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BY:
JENNY MILLER

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WHERE GOOD, HONEST OSAGES COME TO READ

Mineral Council Meeting

Regular accounting reports were made by the accounting office. When reports were finished, an audience member asked who was on the signature card for the C-395 account. The accountant stated that there were three Mineral Council members and the Osage Nation Treasurer.

When the S510 account report was made, the accountant was asked the same question regarding who was on the signature card. The accountant stated it was the same as the C395 account, three members of the Mineral Council and the Osage Nation Treasurer.

Recall that on July 15, 2011 Congress met after the Hearings, and discussion was regarding two Mineral Council members having told Geoffrey Standing Bear that there were two Mineral Council members on the card and that the Osage Nation Treasurer was not on the card. Therefore, it would seem that we have had several different stories as to who is and how many are in fact on the signature cards perhaps even still today.

Until someone produces a copy of the cards, I certainly would not even try to make a guess as to who is, who isn't or how many are actually on the cards.

Superintendent Currey

Melissa Currey, Superintendent for the BIA reported that she had received several calls from annuitants who were strongly opposed to the Mineral Council giving themselves a raise in salary.

Ms. Curry was asked about a letter that was sent to her regarding the issue with the C395 account and the Osage Nation. Ms. Curry stated that she believes the BIA will conduct an audit. She is still in contact with the Regional Director on this subject. Melissa Currey, Supt., stated that the \$300,000.00 should never have been moved.

Mineral Council Audit

The Council voted to hire an auditing firm to audit the C-395, S-501 and Oil & Gas Summit Accounts. Discussion regarding a decision on which auditing firm would be hired was not

conclusive during this meeting.

Attorney– Mineral Council

Attorney, David McCullough was asked for an opinion on the Resolution that Councilwoman Boone presented at the meeting on Friday of last week. Mr. McCullough wrote a resolution that according to him says the same as Council Woman Boone's but more specific. Mr. McCullough indicated that applying for a separate Federal Tax I.D. would be advisable but would entail a lot of paperwork.

Mr. McCullough also suggested that if the Council chose to have an audit, they should go back to the transition period which would be the beginning of fiscal year 2005-2006. This would therefore begin on October 2005.

Attorney on H.R. 2912

Councilman Curtis Bear asked attorney McCullough his opinion with regard to Nation v. Tribe. Mr. McCullough stated that this all began with H.R. 2912 and the question is, was it handled legally. He stated

that he believed there was already a case filed with regard to the question of H.R. 2912. He stated that the Osage Nation came about in 2006 and the Tribe has existed since 1906.

Office of Special Trustee

A vote was taken whether to keep the Office of Special Trustee in charge of investing the Mineral Estate's money. All Council members voted to keep the Office of Trustee in charge of investing the funds as they have in the past.

There was no discussion regarding pay raises for the Council members today.

Judge Hewitt/Trust Case

Judge Emily C. Hewitt ordered a STAY on the Osage Trust Case (Highest Posted Price) case. This STAY is regarding Tranche 2 of the case. The Court's Order states:

"Pursuant to discussions held during today's telephonic status conference (TSC), any matters that would otherwise be due in this case on and after today, July 13, 2011, through Tuesday, August 9, 2011 are STAYED subject to further order from the court.

The court will hold a TSC on Tuesday, August 9, 2011 at 11:00 a.m. Eastern Daylight

Time. The court will contact the parties with the call-in information.

The parties are urged to contact the court at any time when they believe the involvement of the court will help to secure the just, speedy and inexpensive determination of this action."

What Caused This?

Apparently the United States filed a Motion to Dismiss the Case on jurisdictional grounds. Pipestem's response to the Motion to Dismiss in part states:

The United States' motion argues that another complaint must be filed to revive the Court's jurisdiction, if that jurisdiction was previously absent at any time during the pendency of the case. There is no statutory or jurisprudential basis for such a rule, and therefore it must be rejected. "We must not give jurisdictional statutes a more expansive interpretation than their text warrants; but it is just as important not to adopt an artificial construction that is narrower than what the text provides." Exxon Mobil Corp. v. Allapattah Servs., Inc. 545 U.S. 546, 558 (2005) (citation omitted). Nothing in the text of §1500 requires dismissal of these

cases, and binding precedent forbids it.

Some History

Jurisdiction has been an ongoing issue in this Trust Case. On July 28, 2003, the United States filed a Motion to Dismiss this case stating:

Defendant (U.S.) moves to dismiss plaintiff's (Pipestem/Trust Case) complaint for lack of subject matter jurisdiction pursuant to Rule 12(B)(1) of the United States Court of Federal Claims (RCFC).

Defendant (U.S.) moves to dismiss plaintiff's claims to the extent plaintiff seeks damages on behalf of individual headright interests not held by the Tribe. Defendant asserts that plaintiff does not have standing to bring a claim for the approximately 98.75% of headright interests that it does not own because the Tribe "cannot claim that it has 'personally suffered from actual or threatened injury' as a [f]ederally-recognized Tribe. Defendant (U.S.) argues that the headright holders, not the Tribe, suffer any damages that result from the mismanagement of mineral royalties because, as required by statute, the funds are ultimately distributed to those individuals.

Plaintiff (Pipestem) responds that it has standing because “the Tribe as trust beneficiary has suffered concrete injury for all mismanaged funds paid to the Tribe’s trust accounts.” Pl.’s Brief at 1. Plaintiff maintains that headright holders are not in fact “the real parties in interest” because the Tribe, not the headright holders, is the direct trust beneficiary. The Court agrees.

The Court finds that, under the terms of the 1906 Act relating to the tribal trust fund, there is sufficient injury to the Tribe to establish standing. The mineral royalties at issue go first into a tribal trust fund account where they stay for at least one quarter of the calendar year before being transferred to individual headright owners. The responsibility of the government is to the tribal trust fund account. The tribal trust fund is then responsible for the ultimate distribution to the individual headright owners. Importantly the alleged mismanagement of the mineral royalties is described as taking place when the funds were within the trust fund. The mismanagement is not alleged to take place at the point of distribution of the funds to the individual headright holders. Although

the Tribe may have no further interest or claim to the funds once they are distributed to the headright owners, the court finds that the Tribe does have both an interest in and a claim to the funds when those funds are within the tribal trust account that was established by the 1906 Act. Moreover, defendant’s (U.S.) concern that any damages awarded to the Tribe would not “flow down” to the headright holders, is addressed in the first subsection of Section 4 of the 1906 Act which requires that “all moneys found to be due said Osage Tribe of Indians on claims against the United States, after all proper expenses are paid, shall be...placed to the credit of the individual members of the said Osage tribe on a basis of a pro rata division...”

Teleconference 2007

Telephonic status conference (TSC) filed on November 16, 2007.

Those in attendance during this teleconference were: Judge Mary Ellen Coster Williams, Wilson Pipestem, Jerry Rothrock, Akin, Gum, Strauss, Hauer & Feld. For Defendant (U.S.) Edward Passarelli and Alan Woodcock, BIA.

Here are interesting excerpts of this conversation:

Judge: Now let me go back to something though. It’s my understanding that during the July status conference with Judge Weise, you were urged to file as expeditiously as possible an amended complaint.

Pipestem: Yes Your Honor. I wasn’t sure about, in all candor, that, that was something that we had agreed upon, and that’s one reason we were seeking the transcript from the Court. It is our view, just backing up a little bit, that there was an earlier agreement on the part of former counsel of the Osage Nation to file an amended complaint that would add the Osage Tribal Council as party or Osage Tribal Council members as parties, under the concern expressed by the United States and the Court that this case may be one in which the Osage Tribe does not have standing to represent the interest of the Osage Headright holders, the headright holders being persons who have rights to receive distributions of income from the Osage mineral estate and other trust assets. It is our serious concern that doing so would undermine this case in a significant way.

Judge: Doing what, adding the tribal council members as parties?

Pipestem: Yes, Your Honor.

The Court: Andy why is that?

Pipestem: Because we believe and Judge Hewitt in the Osage Tribe's trust funds claim in the Court of Federal Claims has ruled on this issue that the tribe has standing, and it would be difficult if we add any other parties besides the tribe as Plaintiffs in this case because it would presume that there is some need to add other parties, which the Osage Tribal Council may or may not be enough, but at that point we're down a road of adding all headright holders possibly as interested parties in this case.

Trust Case Status Report

Council Member Whitehorn reported today in the Mineral Council meeting that the Trust Team may have an announcement in 30 days regarding this case.