

7 Mineral Council members signed that they agree to the following ANTI-1906 Act claims and/or Acts in this settlement agreement including some misrepresentations to the Court of Federal Claims and acceptance of the Osage Nation takeover.

NEGATIVE POINTS OF TRUST SETTLEMENT AGREEMENT

RECITALS

Page 2(k), Page 2(l), Page 3(m) (n) (o)

(Mineral Council Accepts Osage Nation Takeover of Osage Tribal Council)

k. Whereas the **Osage Nation Congress** has considered and approved this Agreement and authorized the **Principal Chief and the Speaker of the Osage Nation Congress**, both of whom are members of the Osage Trust Team, to execute this Agreement by resolution dated September 26, 2011, a copy Of which is attached as Exhibit 4;

(Misrepresentation to the Court – The Settlement Agreement was not explained to the Osage Headright Holders)

l. Whereas the Osage Trust Team has consulted with the Osage Headright Holders, by:

- i. the transmission of written materials **explaining the settlement set forth in this agreement.**
- ii. holding a series of meetings with Osage Headright Holders at which representatives of the Osage Trust Team and its lawyers have explained the settlement set forth in this Agreement, and provided a summary of this Agreement to the Osage Headright Holders for review;

(Misrepresentation to the Court – There was no Settlement Agreement completed at the time of the vote)

m. Whereas in cooperation with the Osage Trust Team, the U.S. has canvassed the Osage Headright Holders to confirm support for the actions of the Osage Tribe acting through the Osage Minerals Council in approving this Agreement, using the canvass language set forth in Exhibit 2;

(Misrepresentation to the Court – There was no Settlement Agreement completed at the time of the vote)

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

(Possible Misrepresentation & Coercion)

- o. Recognizing that final adjudication of these claims may take many years and entail great expense, and taking account of the legal risks to both parties in connection with the further prosecution of litigation relating to the Osage Mineral Estate and the Osage Tribal Trust Account, including the Court of Federal Claim Action (at both the trial and appellate levels).

DEFINITIONS

Page 5(n)

(Mineral Council Accepts Osage Nation Takeover of Osage Tribal Council)

“Osage Minerals Council” shall mean the Osage Minerals Council in **Article XV, section 4 of the Osage Constitution** dated March 11, 2006, as the successor to all the powers and rights of the former Osage Tribal Council to act with respect to the Osage Mineral Estate on behalf of itself and Headright holders.

What does Article XV, Section 4 of the Osage Constitution say?

Management of the Osage Mineral Estate: The mineral estate of the Osage Reservation is reserved to the *Osage Nation*. The government of the Osage Nation shall have the perpetual obligation to ensure the preservation of the Osage Mineral Estate. The government shall further ensure that the rights of *members of the Osage Nation* to income derived from that mineral estate are protected.

Page 6(q)

(Mineral Council Accepts & Assumes the Osage Tribe is no longer federally recognized)

“Osage Tribe” shall mean 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.*

Page 6(r)

(Mineral Council Accepts Osage Nation Government as dominant)

“Osage Trust Team” shall mean the team of representatives that has been created by the Osage Tribe? from the Osage Minerals Council, the *Osage Nation Congress and the Osage Nation Executive Branch and that has been authorized to manage and direct litigation and settlement relating to the Osage Mineral Estate and the Osage Tribal Trust Account, including the Court of Federal Claims Action.*

What is this saying?

This is saying that the Osage Nation Congress and the Osage Nation Executive Branch has been authorized to manage and direct litigation and settlement relating to the Osage Mineral Estate and the Osage Tribal Trust Account, including the CFC Action.

Section 7

pages 10, 11, 12 & 13

WAIVERS & RESERVATION OF RIGHTS BY OSAGE TRIBE ON BEHALF OF ITSELF AND THE HEADRIGHT HOLDERS

Why is this interesting?

Now all of the sudden in Section 7, the Osage NATION isn't mentioned ONLY the Osage TRIBE on behalf of itself and the Headright Holders. The responsibility here lays with the Osage TRIBE and the HEADRIGHT HOLDERS. So here is what your 7 Mineral Council members, the Chief (elected by non-shareholders) and the Speaker of the Osage Nation Congress (elected by non-shareholders), agreed to:

a. Waivers and Releases

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

1. all claims asserted, or that could have been asserted by the Osage Tribe in the Court of Federal Claims Action;
2. all claims regarding the United States' obligation to provide a historical accounting or reconciliation of the Osage Tribal Trust Account and the Other Osage Accounts or the United States' fulfillment of such obligation.
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 U.S. 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 Minerals Estate.
- d. the U.S. failed to preserve, protect, safeguard or maintain the Osage Mineral Estate;
- e. the U.S. permitted the misuse or overuse of the Osage Mineral Estate;
- f. the U.S. 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 U.S. failed to enforce the terms of any permits, leases or contracts for the transfer, sale, encumbrances, or use of the Mineral Estate;
- h. the U.S. failed to prevent trespass on the Osage Mineral Estate;
- i. the U.S. failed to report or to provide information about the U.S'. actions or decisions relating to, or to prepare an accounting of the Osage Mineral Estate;
- j. the U.S. transferred, sold, encumbered, allotted, managed, or used the Osage Mineral Estate; and,
- k. the U.S. failed to manage the Osage Mineral Estate properly by failing to undertake prudent transactions for the sale, leas, use, or disposal of the Osage Mineral Estate.

4. all claims regarding the United States' alleged mismanagement of the Osage Tribal Trust Account and other Osage Accounts up through and including September 30, 2011, including but not limited to any claim or allegation that:

- a. the U.S. failed to invest revenue in the Osage Tribal Trust Account and/or Other Osage Accounts in a timely manner;
- b. the U.S. maintained excessive cash balances in the Osage Tribal Trust Account and/or Other Osage Accounts;
- c. the U.S. failed to obtain an appropriate return on funds in the Osage Tribal Trust Account and/or Other Osage Accounts;
- d. the U.S. failed to deposit monies into the Osage Tribal Trust Account and/or Other Osage Accounts or disburse monies from the Osage Tribal Account and/or Other Osage Accounts in a proper and timely manner;
- e. the U.S. disbursed monies from the Osage Tribal Trust Account and/or Other Osage Accounts without the Osage Tribe's proper authorization; and,
- f. the U.S. failed to report or provide information about the U.S'. actions or decision 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 the Agreement.

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

- (1) subject to Subsection 8(h), assert any claim for harms or damages incurred or suffered AFTER September 30, 2011;
- (2) receive payment of any balance shown on the Periodic Statement provided to the Tribe in accordance with Subsection 8(a) for any of the Other Osage Accounts.
- (3) 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 Subsection 7(a) shall take effect upon the Date of Payment.

Section 8

Page 17 (h)

ACCOUNTING MATTERS

(POSSIBLY ALREADY ACTIONABLE CASE FOR SHAREHOLDERS)

h. Excepting claims of fraud or gross negligence, the Osage Tribe conditionally waives and covenants not to sue the United States, its agencies (including but not limited to the Interior Department and the Treasury Department), its officials, its employees, or its agents, for FUTURE TRUST FUND MISMANAGEMENT CLAIMS RELATING TO THE OSAGE TRUST ACCOUNT AND OTHER OSAGE ACCOUNTS for a particular calendar year, if the Osage Tribe acting through the Osage Minerals Council does not present an objection in writing to the Department of the Interior, as specified in Subsection 8(g). This waiver and covenant not to sue is conditioned on (i) the Interior Department continuing in the future, at a minimum, to provide the Osage Tribe through the Osage Mineral Council with the Periodic Statements described herein and (ii) the Interior Department's compliance with Subsections 8(e) and (f).

Section 10

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EFFECTIVE DATE

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

Section 11

Page 23, 24, 25

OTHER PROVISIONS

(POSSIBLY ALREADY ACTIONABLE CASE FOR SHAREHOLDERS)

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

e. Authority of Parties to Enter Into Agreement. The undersigned representative(s) for each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to bind legally such Party to it. The Osage TRIBE enters this Agreement ON BEHALF OF ITSELF AND THE HEADRIGHT HOLDERS. *(See Section 8, page 17 h)*

f. Required Party. The Parties agree that the OSAGE TRIBE is the ONLY party WITH STANDING and INTEREST to bring claims relating to the accounting and management of funds in the Osage Tribal Trust Account and OTHER OSAGE ACCOUNTS or claims relating to the management of the Osage Mineral Estate. The Parties further agree that the Osage TRIBE'S interest in any such claim is such that the Osage TRIBE would be a REQUIRED party for the purposes of Rule 19(a) of the Federal Rules of Civil Procedure and for purposes of Rule (19(a) of the Rules of the Court of Federal Claims.

What Does Rule 19 say?

Federal Rules of Civil Procedure
IV PARTIES. Rule 19

(a) Persons Required To Be Joined if Feasible.

(1) Required Party

A person who is subject to service of process whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action as is so situated that disposing Of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) **Joinder by Court Order.**

If a person has not been joined as required, the court must order that the person be made a party. A Person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an Involuntary plaintiff.

g. No Cooperation. The Osage TRIBE, its officers or employees, **including the Osage Mineral Council** shall not aid, assist, or support in any way any individual or party in the development, initiation, or litigation of a claim against the U.S. that the Osage Tribe has otherwise waived in this 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 Court of Federal Claims Action. The Osage Tribe has obtained contractual commitments from its experts and consultants in the Court of Federal Claims Action that these experts and consultants will not advise, assist, or support in any way any individual or party in the development, initiation, or litigation of a claim against the U.S. that the Osage Tribe has otherwise waived in this Agreement, a list of which experts and consultants is attached as Exhibit 5.

Note: This statement is very questionable given that the only legal representation of the Osage TRIBE is the Osage Mineral Council.