually beneficial “to address means
15 of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account,
16 and the Other Osage Accounts” Settlement Agreement, Para. 1.i. During the course of
17 negotiations it became apparent that a review of the existing standards and obligations in the
18 governing regulations is necessary in order to better assist the Bureau of Indian Affairs in sharing
19 and providing information regarding the Osage Mineral Estate to the Osage Minerals Council.
20 Based on these circumstances and in an effort to avoid future litigation, if possible, I therefore
21 conclude that there is a need for negotiated rulemaking. *See* 5 U.S.C. § 563(a)(1).
22

23 The regulations governing the Osage Mineral Estate (25 U.S.C. Part 226) currently apply
24 only to the Osage Mineral Estate and the Osage Agency and do not have broader applicability.
25 Thus, there are limited interest holders readily identifiable. *See* 5 U.S.C. § 563(a)(2). The
26 governing tribal body that oversees the Osage Mineral Estate is the Osage Minerals Council,
27 which is duly elected by Osage oil and gas Headright holders. Thus, due to the limited
28 applicability of the current regulations and the limited interest holders at stake, “there is a
29 reasonable likelihood that a committee can be convened with a balanced representation of
30 persons who can adequately represent the interests and are willing to negotiate in good faith to
31 reach a consensus on the proposed rule.” *Id.* § 563(a)(3).
32

33 Moreover, given the settlement of the litigation and the desire by the Osage Tribe and the
34 Interior Department to proceed in good faith in addressing and improving administration and
35 management of the Osage Mineral Estate as soon as practicable to avoid future litigation, I find
36 that “there is a reasonable likelihood that a committee will reach a consensus on the proposed
37 rule within a fixed period of time.” *Id.* § 563(a)(4). Indeed, the Osage Tribe and the Interior
38 Department have already identified some of the areas that need to be addressed as part of the
39 negotiated rulemaking, including, but not limited to:
40

- 41 1. Identifying the appropriate information needed from all operators, purchasers
42 and payers who are associated with the Osage mineral estate and developing
43 and implementing standardized reporting to manage diligently production and
44 accounting;
- 45 2. Identifying the source, manner, and format of transmission whereby the
46 information required by Subsection 9(a) will be provided to the Osage

- 1 Minerals Council;
- 2 3. Identifying appropriate revisions to the methods for calculating royalties and
- 3 rentals for oil and gas, including but not limited to royalty rates, royalty value
- 4 (pricing), and rental rates;
- 5 4. Identifying the best feasible practices for developing and conducting onsite
- 6 inspection programs;
- 7 5. Identifying the feasibility of implementing technological enhancements for
- 8 generating run tickets and other production data for reporting that information
- 9 to the Osage Tribe and the United States;
- 10 6. Identifying the best feasible practices for gauging oil and gas production and
- 11 the resources needed to implement the strategy selected;
- 12 7. Identifying and implementing the best feasible practices for tank battery
- 13 gauging;
- 14 8. Determining and documenting the formal communication needed to manage
- 15 diligently the Osage mineral estate between the Osage Nation, the Osage
- 16 Minerals Council and the United States.

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20 *See* § 563(a)(5). I am committed to ensuring that the Bureau of Indian Affairs has the necessary
21 resources it needs throughout the negotiated rulemaking process and that the agency uses, to the
22 maximum extent possible, the consensus of the committee with respect to development of a
23 proposed rule for notice and comment. *Id.* § 563(a)(6), (7).

24
25 Based on the foregoing, I am directing you to work with the Osage Agency and the Office
26 of the Solicitor in proceeding with a negotiated rulemaking related to the Osage Mineral Estate
27 currently governed by 25 C.F.R. Part 226.

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32 Larry Echohawk
33 Assistant Secretary – Indian Affairs
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EXHIBIT 9

Letter regarding the Interior Department's annual audit