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WRITER'S E-MAIL

April 28, 2011

grimm@barrowgrimm.com

Mr. Michael S. Black
Director, Bureau of Indian Affairs
MS-4606-MIB
1849 C Street NW
Washington, D.C. 20240

Re: Elections for the Osage Tribe:
Our File No. 8261.000

Dear Mr. Black:

This firm represents Charles O. Tillman, Cora Jean Jech, Dudley Whitehorn, Joanna Barbara, R.E. Yarbrough, John Johnson, Joe Hall and Cody Tucker (collectively referred to hereafter as "Shareholders"), who are individual members of the Osage tribe of Indians ("Osage Tribe") as defined by the Osage Allotment Act of June 28, 1906, 34 Stat. 539, *as amended* (the "1906 Act").

I am writing on behalf of the Shareholders to request that you conduct an election for the independent governing body of the Osage Mineral Estate (hereinafter "Mineral Estate"), which shall include an eight member Tribal Council, Principal Chief and Assistant Principal Chief as prescribed by the 1906 Act in accordance with 25 C.F.R. Part 90 (the "CFRs"). This request was originally made by Shareholder Charles Tillman, in a letter to the Bureau of Indian Affairs ("BIA") dated December 21, 2006. *Exhibit A - Letter from Charles Tillman to Superintendent, BIA, December 21, 2006.* Mr. Patrick Ragsdale, the Director of the BIA at the time, responded by letter dated March 19, 2007, refusing to take any action to protect the Osage Mineral Estate. *Exhibit B - Letter from Patrick Ragsdale to Charles Tillman, March 19, 2007.*

The significance of such an election and action by the BIA is that it restores governance of the Minerals Estate to the Shareholders as prescribed by the 1906 Act. As explained in detail below, the crux of the Shareholders' arguments are that a valuable property interest has been stripped from them, that is, the right of the Shareholders to control the Mineral Estate through the exercise of their right to elect the governing tribal body of the Tribal Council, including Principal Chief and Assistant Principal Chief, to control the Minerals Estate.

Upon the BIA's refusal to conduct an election and the BIA's apparent final decision that the CFR's were rendered moot by the passage of "Reaffirmation of Certain Rights of the Osage Tribe," Pub. L. No. 108-431 ("Reaffirmation Act"), the Shareholders initiated a lawsuit in the District Court of the Northern District of Oklahoma, *Jech, et. al. v. United States, et. al*, Case No. 09-818-TCK-TLW. The District Court dismissed the Shareholders' lawsuit finding that the Shareholders did not exhaust their administrative remedies and did not have a final decision from the BIA. The District Court determined that the Shareholders challenged BIA inaction; however, the Shareholders maintain that they challenge both a BIA decision (that the Reaffirmation Act changed their obligations to the Shareholders and rendered the CFRs moot) and BIA inaction (the failure to conduct an election in accordance with the 1906 Act and CFRs). The Shareholders are in the process of appealing the District Court's dismissal of their lawsuit.

The Shareholders request that the BIA take the action originally requested in Charles Tillman's letter to the BIA, and as explained in detail below. In the event the BIA fails to conduct an election for the Tribal Council, which Council shall be the independent governing body of the Osage Mineral Estate, within ten (10) days from your receipt of this letter or establish a date by which action will be taken, an appeal shall be filed with the Interior Board of Indian Appeals in accordance with 25 C.F.R. § 2.8.

Background

As you know, the 1906 Act created a final roll of Osage Indians to consist of the Osage Tribe and provided a unique method of distributing various real property and mineral rights to the allotted members listed on the final roll ("Allottees"). The mineral rights were severed from the allotted lands and reserved to the Osage Tribe to be administered by a tribal council under the supervision of the Secretary of the Department of Interior. See 1906 Act, § 3. The mineral rights reserved to the Osage Tribe were commonly referred to as the Minerals Estate. The 1906 Act further set aside a trust fund for the income from the Minerals Estate. The right to receive revenues from the Mineral Estate is commonly referred to as a "Headright" while the people entitled to the distributions of income are commonly referred to as "Shareholders." The 1906 Act provided for the "Headright" of the Allottees to pass to their descendants in accordance to Oklahoma estate laws.

Shareholders are the owners of a descended Headright interest. Numerous courts have noted that a Headright is a vested private property interest. See *Logan v. Andrus*, 640 F.2d 269, 270 (10th Cir. 1981); see also *Cohen's Handbook of Federal Indian Law*, (Nell Jessup Newton, ed., LexisNexis Mathew Bender, 2005 ed.) (hereinafter "Cohen"), § 4.07(1)(d). It is further widely noted that the Shareholders own the Minerals Estate essentially as tenants in common. Cohen, § 4.07(1)(d).

The 1906 Act also prescribed a form of tribal council governance for the Minerals Estate which included a Principal Chief, Assistant Principal Chief and an eight (8) member Tribal Council (collectively, "the Tribal Council"). The administration of elections for the Tribal Council is governed by the CFRs. The BIA is charged with the trust responsibility of supervising the Minerals Estate and election of members of the Osage Tribe to the Tribal

Council. According to the 1906 Act and, later, the C.F.R.'s, a Headright included the right to vote for the governing body of the Minerals Estate and such vote was weighted based on the percentage amount of the Headright owned. Thus, each Shareholder possessed a separate voting right directly in proportion to his or her Headright percentage interest to the Minerals Estate.

Historically, in addition to governing the Minerals Estate, the Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council handled all tribal matters, including minerals, federal benefits, gaming, etc. However, despite the fact that various persons were considered Osage and entitled to federal benefits, etc., only those with Headrights could vote for the governing body of the Osage Tribe. To rectify this apparent dichotomy, Congress passed the "Reaffirmation of Certain Rights of the Osage Tribe," Pub. L. No. 108-431 ("Reaffirmation Act"). The Reaffirmation Act clarified that legal membership in the Osage Tribe under the 1906 Act meant those eligible as Headright owners; however not membership in the tribe for all purposes. The Reaffirmation Act reaffirmed the right of the Osage to self-govern "provided that the rights of any person to the Osage mineral estate shares are not diminished thereby." The Reaffirmation Act did not repeal, modify or supersede the CFRs. Its intent was to clarify the right of all Osage to self-govern its tribal affairs outside of the Minerals Estate. Furthermore, at the request of the Osage Tribe (i.e. duly elected Principal Chief of the Tribal Council by the Shareholders), the Secretary of the Interior would assist in conducting elections. Notably, nowhere in the Reaffirmation Act is there any mention of the Osage Nation.

Reaffirmation Act

Congress's intent in enacting the Reaffirmation Act is clear from the Senate Report dated September 15, 2004 which states "the Committee finds that the enactment of H.R. 2912 [Reaffirmation Act] will not affect any change in existing law." *Exhibit C* – Senate Report, September 15, 2004. Congress's intent is even more evident from the congressional hearing record, that is, Congress intended to give the Osage that did not have a descended Headright ("Non-Headright Osage") a voice in tribal government matters that did not involve the Minerals Estate.

In support thereof, Plaintiffs ask you to consider the following exchange between Representative Brad Carson (Oklahoma-D) and one of the current Plaintiffs, R.E. Yarbrough, then President of the Osage Shareholders Association at that time, at the Legislative Field Hearing before the Committee on Resources, U.S. House of Representatives, March 15, 2004 ("Field Hearing"):

Mr. Carson: Just a quick question for Mr. Yarbrough. And I may have – let me know if I misstated the legal issues involved here. The mineral estate is held essentially as tenants in common to people with Headrights. Is that correct?

Mr. Yarbrough: Yes. That's correct.

Mr. Carson. And I know we've talked a lot in here about protections that the Headright owners have. This legislation wouldn't affect them. Does the Tribal

Council have the right to alter the disposition of the minerals estate among Tribal members? If not, what prevents them from doing that.

For example, could Tribal Council vote to say, “Well we recognize that these people all, you know, have Headrights handed down from the 1906 Act. But we've suddenly decided as a matter of policy that the Osage Nation owns the mineral estate that we want to allocate it in some different fashion”?

***Mr. Yarbrough:** My interpretation of what is about to happen is that we as shareholders will maintain our identity and we'll go on separately, but we'll also be inclusive of the tribe at the same time. So we'll actually go ahead and conduct ourselves as we always have.*

***Mr. Carson:** Maybe I should – Maybe Congressman Lucas can answer it or someone. I guess the question is are there institutional protectors from the 1906 Act that says you, for any reason you couldn't – you couldn't feel free to --- *what institutional protections are there to keep Headright ownership basically as it has been for the last near century or altering any kind of the voting membership with this?**

***Chief Jim Gray:** Well Congressman, there are clearly protected property rights that no activist council would have any control over, you know, that particular process. What has been statutorily set up is what's policy now. And there's nothing that this Council can do, even with the passage of this bill to change that.*

Mr. Carson: Thank you on all of that.

Transcript of Field Hearing, from the U.S. Gov. Printing Office. (*Furnished upon request.*)

Similarly, in a subsequent June 1, 2004 hearing on the matter in the United States House of Representatives, Representative James Gibbons (R-Nevada) noted: “H.R. 2912 includes language to ensure *that no one's interest in Headright shares is touched. Headrights are private property, and there is no intent to affect them under this bill.*” See U.S. House of Representatives Hearing on the Reaffirmation of Certain Rights of the Osage Tribe, June 1, 2004 (“Congressional Record”). Likewise, during the same Congressional Hearing the author of H.R. 2912, Representative Frank Lucas (R-Oklahoma) stated: “*It [HR 2912] is intended to put the Osage Tribe on equal footing with all other federally recognized tribes by allowing them to determine their own membership criteria and system of government, while protecting the Headrights of the shareholders.*” See Congressional Record, June 1, 2004. (*Furnished upon request.*)

The foregoing makes patently clear, neither the Osage advocating the Reaffirmation Act nor the congressmen considering the Reaffirmation Act contemplated that Headrights or Shareholders other interest in the Mineral Estate would be “touched” contrary to the protections granted to the Shareholders in the 1906 Act. Even the presiding Principal Chief of the Osage

Tribe acknowledged that “there's nothing that [Minerals] Council can do, even with the passage of the [Reaffirmation Act]” that can alter the voting membership of the Minerals Council. Indeed at least one federal court that has considered the Reaffirmation Act has noted that the Reaffirmation Act “maintains the system for assigning mineral interests, but grants the Osage Tribe the right to determine membership for *other purposes*.” *Fletcher v. U.S.*, 2005 WL 3551108, *2 (10th Cir. 2005) (emphasis added).

BIA's Refusal to Conduct an Election for the Tribal Council

Unfortunately, Principal Chief Jim Gray and the BIA quickly forgot the congressional sentiments of leaving the Mineral Estate untouched shortly after the passage of the Reaffirmation Act. A new form of tribal government was proposed by the Osage Reform Commission to the 31st Council of the Osage Tribe. The new government was ratified by a majority vote of a minority number of the total Osage people, both Shareholders *and Non-Headright Osage* who were not legal members of the Osage Tribe, and subsequently formed the Osage Nation which is governed by the Constitution of the Osage Nation (“Osage Constitution”).¹ See Osage Constitution, Articles XXIII & III (*furnished upon request*).

The new Osage Constitution provides that all “oil, gas, coal and/or other minerals” are reserved to the Osage Nation, not the Osage Tribe [Shareholders] as required by the 1906 Act. See Osage Constitution, Article XV §1-2, & 4. Additionally, it established a minerals council, as an independent agency within the Osage Nation (“the Agency”), whose authority is subject to the laws and decisions of the Chief of the Osage Nation and the Osage Nation’s Congress, rather than the Secretary of the Interior as provided for in the 1906 Act. See Osage Constitution, Article XV §4. The Chief, Vice-Chief and Congress of the Osage Nation are elected by Osage that are Shareholders and Non-Headright Osage, not the Shareholders entitled to vote under the 1906 Act. See Osage Constitution, Article III. There is no Principal Chief or Assistant Principal Chief elected by the Shareholders to the Minerals Council, as prescribed by the 1906 Act.

Specifically, the Chief of the Osage Nation has the power to veto oil and gas leases and other decisions of the newly created Agency; approve or deny funding for the Agency and otherwise subject the Minerals Estate to the laws of the Osage Nation (which, for example, could include taxation issues, removing funds from the Minerals Estate, etc.). Thus, while the Osage Constitution created the Agency as a “minerals council,” it is nothing more than an executive agency within the Osage Nation that is subject to the control of the entire Osage Nation, not the Shareholders. It goes without saying that Non-Headright Osage have irreparable conflicts of interest with the Shareholders when it comes to the administration of the Minerals Estate – both groups stand to gain more from keeping control of the Minerals Estate away from the other. Clearly, this was not the Congressional intent of the Reaffirmation Act.

¹ The issue of those entitled to vote on the Osage Nation Constitution other than Shareholders, in and of itself, has substantial constitutional “taking” issues regarding voting eligibility which the Shareholders note, but do not challenge at this time in any respect other than the changes to the Tribal Council and governing body of the Mineral Estate.

Upon the ratification of the Osage Constitution, the BIA absolved itself of any responsibility for the election process for the Tribal Council and the oversight of the Minerals Estate, citing non-involvement with internal tribal issues. Several concerned Shareholders called upon the BIA to conduct an election in accordance with the CFRs and further requested the reinstatement of a Principal Chief, Assistant Principal Chief and independent Tribal Council to govern the Minerals Estate. *See Exhibit D – Letters from Concerned Shareholders*. In response, the BIA cited the Reaffirmation Act and stated that (1) the Reaffirmation Act superseded prior regulations; (2) the Osage Constitution did not diminish the Headright owner's interest; and (3) the passage of the Reaffirmation Act rendered the CFRs moot. *See Exhibit B – Letter from Patrick Ragsdale to Charles Tillman, March 19, 2007; Exhibit E – Letters from the BIA and Exhibit G - Letter from Acting Director of the Bureau of Indian Affairs to John H. Mashunkashey, Chairman of the Osage Minerals Council ("Chairman Mashunkashey"), February 12, 2010.*

The BIA has remained steadfast in its position, which was stated in a January 28, 2008, letter from Carl J. Artman, the Assistant Secretary – Indian Affairs at the time, in response to a concerned shareholder's request for an election. The Assistant Secretary stated that it was his opinion that the BIA had fulfilled its obligations under the 1906 Act and "will take no further actions in this issue since it is an internal tribal matter." *Exhibit F - Letter from Assistant Secretary – Indian Affairs, January 28, 2008.*

Recently, the BIA has affirmed its position in a letter dated February 12, 2010, where the Agency established by the Osage Nation requested that the BIA administer the Agency elections in accordance with the CFRs and the BIA refused; instead directing the Agency back to the Chief of the Osage Nation. *See Exhibit G - Letter from Acting Director of the Bureau of Indian Affairs to John H. Mashunkashey, Chairman of the Osage Minerals Council ("Chairman Mashunkashey"), February 12, 2010.*

The BIA's Inaction Diminishes the Shareholders Interest in their Headrights

The unintended result of the Reaffirmation Act has thus been an overt confiscation of the Minerals Estate from the Shareholder's duly elected Tribal Council by the Osage Nation, which is undeniably comprised of and controlled by Non-Headright Osage, not Shareholders; and a complete abolishment of the Tribal Council as the previous form of governance over the Minerals Estate under the blindfolded oversight of the BIA contrary to the Congressional intent of the Reaffirmation Act and the CFRs.

It is against this backdrop of the BIA's complete abandonment of its trust responsibility and prior form of government of the Minerals Estate that the Shareholders' requests emerge. It has long been held that property interests granted by the United States to individual Indians, once vested, may not be abrogated by statute. *See Choate v. Trap, 224 U.S. 665 (1912); see also Morrow v. U.S., 243 F. 854 (8th Cir. 1917)* ("There is no question that the government may, in its dealings with the Indians, create property rights which, once vested, even it cannot alter.") As previously noted, courts have consistently recognized a Headright as a vested interest in real property and the Minerals Estate is held by the Shareholders as a tenancy in common, often compared to shareholders' ownership of a corporation.

The above facts illustrate the Shareholders have lost complete control over the Minerals Estate, which is a valuable property interest granted by the United States in the 1906 Act, to the Osage Nation. Indeed, the Tenth Circuit has noted that the 1906 Act “*set up the machinery for the administration of the Osage Mineral estate and described and declared the rights vested in the individuals.*” *Logan*, 640 F.2d at 270 (emphasis added). The 1906 Act and the CFRs, set forth in great detail the governance over the Minerals Estate and the Shareholder’s rights to vote for that governance and, thereby, control the Minerals Estate. Yet, inexplicably, the BIA refuses to supervise or administer this longstanding tribal governance, presumably because “the intent of the 2004 Act eliminates the BIA’s authority under the Part 90 regulations.” See *Exhibit E, Letters from BIA to Shareholders; and Exhibit F – Letter from Assistant Secretary – Indian Affairs*, January 28, 2008.

Nowhere within the four corners of the statutory language, transcripts of congressional hearings on the Reaffirmation Act or Congressional Record can this strained “interpretation” of the Reaffirmation Act be found. Moreover, considering the similarities between a Headright and stock, the right to vote for corporate governance by virtue of stock ownership is a fundamental right associated with the ownership interest that is itself a part of the stockholder’s property. See 18A Am. Jur. 2d Corporations § 850.

The Draconian result of the BIA’s “interpretation” of the Reaffirmation Act has allowed the Osage Nation to simply seize control of the Minerals Estate from the statutorily-created Tribal Council, contrary to the precise statutory language of 1906 Act and the utter lack of Congressional authority under the Reaffirmation Act. **This seizure by the Osage Nation results in the loss of two specific property rights of the Shareholders; i.e. respective voting rights to select their representatives to the Minerals Council, including Principal Chief and Assistant Principal Chief, and the control of the Minerals Estate itself.**

As a result of its continuing inaction, the BIA is failing to protect the integrity of the Mineral Estate mandated by Congress and the Shareholders’ voting rights to select the leadership to a Tribal Council. Instead, the BIA continues to maintain a blind eye to this colossal seizure of Shareholders’ property interests and congressionally-vested rights without due process under the auspices of “internal governmental affairs of the Osage Nation.” Now we hear the BIA’s articulated policy that the Reaffirmation Act “repealed” the CFRs and the Shareholders cannot challenge the failure of the CFR election process or seizure of the Minerals Estate because of the necessity of joining the Osage Nation as a necessary party to the Lawsuit. This argument is akin to the BIA allowing the Osage Nation to seize property rights declared by Congress to be “untouched”; authorizing the seizure as an “internal governmental affair of the Osage Nation”; and then, when challenged, claiming it has no responsibility because the Osage Nation is not a party to the demand to prevent the seizure. This type of blind arrogance overturns 100 years of supervised elections under the special relationship the Shareholders shared with the BIA.

The Shareholders do not challenge the actions of the Osage Nation or the Osage Constitution and, in fact, agree that the Osage Nation is the governing body of Osage on all matters except the Mineral Estate. Rather, the Shareholders only challenge the actions of the BIA in its stated position that the Reaffirmation Act eliminates its delegated responsibility under the 1906 Act to administer and supervise the elections for the governing body of the Mineral

Estate prescribed by the 1906 Act (eight (8) member Tribal Council, Principal Chief and Assistant Principal Chief) and recognize such Tribal Council as the independent governing body of the Mineral Estate.

It is under this authority that the Shareholders allege the BIA acts in violation of the 1906 Act when it refuses to conduct an election in accordance with the CFRs and recognizes the Agency under the Osage Nation as the governing body of the Minerals Estate. The Shareholders have no care or concern for the language written in the Osage Constitution which may violate federal law or the actions taken by the Osage Nation which do not involve the Minerals Estate. The Shareholders simply ask the BIA to continue to recognize the independence of the Minerals Estate and supervise its governance as the BIA has for the past 100 years since 1906 by conducting elections to the Tribal Council in accordance with the 1906 Act and the CFRs.

SUMMARY OF REQUESTED ACTION AND INJURY

The right to control the Mineral Estate and vote for the governing body of the Mineral Estate is a vested private property interest granted to the Allottees by the United States of America in the 1906 Act and inherited and owned by the Shareholders. The BIA's responsibility to administer and supervise the elections of the Mineral Estate is outlined in the CFRs. Since the creation of the Osage Nation in 2006, the BIA has refused to administer and supervise an election for the governing body of the Mineral Estate, which the 1906 Act prescribes as a Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council.

Shareholder Charles Tillman, the Osage Shareholders Association and other Shareholders not represented by the undersigned, have repeatedly requested that the BIA conduct an election for the Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council, and recognize such Tribal Council as the governing body of the Mineral Estate. The failure of the BIA to take such action resulted in the Shareholders' complete loss of control of the Mineral Estate. The resulting injury and, thus, diminishment in the value of their interest in the Mineral Estate includes, but is not limited to (i) loss of the right to manage and control the finances related to the Mineral Estate, including, the preparation of a budget and spending funds in the manner they see fit; (ii) the loss of the right to seek assistance from the BIA with respect to elections; (iii) the loss of the right to have final approval over leases and contracts with producers; (iv) the loss of the right to manage and control litigation affecting the Mineral Estate, specifically, the case originally styled *The Osage Tribe of Indians of Oklahoma v. The United States of America*, in the United States Court of Federal Claims, Case No. 99-550, which case style was inexplicably changed to the *Osage Nation v. the United States of America*; and (v) subjecting the Shareholders' vested property interest to laws created by the Osage Nation, whose officials are elected by both Shareholders and Non-Headright Osage.

The Shareholders do not seek to challenge the Constitution of the Osage Nation or any laws enacted thereunder. The Shareholders only seek to challenge the BIA's decision to absolve itself from responsibility to administer the Mineral Estate in accordance with the 1906 Act and CFRs.

April 28, 2010

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In the event the BIA fails to conduct an election for the Tribal Council explained herein, which Council the BIA shall recognize as the independent governing body of the Osage Mineral Estate, within ten (10) days from your receipt of this letter or establish a date by which action will be taken, an appeal shall be filed with the Interior Board of Indian Appeals in accordance with 25 C.F.R. § 2.8.

Sincerely,

BARROW & GRIMM, P.C.



William R. Grimm

Charles O. Tillman, Jr.

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Fairfax, OK 74637
TEL: (580) 763-6011

December 21, 2006

Melissa Currey
Superintendent
Bureau of Indian Affairs
Osage Agency
Box 1539
1813 Grand View
Pawhuska, OK 74056
Via U. S. Mail

Jeanette Hanna
Regional Director
U.S. Bureau of Indian Affairs
Muskogee Area Office
3100 W. Peak Blvd.
P.O. Box 8002
Muskogee, OK 74402
Via U.S. Mail

The Honorable James M. Inhofe
United States Senator
453 Russell Senate Building
Washington D.C. 20510-3603
Via U.S. Mail

Members of the Indian Affairs Committee
U.S. Senate
The Honorable John McCain
Chairman 2006
838 Hart Senate Building
Washington D.C. 20510
Via U.S. Mail

Re: *Osage Headright Owners*

Dear Superintendent Currey:

Several problems have arisen since the most recent election of Osage Tribal officials. This election failed to comply with Federal law. Osage elections are held under the supervision of your office pursuant to the Code of Federal Regulations, including section 90.2, et al. 25 C.F.R. 90.31 states "The manner of carrying out elections to be held under the act of June 28, 1906, as amended by the act of March 2, 1929, as amended by the act of August 28, 1957, is covered in the regulations set forth in this part." The regulations clearly indicate that "qualified" voters are headright interest owners. A list of those owners was to be compiled and the election conducted by your office, which has supervision over the notices, ballots and voting.

The recent election occurred under your oversight and is in violation of the Congressional Act of June 28, 1906 and its recent amendment, passed as House Bill 2912 in 2004. That House Bill reaffirmed that the term "legal membership" means persons eligible for allotments of Osage

Reservation lands and a pro rata share of the mineral estate i.e., headright owners. The 2004 house bill stated "Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own membership, provided that the rights of any person to Osage mineral estate shares are not diminished thereby."

The recent Osage Constitution, adopted by the Osage Tribal Council in March of 2006 provides for management of the Osage Mineral Estate by the election of a "Osage Mineral Council" consisting of 8 members. However, this Constitution also indicates that the principal chief has a "veto" authority over all management actions taken by the Osage Mineral Council. It further provides that no "rules or regulations" may be promulgated by the Osage Mineral Council which could be inconsistent with other rules of the Osage Nation, as defined within this Constitution.

Although the "Osage Mineral Council", as defined by the new Osage Nation Constitution, is elected by the headright owners, this Mineral Council has no authority to manage or make decisions without the consent of the current principal chief, who was not elected by the headright owners. Clearly, the 1906 Act and all of the Federal Regulations promulgated thereunder mandate elections of a principal chief and assistant chief "by the headright owners". Those are still in full force and effect and such elected officers of the tribe along with an 8 member Council are still designated by the 1906 Act as amended to govern all matters dealing with the minerals and headright owners of the Osage Tribe.

The duties of the Secretary of Interior and your office are set out in 25 U.S.C. § 2 and other statutes, the regulations and numerous federal cases. The U.S. Supreme Court held that the 1906 act conferred "large administrative supervision" upon the Secretary over the Osage Council elections and those elected. *U.S. ex rel Brown v. Lane*, 232 U.S. 598, 34 S. Ct. 449 (1914). Your duties also extend to supervising and protecting a very valuable asset of the Osage Tribe, its mineral estate. The current Osage Nation Constitution and the most recent election are contrary to the letter and intent of the 1906 Act, as amended by House Bill 2912 in the following manner:

1. No principal chief or assistant principal chief was elected by the headright owners to govern the management of the mineral estate, along with 8 council members;
2. The actions and activities of a council elected by the headright owners cannot be subject to a "veto" power of a principal chief, who was not elected by said annuitants;

Another valuable asset owned by the annuitants/head right owners is their case pending in the United States Court of Federal Claims, consolidated under Case No. 99-550, which has been the subject of some recent reports in the Tulsa World and other newspapers. I have knowledge of the potential value of this case, as it was filed by the tribe when I was the Principal Chief, elected

Dec. 14, 2006

Superintendent of the Osage Agency ltr

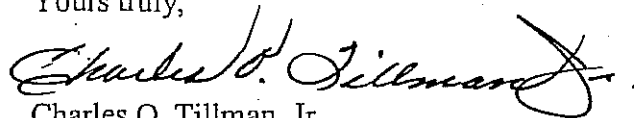
Page 3

by the headright owners. The claims in this case address damages suffered by the headright owners/annuitants. By the actions/inactions of the U.S., the management of this case is not being directed by the persons who are designated in the 1906 Act, inclusive of 8 council members, a principal chief, and assistant principal chief all to be elected by the headright owners. It is not known if the current Osage Mineral Council is even being consulted as to the management of this case.

Your office has responsibility, even in cases against the United States, to see that the rights of the Osage Tribe and its annuitants are properly represented and protected in such litigation. *See* 25 C.F.R. § 89.40 -41. The office of the superintendent is not providing the oversight and support required by Federal law in allowing these valuable claims to be "managed" by persons not elected by the headright owners.

It is my urgent request that your office take immediate steps to rectify the unlawful situation currently existing, as a result of your failure to hold elections as required by Federal law. I further urgently request that you uphold your duty, as trustee, in the management of all matters concerning the Osage Mineral Estate including elections, leasing, royalty revenues, and the claims of the annuitants in Case No. 99-550, currently pending in the United States Court of Federal Claims in Washington D.C.

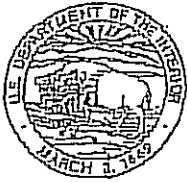
Yours truly,



Charles O. Tillman, Jr.

Former Principal Chief of the Osage Tribe of
Indians, Annuitant and Headright Owner

cc: Osage Mineral Council



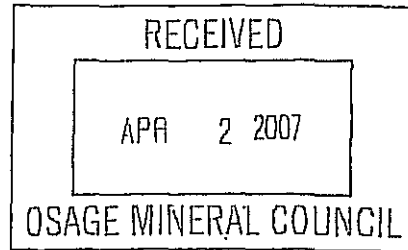
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

MAR 19 2007

Tribal Government Services
COCR 2007 000498



Mr. Charles O. Tillman, Jr.
Rt. 1, Box 45-1
Fairfax, Oklahoma 74637

Dear Mr. Tillman:

Thank you for your letter dated December 21, 2006, to Senator John McCain, in which you seek his involvement in protecting your trust interests. Senator McCain asked our office to respond directly to you.

On December 3, 2004, Congress enacted Public Law 108-431, 118 Stat. 2609 (the Act), which reaffirmed the right of the Osage Nation to determine its own form of government as well as its membership. Until passage of the Act, the Osage Nation was the only federally recognized tribe that lacked express congressional authority to reorganize its form of tribal government and redefine its membership.

At the request of the Tribal government, the Bureau of Indian Affairs (BIA), Eastern Oklahoma Region, provided technical assistance and advice pursuant to Section 1 (b)(3) of the Act to the elected Tribal leadership on conducting an election to implement the Act. After the passage of the Act, provisions in the Code of Federal Regulations (CFR) specifically relating to the Tribe became obsolete. For instance, 25 CFR § 5(e) established a one-quarter degree of Osage Indian blood degree requirement rather than membership to qualify for Indian Preference in employment. Previously, the BIA had to seek a waiver of that provision to provide Indian preference to Osages that were generally considered members but lacked the quarter degree Osage blood. The Act clarified the Tribe's membership and made obsolete the special provisions of 25 CFR §5(e), which related only to the Osages.

The Act included a provision "that the rights of any person to Osage mineral estate shares are not diminished thereby." The Osage Constitution, adopted by the vote of the Osage people as determined by the previous elected tribal leadership and council, upheld the intent and direction of the Congress in this regard. There is no need for the BIA to take any further or new action at this time to protect the Osage mineral estate for those Osages that share in it, which is your concern as a headright holder.



We appreciate your interest in Indian issues.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. ...", is centered on the page.

Director, Bureau of Indian Affairs

cc: Copy to Senator McCain's Washington Office
Director, Eastern Oklahoma Region

108th Congress

SENATE

Calendar No. 697
Report

2d Session

108-343

=====

TO REAFFIRM THE INHERENT SOVEREIGN RIGHTS OF THE OSAGE TRIBE TO
DETERMINE ITS MEMBERSHIP AND FORM OF GOVERNMENT

September 15, 2004.--Ordered to be printed

Mr. Campbell , from the Committee on Indian Affairs, submitted the
following

R E P O R T

[To accompany H.R. 2912]

The Committee on Indian Affairs, to which was referred the bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government, having considered the same, reports favorably thereon without amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of H.R. 2912 is to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2912 affirms the right of the Osage Tribe (the ``tribe'') to form its own membership rules and tribal government, provided that no rights to any shares in the mineral estate of the tribe's reservation are diminished.

The tribe is a Federally recognized tribe with a nearly 1.5 million-acre reservation located in northeast Oklahoma. In 1906, Congress enacted the Osage Allotment Act (``1906 Act''), which is unique among Federal Indian laws in that it restricts the Osage Tribe from defining its own membership rules, and prescribes a particular form of government which the tribe cannot change without seeking amendment of Federal law.

All other Federally recognized Indian tribes in the nation generally have the sovereign right to make their own internal

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membership rules and to form suitable tribal governments. In brief, the 1906 Act--

- Defined the legal membership of the tribe to consist of all living Osage Indians who were on the Secretary of the Interior's 1906 roll for the tribe, plus their children born before July 1, 1907;
- Allotted a certain amount of surface land in the Osage Reservation to the tribal members;
- Provided that the tribe retained all mineral rights to the entire reservation in undivided ownership; and
- Provided for the distribution of royalties from development of mineral resources to each of the enrollees, such shares in the royalties are called ``headright shares''.

The U.S. Federal court decisions have interpreted the 1906 Act to mean that Congress took away the tribe's right to determine its own membership rules. The only individuals who may be members of the tribe and participate in the tribal government are those who are the lineal descendants of the original enrollees under the 1906 Act and who have a headright share of the mineral revenues from the reservation.

As a result, the 1906 Act excludes many thousands of Osage Indians from being members of the tribe because they do not have headright shares. Ironically, in the eyes of the Federal government, such individuals (including full-blooded Osages) are not ``Indians'' because one must be a member of a Federally-recognized tribe to be an Indian.

Those Osages who are precluded from being members of the tribe under the terms of the 1906 Act are thus denied important services and benefits, such as Native American academic scholarships, and more importantly, a role in participating in the life and government of the tribe.

Without clarifying the 1906 Act, the tribe is prevented from exercising its prerogatives as an Indian tribal government and individual Osages are prevented from the full enjoyment of their rights and privileges owing to their rightful membership in the Osage tribe.

H.R. 2912 clarifies the 1906 Act and re-affirms the right and authority of the tribe to craft its own membership, governance, and governmental rules on the same footing as all other Federally-recognized tribes. The bill provides that no individual Osage's rights to shares in the mineral estate are diminished by the exercise of the tribe's re-affirmed authority to determine its own membership.

The bill also directs the Secretary of the Interior to assist the tribe in holding appropriate elections and referenda at the request of the tribe.

LEGISLATIVE HISTORY

H.R. 2912 was introduced on July 25, 2003, by Congressman Frank Lucas (R-OK) and referred to the Committee on Resources. On March 15, 2004, that Committee held a hearing on the bill, and on May 5, 2004, the bill was favorably reported to the House of Representatives by unanimous consent. See H. Rpt. 108-502. On June 1, 2004, the House of Representatives passed the bill, and when it came to the Senate it was referred to the

Committee on Indian Affairs.

On July 14, 2004, the Committee on Indian Affairs favorably reported H.R. 2912 to the Senate with recommendation that it do pass.

COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs, in open business session on July 14, 2004, by a unanimous voice vote of a quorum present, considered the bill and ordered H.R. 2912, in the form of a substitute amendment, reported to the Senate with favorable recommendation that it be passed.

COST AND BUDGETARY CONCERNS

The costs estimate for H.R. 2912, as provided by the Congressional Budget Office, is set forth below.

U.S. Congress,
Congressional Budget Office,
Washington, DC 20515, July 20, 2004.

Hon. Ben Nighthorse Campbell,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2912, an act to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

Elizabeth Robinson
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2912--An act to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government

H.R. 2912 would enable the Osage Tribe to determine the tribe's membership roll and government rules in the same manner as other federally recognized tribes. In 1906, the Congress enacted the Osage Allotment Act that defined membership in the Osage Tribe. Under that act, Osage Indians may be legal members of the tribe and participate in the tribal government only if they are lineal descendants of the original enrollees under the 1906 act and own a share of the mineral revenues from the reservation. CBO estimates that implementing H.R. 2912 would have no effect on the federal budget because federal agencies currently provide services to all Osage Indians and do not restrict services to those considered to be members of the tribe under the Osage Allotment Act. Enacting H.R. 2912 would not affect revenues or direct spending.

H.R. 2912 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the Osage Tribe.

On May 17, 2004, CBO transmitted a cost estimate for H.R.

2912, as ordered reported by the House Committee on Resources on May 5, 2004. The two versions of the legislation and the CBO cost estimates are identical.

The CBO staff contact for this estimate is Mike Waters, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no executive communications relating to H.R. 2912.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impact of H.R. 2912 will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of H.R. 2912 will not effect any changes in existing law.

<all>

March 20, 2006

RECEIVED
MAR 20 2006 1 09

Ms. Melissa Curry
Bureau of Indian Affairs, Osage Agency
901 Grandview
Pawhuska, Oklahoma

We write to inform you of our strong opposition to the Osage Tribe's proposal to delegate authority for the upcoming June elections to the Osage Governmental Reform Commission (OGRC), and to reiterate our continuing objection to the newly ratified Osage Constitution.

We are not aware of any standards that have been provided to the OGRC by either the Osage Tribal Council or the Bureau of Indian Affairs (B.I.A.) to measure or control the OGRC's performance pursuant to the delegation of authority. We are not certain whether such standards exist. We are also not aware of whether the Tribe or the B.I.A. has maintained any authority to review the actions taken by the OGRC in the course of administering our elections. The Osage Tribal Council historically has refused to restrain or even review the actions of the OGRC, stating instead that the OGRC was engendered to be an "impartial and independent" entity. In other words, any authority that has been delegated so far to the OGRC by the Osage Tribal Council has been by "blanket delegation."

We believe that the 1906 Act, as amended, provides that the B.I.A. will continue to administer or, at the very least, have oversight authority over any election pertaining to our Mineral Estate. We recall that the B.I.A. frequently uses election judges, counts votes by hand, and employs other safeguards to preserve the integrity of our elections.

By contrast, over the course of a referendum vote and the Constitutional ratification vote, the OGRC had demonstrated an inability to reach and notify all eligible voters of upcoming elections, to properly and timely mail ballots to absentee voters, and to provide any sort of election monitors or poll judges.

Furthermore, the OGRC seems unable to observe any sort of wall between their official and personal positions on certain matters and what should be the personal decisions of our electorate. Instead, we understand that the OGRC spent more than \$200,000.00 taking trips out of state to encourage Osage voters to vote "yes" on the Constitution, mailing literature conveying the same position, and operating a phone bank where Osage voters were urged to support the Constitution by voting "yes." We further understand that some absentee voters were informed that a "no" vote meant the Tribe would be terminated upon the death of the last remaining allottee.

In fact, among those Osages who live in Osage County, the Constitutional vote was nearly evenly divided. The out of state voters, who were not exposed to anything

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more than the Commission's sales pitches (because the first tangible copy of the Constitution and the Absentee ballots were released almost simultaneously, one month before the ratification vote), made the difference in that election. Our concerns about the OGRC's partiality are compounded by the fact that several members of the OGRC and their close family members intend to run for governmental office in the upcoming elections.

We believe that several portions of the new Osage Constitution override or attempt to override the 1906 Act of Congress, as amended. For example, we understand that the Minerals Council will consist of 8 members but will not have a Chief or Vice Chief. Instead, the Constitution envisions one Executive Branch with (perhaps) dual authority over both governing bodies. We are not sure whether the Chief and the Vice Chief of the Mineral Estate can be jettisoned from our governmental structure (and these labels appropriated for the use of the new government) without a change to the governing federal law.

We further believe that unnecessary and unreasonable voter confusion will result if members of both governing bodies (the National Congress and the Minerals Council), the Executive Branch officials, and any Judicial officials are elected on the same day, especially where certain Osages are not entitled to vote for members of the Minerals Council as a matter of federal law.

In conclusion, we respectfully request that the B.I.A. formally review the matters we have raised in this letter at the earliest possible opportunity. We also request that the B.I.A. exercise its statutory authority to administer elections pertaining to the Osage Mineral Estate, pursuant to established B.I.A. procedures, including the counting by hand of all votes. In short, we request that any election pertaining to the Mineral Estate be conducted separately from any election of National Congress, Executive, or Judicial officers pursuant to the New Constitution.

Very Truly Yours,

Executive Board

**Osage Shareholders Assn.
P.O. Box 418
Pawhuska, OK 74056**

Cc: Ms. Jeanette Hannah, Area Director, Bureau of Indian Affairs
Mr. Jim Cason, Acting Deputy Secretary of the Interior

United States Beef Corporation

RECEIVED
OSAGE AGENCY
PAWHUSKA, OK 74056

January 12, 2007

2007 JAN 17 AM 11 36

Ms. Melissa Currey
Superintendent
Bureau of Indian Affairs
Box 1539
1813 Grand View
Pawhuska, OK 74056


Dear Ms. Currey:

Re: Osage Headright Owners

As an Osage Headright Owner, I am compelled to write this letter of concern for our Osage Minerals Estate Trust. The last election for the Osage Minerals Council was held last June 2006 at which time there was no Principal Chief and Assistant Chief on the ballot as prescribed by the 1906 Act. I did not have the privilege to vote for an executive office of the Osage Mineral Council even though these two executive positions of the Osage Minerals Council has been mandated by Federal law, 1906 Act, with oversight authority by the 25 CFR.

My concern is about the fiduciary responsibility, which is to be provided by the Secretary of the Interior on our minerals estate. Without the Secretary of Interiors enforcement of the law to protect our trust we have been left vulnerable to the vigorous effort that is silently diminishing our minerals estate trust. Mr. Charles O. Tillman, Jr. past Principal Chief of the Osage Tribe has been asked to be an advocate with my full support in this effort to make our Minerals Council whole again and by regaining the stability which only can be found by the enforcement of the law.

Sincerely,



John R. Davis
(Osage Minerals Annuitant and Headright Owner)

JRD/kds

R023

John R. Davis • President

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OSAGE AGENCY
PAWHUSKA, OK 74056
2007 JAN 17 AM 11 27

The Honorable James M. Inhofe
United States Senator
453 Russell Senate building
Washington, D.C. 20510-3603

Members of the Indian Affairs Committee
U. S. Senate
The Honorable John McCain
Chairman 2006
838 Hart Senate Building
Washington, D.C. 20510

Dear Senator: *MELISSA CURREY*

I have always participated in the Osage Minerals Election. I find it very alarming that I did not get to vote for a Principal Chief and Assistant Chief to administer the business of the Minerals Estate Trust. I fear that history will repeat itself and the trust will fall victim to unscrupulous individuals. Please enforce the 1906 Act, which is Federal law.

Ms. Charles Tillman has been asked to send a letter to Washington, D.C. to request an election for Principal Chief and Assistant Chief of the Osage Minerals Council. We are asking for your support and protection of the Osage Minerals Estate Trust.

Sincerely yours,

John Raymond Dennis

Osage Minerals Annuitant and Headright Owner

*GRANDFATHER: BERT B. DENNISON
ORIGINAL ABOVE*

P.S. HAVE A NICE DAY!

R024

Department of the Interior
 Bureau of Indian Affairs
 Osage Agency
 Attn: Melissa Currey, Superintendent
 P.O. Box 1539
 Pawhuska, Ok 74056

October 2007

PAWUHUSKA, OK 74056

2007 OCT 29 AM 10 31

Re: Plea for intervention – Osage Shareholders

To Whom It May Concern:

I, the below signed Osage Shareholder, request the intervention of the office of the Bureau of Indian Affairs, due to the following real and present dangers as described:

The new Osage Constitution, signed by the new Osage Nation Principal Chief, claims and avers that all minerals underlying Osage County, Oklahoma are not owned by the United States in trust for the headright owners, members of the "closed Osage roll" of 2,229 persons in 1906, but by all persons of Osage descent, set forth as the new "Osage Nation". See New Osage Constitution, Article XV, section 4; as well as Article I & II, section 2, which defines Osage Nation.

This new "Osage Nation Constitution" was enacted in 2006. Neither a Principal Chief nor an Assistant Chief were elected by the headright owners as required by the 1906 Act. Instead, the new Osage Nation was formed and a Chief, Assistant Chief and a Tribal Congress were elected by all persons of Osage descent, not "the headright owners" as required by the 1906 Act.

Also in 2006, an eight person "Minerals Council" was elected by the headright owners. However, the new constitution grants the Principal Chief "veto power" over oil and gas leasing decisions and makes any minerals council "rules and regulations" subject to the laws of the new "Osage nation". See Article XV, Section 4 of the Osage Nation Constitution.

In sum, the current Osage Nation is not "the tribe" described in the 1906 Act (and subsequent congressional ratifications) which refers to the "tribe" as the "closed roll" Osage Tribe of Indians, i.e. the headright owners. See 25 CFR 5.1 (c) *infra*. In fact, the new Constitution of the Osage Nation which states that the subject minerals are owned by the "Osage Nation", i.e. all persons of Osage descent, and places the officials elected under said constitution (current Principal Chief, Assistant Chief and Osage Congress) directly at odds with the headright owners, who claim the subject minerals are owned by the United States, in trust for them.

In addition to my concerns in regards to the above I, also, believe that this new government has infringed upon my right to be a member of the Osage Tribe or Nation. The Osage Nation Constitution Article III, Section 2 states: "Qualifications for Membership: All lineal descendants of those Osages listed on the 1906 Roll are eligible for membership in the Osage Nation, and those enrolled members shall constitute the citizenry subject to the provisions of this Constitution and to the laws enacted and regulations approved pursuant to this Constitution."

Federal court decisions have interpreted the 1906 Act to mean that the only ones who may be members of the Osage tribe and participate in the tribal government are those who are the lineal descendants of the original enrollees under the 1906 Act and have a headright share of the mineral revenues from the reservation. (Emphasis mine) Prior to this constitution any person that could prove lineal descent and had a headright share had a

right to participate in the tribal government. This is no longer the case. It is my belief that this change is not only detrimental to those of us that are shareholders/headright owners but, also, to all lineal descendants.

I consider these actions to be a threat to myself and my descendants in regard to my rights as a shareholder of the Osage mineral estate and as a lineal descendant as set out in the above mentioned 1906 Act. I respectfully request that the Department of the Interior, the Bureau of Indian Affairs and other agencies of the U.S. Government as are deemed necessary take any and all appropriate actions needed to insure that these rights are not infringed upon in any manner.

Sincerely,

Judith Watson Soudan I.I.M. # 9304007926 - OSAGE TRIBE

*Judith WATSON SOUDAN
21 LIVE OAK KNOLLS
OROVILLE, CA. 95966*

Department of the Interior
Bureau of Indian Affairs
Osage Agency
Attn: Melissa Currey, Superintendent
Box 1539
Pawhuska, Ok 74056

October 2007

2007 OCT 31 AM 9 01

Re: Plea for intervention – Osage Shareholders

To Whom It May Concern:

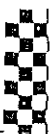
I, the below signed Osage Shareholder, request the intervention of the office of the Bureau of Indian Affairs, due to the following real and present dangers as described:

The new Osage Constitution, signed by the new Osage Nation Principal Chief, claims and avers that all minerals underlying Osage County, Oklahoma are not owned by the United States in trust for the headright owners, members of the "closed Osage roll" of 2,229 persons in 1906, but by all persons of Osage descent, set forth as the new "Osage Nation". See New Osage Constitution, Article XV, section 4; as well as Article I & II, section 2, which defines Osage Nation.

This new "Osage Nation Constitution" was enacted in 2006. Neither a Principal Chief nor an Assistant Chief were elected by the headright owners as required by the 1906 Act. Instead, the new Osage Nation was formed and a Chief, Assistant Chief and a Tribal Congress were elected by all persons of Osage descent, not "the headright owners" as required by the 1906 Act.

Also in 2006, an eight person "Minerals Council" was elected by the headright owners. However, the new constitution grants the Principal Chief "veto power" over oil and gas leasing decisions and makes any minerals council "rules and regulations" subject to the laws of the new "Osage nation". See Article XV, Section 4 of the Osage Nation Constitution.

In sum, the current Osage Nation is not "the tribe" described in the 1906 Act (and subsequent congressional ratifications) which refers to the "tribe" as the "closed roll" Osage Tribe of Indians, i.e. the headright owners. See 25 CFR 5.1 (c) *infra*. In fact, the new



Constitution of the Osage Nation which states that the subject minerals are owned by the "Osage Nation", i.e. all persons of Osage descent, and places the officials elected under said constitution (current Principal Chief, Assistant Chief and Osage Congress) directly at odds with the headright owners, who claim the subject minerals are owned by the United States, in trust for them.

In addition to my concerns in regards to the above I, also, believe that this new government has infringed upon my right to be a member of the Osage Tribe or Nation. The Osage Nation Constitution Article III, Section 2 states: "Qualifications for Membership: All lineal descendants of those Osages listed on the 1906 Roll are **eligible** for membership in the Osage Nation, and those enrolled members shall constitute the citizenry subject to the provisions of this Constitution and to the laws enacted and regulations approved pursuant to this Constitution.

Federal court decisions have interpreted the 1906 Act to mean that the only ones who may be members of the Osage tribe and participate in the tribal government are those who are the lineal descendants of the original enrollees under the 1906 Act and have a headright share of the mineral revenues from the reservation. (Emphasis mine) Prior to this constitution any person that could prove lineal descent and had a headright share had a right to participate in the tribal government. This is no longer the case. It is my belief that this change is not only detrimental to those of us that are shareholders/headright owners but, also, to all lineal descendants.

I consider these actions to be a threat to myself and my descendants in regard to my rights as a shareholder of the Osage mineral estate and as a lineal descendant as set out in the above mentioned 1906 Act. I respectfully request that the Department of the Interior, the Bureau of Indian Affairs and other agencies of the U.S. Government as are deemed necessary take any and all appropriate actions needed to insure that these rights are not infringed upon in any manner.

Sincerely,





IN REPLY REFER TO:

United States Department of the Interior**BUREAU OF INDIAN AFFAIRS**

Eastern Oklahoma Regional Office

P.O. Box 8002

Muskogee, OK 74402-8002

February 28, 2008

Ms. Jenny M. Miller
616 West Seneca
Nowata, OK 74048

Dear Ms. Miller,

This correspondence is in response to your letters dated December 21, 2007, December 25, 2007, January 2, 2008, January 3, 2008, January 25, 2008, January 27, 2008, and February 12, 2008 to this office. In each of your correspondence you continue to express your dissatisfaction with the current leadership of the Osage Nation and the implementation of *Public Law 108-431*.

The position of the Bureau of Indian Affairs has not changed from the December 19, 2007 correspondence sent from this office to you with regards to your views on the internal Tribal operations of the Osage Nation. As stated previously, the views and concerns you express are those which are within the sovereign rights of the Nation in handling its own internal governmental affairs. While you may oppose many of these Tribal actions, again these are not areas in which the Bureau has any role to intervene based on your comments. And as clearly stated in the January 28, 2008 correspondence to you from the Assistant Secretary - Indian Affairs, the Bureau "... will take no further actions in this issue since it is an internal tribal matter ..." and the Bureau has fulfilled its responsibilities under *Public Law 108-431*.

As to your request for a copy of the memorandum dated August 16, 2006 which provided for a waiver of 25 CFR Part 5.1(e) - Osage Tribe, enclosed is a copy of the memorandum. The waiver in effect states that 25 CFR Part 5.1(e), which required a minimum blood quantum, is no longer applicable for Federal Preference in Employment pursuant to *Public Law 108-431*. In short, *Public Law 108-431* supersedes regulations found in 25 CFR that pertain to Tribal membership and the Tribal governmental structure of the Nation.

As to your request for the "... 11 to 15 provisos" referred to in the testimony presented at the House Resources Committee field hearing on March 15, 2004, this discussion was focused specifically in response to the Committee's question on how the Osage Tribe (at that time) was treated differently than the other Federally recognized Tribes across the nation. The reference to provisos pertained to the number of specific regulations found in 25 CFR that pertained specifically to the Tribe. You may contact your local library to reference the 25 CFR or contact the U.S. Government Printing Office to purchase a copy

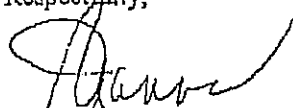
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to view these regulations. The index has the list of the various regulations specific to the Osage.

As to your request for a meeting on the contents of your correspondence, a meeting would not change the Bureau's position that the matters which you provide comments are ones which are better raised within the Tribal government itself. Tribal forums and remedies are options available to you to resolve your concerns on the internal operations of the Osage Nation.

Respectfully,



Regional Director

Enclosure



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Osage Agency
P.O. Box 1539
Pawhuska, Oklahoma 74056-1539



February 21, 2007

Dear Osage Annuitant,

This correspondence is in response to your letter regarding your concerns about the Osage Nation election process and its effects on Osage headright owners.

As you are aware, the Congress enacted *Public Law 108-431*, 118 Stat. 2609, on December 3, 2004, which amended previous laws to allow the Osage Nation to decide its own form of Tribal Government as well as its own membership. Until passage of the Act, the Osage Nation was the only Federally recognized Tribe which was prohibited by Federal law from deciding who its members were and what form of Tribal Government it would operate under as a Tribe. The Congress remedied this situation with the passage of the Act.

Pursuant to Section 1 (3), the Bureau of Indian Affairs, Eastern Oklahoma Region, at the request of the governing body at that time, provided technical assistance and advice to the duly elected Tribal leadership on conducting an election to implement the Act. Upon passage of the Act, any reference in the Code of Federal Regulations (CFR) became moot and were non-applicable. For instance, the Bureau had to seek a waiver that 25 CFR Part 5.1(e), which pertained to Preference in Employment, no longer applied. 25 CFR Part 5.1(e) had established that a one-quarter degree of Osage Indian blood degree was required to obtain an Indian Preference claim for employment. That waiver was granted as, again, *Public Law 108-431* superseded regulations and provided the authority to the Osage Nation to decide who was a member of the Tribe.

Public Law 108-431 also included the statement "... provided that the rights of any person to Osage mineral estate shares are not diminished thereby." It is the position of the Bureau that the Constitution, which was enacted by the vote of the Osage people as determined by the (former) duly elected Tribal Leadership and Council, upheld the intent and direction of the Congress in this regard. As such, there is no action to be taken by the Bureau at this time for the concerns outlined in the letter.

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AR-000160

Further, it is the long-standing policy of the Bureau to refrain from involvement in internal Tribal government issues unless evidence is before the Bureau which indicates governing resolutions/laws were not followed in the election of a Tribal leadership position. Internal disputes of a Tribe are ones in which the Tribe itself has the sovereign right to resolve.

In short, the Bureau has upheld its responsibilities pursuant to *Public Law 108-431*.

Respectfully,


Superintendent



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

file

JAN 28 2008

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BIA-EORO
REGIONAL DIRECTORS OFFICE

Ms. Jenny M. Miller
616 West Seneca
Nowata, Oklahoma 74048

Dear Ms. Miller:

Thank you for your letter dated November 1, 2007, to President George Bush in which you forwarded copies of correspondence addressed to Melissa Currey, Bureau of Indian Affairs (BIA) Superintendent, Osage Agency, regarding the Osage tribal government. The White House forwarded your correspondence to our office for response.

On December 3, 2004, Congress enacted Public Law 108-431, 118 Stat. 2609 (the Act), which reaffirmed the right of the Osage Nation to determine its own form of government as well as its membership. Until passage of the Act, the Osage Nation was the only federally recognized tribe that lacked express congressional authority to reorganize its form of tribal government and redefine its membership.

At the request of the Osage Nation, the BIA, Eastern Oklahoma Region, provided technical assistance and advice pursuant to Section 1 (b)(3) of the Act to the elected Tribal leadership regarding conduct of an election to implement the Act. The Osage Constitution, adopted by a vote of the Osage people, upholds the intent and direction of the Congress in this regard.

The BIA will take no further actions in this issue since it is an internal tribal matter that is best addressed the proper tribal forum. The BIA's policy of non-interference in tribal issues is consistent with Court decisions such as *Wheeler v. United States Dept. of the Interior*, 811 F.2nd 548 (10th Cir. 1987). Furthermore, we have fulfilled obligations established by the Act.

We appreciate your continued interest in American Indian issues.

Sincerely,

Carl J. Artman
Assistant Secretary - Indian Affairs

cc: Director, Eastern Oklahoma Region

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R030

02/12/2010 17:13 FAX

001/001



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240



FEB 12 2010

John H. Mashunkashey, Chairman
Osage Minerals Council
813 Grandview, P.O. Box 779
Pawhuska, Oklahoma 74056

Dear Chairman Mashunkashey:

This letter is in response to your request to the Assistant Secretary-Indian Affairs, Mr. Larry Echo Hawk, to have the Bureau of Indian Affairs conduct the Osage Minerals Council election. The request was outlined in Resolution No. 1-230 of the Minerals Council, which was passed on April 9, 2009, and cited the election to be conducted by the Bureau in accordance with Title 25 of the Code of Federal Regulations (CFR), Part 90.

First, I would like to thank you and the Osage Minerals Council for taking the time to meet with me on Friday, January 22, 2010. Your presence and that of the Council and your legal representatives was helpful as you provided information on 25 CFR, Part 90. We have reviewed that information in light of your request for the BIA to provide assistance with the upcoming election. As was discussed during our meeting, the Bureau of Indian Affairs has not applied the Part 90 regulation(s) since the enactment of the 2004 Osage Reorganization Act. As you know, the 2004 Act resulted in a change in the structure of the Osage Nation when the Act affirmed the Nation's ability to develop the current constitution.

The Department's existing position regarding the intent of the 2004 Act eliminates the BIA's authority under the Part 90 regulations. The BIA must, therefore, decline your request to participate in your election under the Part 90 regulations. However, the BIA will be available to provide modified technical assistance in the administration of the Minerals Council's election with the consent of the Principal Chief of the Osage Nation.

The ability to provide technical assistance in the administration of an election is a general authority that the Bureau may offer to any tribe. We believe that the election of any tribe's officials is a solemn and internal governmental activity. The BIA supports tribal autonomy in the conduct of those activities that promote a tribe's sovereignty. As the Osage Nation processes begin in earnest, we would like to reiterate this sentiment. Our analysis of this matter should not intervene in the internal governmental affairs of the Osage Nation.

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I appreciate the responsibility that the Minerals Council and Principal Chief Gray, hold. We all share a desire for any election results to be defensible. To achieve that desired outcome, I have copied Principal Chief Gray on this letter and express, again, the BIA's offer to provide technical assistance for the election with the consent of the Principal Chief.

Thank you for discussing this matter.

Sincerely,


Acting Director, Bureau of Indian Affairs

Cc: Jim Gray, Principal Chief, Osage Nation
Tulsa Solicitor, Tulsa Field Office