



# SHAREHOLDER LAWSUIT REPORT

By  
Jenny Miller  
March 17, 2011

## Objection filed 3/14/11

Points of the objection filed on March 14 are summarized in this newsletter. I have placed in italics excellent and strong points made by the Shareholders Attorneys and those taken directly from case law (cases where previous suits have been ruled as law thereby setting a precedent for this case) The actual objection is attached for your review.

### Part I

(1)-----The Mineral Estate is subject to the laws of the Osage Nation, whose officials are elected by non-headright owners.

(2)-----Property rights of the shareholders may be summarized as a complete loss of control over the Mineral Estate and the loss of the right to elect a Principal Chief and Assistant Principal Chief of the Mineral Estate.

(3)-----This loss is resulting from the BIA's adamant refusal to recognize the Mineral Estate is

independent of the Osage Nation and that the 1906 Act governs the rights of headright owners and the governance of the Mineral Estate.

(4)-----Shareholders object to the BIA's recognition of the Osage Nation as the governing body of the Mineral Estate. Plaintiffs have no comment on the Osage Nation Constitution, nor do Plaintiffs seek to "undo" the Osage Nation Constitution.

(5)-----The laws of the U.S. grant the rights to Shareholders that they seek to enforce in this action; which *cannot be rescinded by a tribal constitution or even an act of Congress.*

(6)-----**(Case Law):**  
*(Property interests granted by the United States, once vested, may not be abrogated by statute.)*

(7)-----**(Case Law):**  
*("There is no question that the government may, in its dealings with Indians, create property rights which, once vested, even it cannot alter.")*

(8)-----Shareholders have no opinion regarding the ON Constitution other than that the BIA is prohibited from recognizing a governing body of the Minerals Estate other than the Principal Chief of the Mineral Estate, the Asst. Chief of the Minerals Estate and eight (8) member Minerals Council elected in accordance with the CFRs and the 1906 Act.

### Part II

(1)-----Shareholders object to having failed to exhaust administrative remedies. Shareholders dispute that they were required to initiate such process because the BIA's decision, detailed in numerous letters, constitutes a final agency decision subject to judicial review.

(2)-----In this case, the BIA denied several requests by concerned headright owners for an election for the governing body of the Minerals Estate in a definitive and unwavering manner.

(3) **See Exhibits**

Notably, at least one letter came from the acting Assistant Secretary of Indian Affairs, the highest ranking official charged with the responsibility of Indian Affairs in the DOI, aside from the Secretary of the DOI and Deputy Secretary of the DOI, and the highest ranking official of the BIA

(4)-----The concerned headright owners were not represented by counsel and the Federal Defendants never advised any one of them of their right to appeal the BIA's decision.

(5)-----The legal consequence of the BIA's position is that two separate elections affecting the Mineral Estate occurred under the Nation's supervision without any involvement by the BIA.

(6)-----As noted above, the Assistant Secretary of Indian Affairs in the DOI, the highest ranking official with respect to Indian Affairs aside from the Secretary and Deputy secretary of the DOI and the highest ranking official in the BIA, wrote a letter in which he stated "the BIA will take no further action on this issue," the issue being the failure of the BIA to conduct an election in

accordance with the 1906 Act and CFRs as made clear from the context of the Assistant Secretary's response. See Exhibit 1 – letter dated January 28, 2008 from the Assistant Secretary of Indian Affairs.

(7)-----**(Case Law):**

*The 10<sup>th</sup> Circuit notes that where the agency has repeatedly stated its position and shown no signs of a willingness to reconsider, exhaustion would be futile.*

(8)-----As such, it is evident that the BIA's position in this matter is unwavering and pronounced by a high level, perhaps even final, decision maker on this issue and exhaustion would be futile. (ineffective)

(8)----- This makes clear that even if exhaustion were required under the APA, it is futile (ineffective) to require Shareholders to present pure questions of law to the BIA that unwaveringly pronounced its position on the matter numerous times from officials throughout the BIA hierarchy, beginning with the superintendent of the Osage Agency through the Assistant Secretary of Indian Affairs.

**Conclusion**

The BIA's adamant refusal to conduct an election for the governing body of the Osage Mineral Estate resulted in the diminishment of a valuable vested property interest granted by the United States, to wit, the headright owners' right to control the Mineral Estate.

Well-settled federal law provides that letters stating settled agency positions from which legal consequences flow are final agency decisions subject to judicial review under the APA. It is clear that numerous letters from the BIA express settled BIA positions and the legal consequence of those positions occurred when the Shareholders were stripped of their right to elect the governing body of the Mineral Estate in accordance with the 1906 Act and CFRs.

-End-

Send money to support this if you want to regain control of the Mineral Estate and keep your interest:

Protection Osage Mineral Trust, Acct # 0157087204

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