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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CORA JEAN JECH, an individual, CHARLES )  
TILLMAN, an individual, DUDLEY )  
WHITEHORN, an individual, JOE HALL, an )  
individual, JOANNA BARBARA, an individual, )  
R.E. YARBROUGH, an individual, CODY )  
TUCKER, an individual, JOHN JOHNSON, an )  
individual )

Plaintiffs, )

vs. )

The UNITED STATES OF AMERICA, )  
DEPARTMENT OF INTERIOR, KEN )  
SALAZAR, Secretary of the Interior, BUREAU )  
OF INDIAN AFFAIRS and LARRY )  
ECHOHAWK, Assistant Secretary, Indian )  
Affairs, )

Defendants. )

Case No. 09-CV-818-TCK-TLW

**COMPLAINT**

COME NOW the Plaintiffs, Cora Jean Jech ("Jech"), Charles Tillman ("Tillman"), Dudley Whitehorn ("Whitehorn"), Joe Hall ("Hall"), Joanna Barbara ("Barbara"), R.E. Yarbrough ("Yarbrough"), Cody Tucker ("Tucker") and John Johnson ("Johnson") (Jech, Tillman, Whitehorn, Hall, Barbara, Yarbrough, Tucker and Johnson, collectively, the "Shareholders" or "Plaintiffs"), and for their Complaint against the United States of America, Department of Interior ("DOI"), Ken Salazar, Secretary of Interior ("Salazar"), Bureau of Indian Affairs ("BIA"), and Larry Echohawk, Assistant Secretary, Indian Affairs ("Echohawk") (DOI, Salazar, BIA and Echohawk, collectively, the "Defendants"), and allege and state as follows:

I  
**Jurisdiction and Parties**

1. Plaintiffs are descendants of original allottees and lawful owners of a headright interest in distributions from the Osage Mineral Estate; thus, Plaintiffs are legal members of the Osage tribe of Indians ("Osage Tribe"), as defined in the Osage Act of June 28, 1906, 34 Stat. 539 (the "1906 Act"), as amended.

2. Plaintiff Jech is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

3. Plaintiff Tillman is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

4. Plaintiff Dudley is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

5. Plaintiff Hall is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

6. Plaintiff Barbara is an individual legal member of the Osage Tribe residing in California.

7. Plaintiff Yarbrough is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

8. Plaintiff Tucker is an individual legal member of the Osage Tribe residing in Osage County, Oklahoma.

9. Plaintiff Johnson is an individual legal member of the Osage Tribe residing in California.

10. Defendant DOI is an agency of the United States responsible for providing oversight and superintendence of federally-recognized American Indian tribes.

Defendant Salazar is currently the Secretary of Interior and Defendant Echohawk is currently the Assistant Secretary - Indian Affairs.

11. Defendant BIA is a bureau under the Department of the Interior charged with the responsibility of managing and administering the land and mineral rights held in trust by the United States of America for American Indians.

12. Jurisdiction against Defendants is proper pursuant to 5 U.S.C. § 702 and/or 25 U.S.C. § 345.

13. Venue is proper pursuant to 28 U.S.C § 1391.

## II Background Facts

14. In 1872, the United States Congress ("Congress") confirmed a reservation to the tribe of Osage Indians. Discoveries of oil and gas on the reservation followed in approximately 1896. The oil and gas discoveries lead to unrivaled tribal wealth, which made the Osage Indians particularly susceptible to fraud and overreaching. *Cohen's Handbook of Federal Indian Law*, (Neil Jessup Newton, ed., LexisNexis Matthew Bender, 2005 ed.) (hereinafter "Cohen"), § 4.07(1)(d).

15. In response, Congress enacted the 1906 Act to individualize Osage tribal property and protect the Osage tribal member's mineral estate. *Id.*

16. The 1906 Act, among other things, (1) required the creation of a final tribal roll of the members entitled to receive distributions (§ 1); (2) allotted Osage lands (§ 2); (3) reservation of mineral rights to the Osage Tribe in the allotted lands (§ 3); (4) set aside a trust fund for the sale of lands and income from the Osage mineral estate (§ 3); and (4) prescribed the form of tribal government (§ 9) 1906 Act.

17. Section 1 of the 1906 Act limited the enrollment of members of the Osage Tribe entitled to receive distributions to persons on the roll at the time of the 1906 Act, and their children born before July 1, 1907 ("Allotted Members").

18. The reservation of the mineral rights to the allotted lands is commonly referred to as the Mineral Estate. The 1906 Act provided that the income and royalties derived from the Mineral Estate was to be held by the United States in trust for the Osage Tribe ("Tribal Trust");

to the credit of the individual members of the said Osage tribe on the basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, or to their heirs as hereinafter provided. 1906 Act, § 4.

19. As the roll created by the 1906 Act is the "permanent basis for per capita distributions of tribal income and property" it "converted the right to receive tribal property distributions into a restricted tenancy in common in the persons on the 1906 roll." *Cohen*, § 4.07(1)(d).

20. The right to receive distributions from the Tribal Trust is commonly referred to as a "headright"; persons who own headrights are commonly referred to as "Shareholders."

21. A headright is a vested communal property interest granted by Congress in the 1906 Act to a pro rata share of the funds generated from the tribal mineral resources. The headright is subject to restrictions alienation. This headright interest can be conveyed to heirs and devisees, but since 1984 no more than a life estate in the headright can be conveyed to one who is not an Osage Indian. *Osage Tribe of Indians Technical Corrections Act of 1984*, Pub.L. 98-605, 98 Stat. 3163, § 2(e) (1984).

22. The 1906 Act, as amended by Pub. L. No. 95-496 §§ 5, 7 and 8, 92 Stat. 1660 (1978), further provides that headrights pass to the heirs, devisees and assigns of the Allotted Members, subject to the above noted restrictions on inheritance by non-Osage persons or entities.<sup>1</sup> Consequently, some Osage own no headrights, others may own a fractionalized interest in a headright, while others may own multiple headrights. In fact, some headrights are owned by non-Osage. *See Cohen*, § 4.07(1)(d).

23. The "headright" is a substantial property right because it provides quarterly income distributions to the Shareholders, that is, the legal members of the Osage Tribe. Additionally, a small portion of the revenues from the Mineral Estate held in the Tribal Trust are used to fund the operations of the Osage Tribe.

24. Several lawsuits have been filed that impact the Osage Tribe and the Shareholders.

- a. On June 10, 1996, beneficiaries of the interests held in trust by the United States for the benefit of certain Native Americans initiated a lawsuit styled *Elouise Pepion Cobell, et.al. v. Dirk Kempthorne, Secretary of Interior, et. al.*, in the District Court of the District of Columbia, Case No. 96-1285 (JR) ("*Corbell*"), alleging mismanagement of tribal trust funds. The parties in this case have reportedly reached a settlement that is awaiting approval from the Court.
- b. In 1999, in a case styled *The Osage Tribe of Indians of Oklahoma v. The United States of America*, in the United States Court of Federal

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<sup>1</sup> The term Osage is used herein generally to refer to persons that are descendents of the Allotted Members, but who do not presently own a headright.

Claims, Case No. 99-550, the Osage Tribe filed a lawsuit against the United States, *et. al.* alleging, among other things, that the United States failed to collect royalties and failed to invest collected royalty income in the manner required by law. Federal Court of Claims case No. 00-169, originally styled *The Osage Tribe v. United States of America*, made similar allegations, but for reasons unbeknownst to Plaintiffs and unexplained by the Court, the caption of the case was changed to reflect that the plaintiff was the Osage Nation. Ultimately Case No. 00-169, was consolidated into Case No. 99-550. Due to the fact that over 100 years of mismanagement was at issue, to simplify the proceedings, the Court first considered a "sampling" of claims consisting of payments collected from only five oil and gas leases for a specified period of time and called the sample "Tranche One." The Court ultimately granted judgment in favor of the Osage Tribe/Nation in Tranche One of approximately \$1.8 Million and the remaining claims are still pending before the Court.

- c. In the Northern District of Oklahoma, in a case styled *Fletcher, et. al. v. The United States of America, et. al.*, Case No. 02-cv-427E, on May 31, 2002, certain members of the Osage Tribe and the Osage Development Council filed a lawsuit against the United States alleging, among other things, mismanagement of trust funds based on the distribution of such funds to non-Osage. This case is currently pending before Judge Frizzell.

25. The tribal government prescribed by the 1906 Act, as amended, for the Osage Tribe included a principal chief, assistant principal chief and an eight-member Osage Tribal Council.<sup>2</sup> The 1906 Act's provisions for elections of tribal officials and the Osage Tribal Council were amended in 1978 to require elections every four years "in a manner prescribed by the Secretary of the Interior."<sup>3</sup> The 1978 amendment further provides that "the tribal government so constituted shall continue in full force and effect until January 1, 1984 and thereafter until otherwise provided by Act of Congress."<sup>4</sup>

26. Elections of the officers of the Osage Tribe and Osage Tribal Council are governed by 25 C.F.R. Part 90, which provides, among other things, that only members of the Osage Tribe, that is, headright owners, are permitted to vote in elections or qualified to run for tribal office. Each ballot cast has "exactly the same value as the voter's headright interest shown on the last quarterly annuity roll." *Id.* Each headright owner is, thus, entitled to a vote that is directly proportional to his headright interest, much like shareholders in a corporation.

27. The BIA is charged with the responsibility of administering the elections of the Osage Tribe. Traditionally, the elections were administered as follows:

- a. The Chief of the Osage Tribe appointed a Supervisor of the election, which always occurred the first Monday in June.
- b. The BIA worked with the Supervisor to administer the election.

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<sup>2</sup> 1906 Act, *as amended by* Act of March 2, 1929, § 7, 45 Stat. 1478; Pub. L. No. 95-496 §§ 5, 7 and 8, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- c. The BIA prepared the ballots or delegated the ballot preparation to an outside company. In either event, the Osage Tribe was never responsible for language or format of the ballots.
- d. The BIA maintained the "roll book," which listed each headright owner and the amount of the headright owned.
- e. The Supervisor would appoint an assistant to aid in the administration of the election.
- f. The Supervisor, Supervisor's Assistant and the BIA would select six (6) judges and six (6) clerks.
- g. The clerks were responsible for checking that the voter was in the "roll book" and the judges were responsible for administering the ballots.
- h. The BIA was intimately involved in the election and, with the Supervisor, Assistant Supervisor, judges and clerks, ensured that the votes were tabulated.

28. The 1906 Act did not limit the authority of the Osage Tribe to matters only concerning the Mineral Estate and, indeed, the Osage Tribe had general governmental authority over other affairs, such as participation in federal programs. *See Logan v. Andrus*, 640 F.2d 269, 270-71 (10<sup>th</sup> Cir. 1981). Thus, the authority of the Osage Tribe was two-fold: (1) manage the Minerals Estate in accordance with the 1906 Act and (2) manage the other general affairs of the Osage Tribe.

29. The Tenth Circuit noted that by proscribing the Osage Tribe's form of government in the 1906 Act, "Congress terminated the power of the Osage Tribe to create a form of tribal government inconsistent with the prescription of the 1906 Act."

*Fletcher v. U.S.*, 116 F.3d 1315, 1330 (10<sup>th</sup> Cir. 1997). In so holding, the Tenth Circuit noted that "Congress' prescription of a form of tribal government and the restriction of a tribe's powers over internal affairs in this way appears unique in its relations with Indian tribes." *Id.*

30. On December 3, 2004, Congress clarified its role in the Osage Tribe's affairs by enacting the "Reaffirmation of Certain Rights of the Osage Tribe", Pub. L. No. 108-431, 118 Stat. 2609 ("Reaffirmation Act"), which provides in pertinent part:

(a) FINDINGS . . .

**(3) *Today only Osage Indians who have a headright share in the mineral estate are "members of the Osage Tribe."***

(b) REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE

(1) MEMBERSHIP. —Congress hereby clarifies that the term "***legal membership***" in section 1 of the [1906 Act], means the persons eligible for allotments of Osage Reservation lands and a pro rata share of the Osage mineral estate as provided in that Act, not membership in the Osage Tribe for all purposes. Congress hereby reaffirms the inherent sovereign right of ***the Osage Tribe*** to determine its own membership, ***provided that the rights of any person to the Osage mineral estate shares are not diminished thereby.***

(2) GOVERNMENT.—Notwithstanding section 9 of the [1906 Act], Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government.

(3) ELECTIONS AND REFERENDA.—At the request of the Osage Tribe, the Secretary of the Interior shall assist the Osage Tribe with conducting elections and referenda to implement this section. *Id.* (emphasis added).

31. Thus, through the Reaffirmation Act, Congress clarified that the Osage Tribe could determine its own form of government with respect to the second part of its authority, the management of the general affairs of the Osage not involving the Mineral

Estate, but specifically prohibited any action that would diminish the headright owner's rights to the Mineral Estate. The Tenth Circuit agrees 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.*, 160 Fed.Appx.792, 2005 WL 3551108 (10<sup>th</sup> Cir. 2005) (emphasis added).

32. Notwithstanding a declaration by Congress that as of the date of the Reaffirmation Act, December 3, 2004, only headright owners were members of the Osage Tribe, Jim Gray, the Principal Chief at that time, orchestrated a series of events which culminated in the disenfranchisement of the members of the Osage Tribe, ratification of a new constitution, which significantly diminished the headright owner's interest in the Mineral's Estate, and a different name, the "Osage Nation."

33. In light of the Reaffirmation Act, the Osage Tribe launched the Osage Nation Government Reform Project ("Government Reform Project").

34. In June of 2005, the Osage Tribe hired Mary Hepsibah Barnett ("Barnett") to act as coordinator of the Government Reform Project. The Osage Tribe further appointed a ten-member commission to oversee the process ("Government Reform Project Commission"). Despite that the Government Reform Project involved a complete overhaul of the Osage Tribal government as it had existed for the past 100 years, Gray instituted an inflexible deadline of January of 2006 for the referendum vote on the proposed new constitution. The deadline was a mere six months prior to the Osage Tribe's elections, which, under the current tribal government pursuant to the 1906 Act, as amended, occurred every four years.

35. The Government Reform Commission held a referendum to determine the mandate of the "Osage" people. The determination of "who is Osage" and, thus, entitled to vote on the proposed constitution and in the June 2006 election, changed periodically from June 2005 through June 2006, and unquestionably included persons who were not headright owners.

- a. "Notice of Constitutional Referendum" Osage's with a CDIB card or Membership Card are eligible to vote, date unknown.
- b. February of 2006, Osage News, Volume 3, Issue 2: The Osage Tribal Membership card makes you a member of the tribe.
- c. "Notice of New Voting Criteria" (date after March 11, 2006, but before June 5, 2006): All Osage who have attained the age of 18 years and who possess tribal Membership Cards issued subsequent to October 9, 2002, bearing the signature of Principal Chief Jim R. Gray, shall be considered enrolled members during this transition and entitled to vote in the Osage Nation Election of June 5, 2006.

36. The Osage Tribal Council never approved the allowance of open voting by non-headright holders on the proposed constitution to change the form of government for the Osage Tribe.

37. Congress specifically stated in the Reaffirmation Act that as of December 2004, the only members of the Osage Tribe were headright owners. Thus, under the current law, the only persons that were entitled to vote on a new form of government would be the headright owners, as they were the only members of the Osage Tribe at the time.

38. On March 11, 2006, some Osage voted to ratify the Constitution of the Osage Nation. The Government Reform Commission and not the BIA administered the election for the ratification of the proposed constitution. The election was not administered pursuant to 25 C.F.R. Part 90, the BIA did not regulate who could vote on the proposed Constitution of the Osage Nation, the BIA did not prepare the ballots or absentee ballots and the BIA was not otherwise involved in the ratification process.

39. Instead, *all* Osage persons, irrespective of headright ownership, eighteen years or older by that date were eligible to vote, provided their name appeared on the Master List of Voters by March 1, 2006, and they had proof of voter identification in the form of a CDIB card or Osage Membership Card. Inexplicably, the ratification procedure was outlined in the Constitution and provided:

This Constitution, when ratified by a majority vote of the qualified voters of the Osage Nation voting in an election called for that purpose by the Osage Government Reform Commission, shall be effective from the date of approval by the Osage People . . . *Osage Nation Constitution*, Exhibit "A."

40. Qualified Voters are defined in Article XIII – Suffrage and Elections as "All enrolled members of the Osage Nation who shall have attained the age of eighteen 18 years and are registered to vote as provided by Osage law shall be qualified to vote under the authority of this Constitution." *Osage Nation Constitution*, Exhibit "A." Therefore, the qualified voters are simply persons qualified to vote under Osage law. However, Osage law could not exist at this time, of course, because the very nature of the constitution was to establish a new government.

41. The proposed final draft of the Constitution of the Osage Nation was not included on the ballots and a copy of the final draft of the Constitution of the Osage

Nation was not mailed with the absentee ballots or available at the polls. Therefore, it is unclear how the majority of the voters knew which version of the proposed Constitution of the Osage Nation was submitted for ratification.

42. The following language was included in the Constitution of the Osage Nation, ratified by any Osage person with a Membership Card, irrespective of headright ownership, on March 11, 2006:

#### ARTICLE III – MEMBERSHIP

Section 1. Base Membership Roll: The base membership of the Osage Nation shall consist of those persons whose names appear on the final roll of the Osage tribe of Indians pursuant to [the 1906 Act].

Section 2. Qualifications for Membership: All lineal descendents 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 . . .

Section 4. Membership Laws: The Osage Nation Congress shall have the power and is required to regulate membership and maintain a correct roll of all Osage enrolled as members of the Osage Nation. The Osage Nation Congress shall enact laws, not inconsistent with this Constitution, prescribing rules and regulations governing membership, including application and appeal procedures, loss of membership, and the adoption of members.

*Osage Nation Constitution*, Exhibit "A." Notably, pursuant to Article III, headright owners are only "eligible" for membership in the Osage Nation, in direct contradiction with the Reaffirmation Act.

43. The Constitution further abolished the Osage Tribal Council, instead providing that the Minerals Estate was reserved to the Osage Nation and establishing a Minerals Council that has very little actual authority to manage the Mineral's Estate without the intervention of the Principal Chief or Osage Nation:

## ARTICLE XV – NATURAL RESOURCES AND MINERALS

Section 2. Osage Mineral Estate: The oil, gas, coal and/or other minerals within the boundaries of the Osage Reservation are hereby reserved to the Osage Nation pursuant to the [1906 Act], as amended, and is hereby designated the Osage Minerals Estate.

Section 3: Osage Mineral Royalties: the right to income from mineral royalties shall be respected and protected by the Osage Nation through the Osage Minerals Council formerly known as the Osage Tribal Council and composed of eight (8) members elected by the mineral royalty interest holders.

Section 4: 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.

To discharge those obligations, the Osage Nation hereby creates a minerals management agency, designated the Osage Minerals Council, consisting of members of the Osage Nation who are entitled to receive mineral royalty income from the Osage Mineral Estate, as provided by federal law. Only Osage mineral royalty interest holders shall be entitled to vote in electing the Osage Minerals Council.

...

Article XV continues to provide that the Minerals Council may promulgate rules and regulations, provided the same are not inconsistent with the laws of the Osage Nation. The Minerals Council may approve leases and other forms of development; however, such power is subject to the veto by the Principal Chief. The resolution of disputes between the Minerals Council and the Principal Chief will be resolved by the Osage Nation Judiciary. *Osage Nation Constitution*, Exhibit "A."

44. Consequently, under the Osage Nation's Constitution, the scope of the Minerals Council's authority is subject to the decisions of the Principal Chief and the Osage Nation Congress, which is comprised of officials elected by the Osage in a one-

man, one-vote process, where the voters may or may not own headrights. *See Osage Nation Constitution*, Exhibit "A."

45. On June 12, 2006, Jim Gray was elected the first Principal Chief of the Osage Nation by a vote of Osage persons 18 years or older that presented an Osage Membership Card that bore Jim Gray's signature. Plaintiffs have been unable to identify any other criteria for establishing membership and/or voter qualification. *See* paragraph 21(d) above.

46. The new Minerals Council under the Osage Nation was also elected on June 12 2006. Despite repeated requests, aside from providing a list of headright owners, the BIA refused to supervise, administer or otherwise be involved with the election of the Minerals Council, instead claiming it would not participate in such election unless Jim Gray himself specifically made a request in writing.

47. By letter dated October 19, 2006, Jim Gray informed the Osage Agency, Bureau of Indian Affairs, that "Contrary to the understanding of Osage Agency, the Osage Nation is the 'direct trust beneficiary' of the Osage Mineral Estate and the Osage tribal trust account." *See Letter from Jim Gray to Melissa Curry and Jeanette Hanna*, October 19, 2006, Exhibit "B".

48. By an undated letter to all shareholders, Jewell Purcell, Chairperson of the Minerals Council wrote: "[t]he Osage Minerals Council is within the Osage Nation as stated in the Osage Nation Constitution . . . [t]he Minerals Estate is in trust with the Secretary of Interior for the benefit of the Osage Tribe which is now governed by the Osage Nation Government and Constitution. The Osage Nation is now made up of

members who are on the Membership Roll and are eligible to vote." *Undated letter from Jewell Purcell to Shareholders, Exhibit "C."*

49. On December 21, 2006, Plaintiff Tillman, former Principal Chief of the Osage Tribe and concerned headright owner, wrote a letter to the Superintendent of the Osage Agency and Regional Director of the BIA, alerting the BIA to the problems with the Osage Nation's control over the Mineral Estate and demanding that the DOI and Secretary of Interior conduct the Osage Tribal Council elections in accordance with the 1906 Act as amended, stating, among other things:

- a. Osage Minerals Council, while elected by headright owners, has no meaningful authority to make decisions without the consent of the principal chief, who was not elected by the headright owners.
- b. The 1906 Act is in full force and effect and mandates the election of a principal chief and assistant chief by the headright owners and an eight-member tribal council to govern all matters dealing with the minerals and headright owners.
- c. The Secretary of Interior is charged with the responsibility of supervising and protecting the Osage Mineral Estate.
- d. The June 2006 elections were contrary to the 1906 Act insofar as no principal chief, assistant principal chief were elected to, with the tribal council, govern the management of the mineral estate and the actions and activities of a council elected by headright owners cannot be subject to a veto power of a principal chief that was not elected by such headright owners. *See Letter from Tillman to BIA, Senator Jim*

*Inhofe and the Senate's Indian Affairs Committee, December 21, 2006, Exhibit "D."*

50. On February 21, 2007, Melissa Curry, Superintendent of the Osage Agency of the Bureau of Indian Affairs, responded to a similar inquiry by a headright owner named Diane Simpkins, and stated the Reaffirmation Act "amended previous laws" and "superseded regulations and provided the authority to the Osage Nation to decide who was a member of the tribe." *See Letter from Melissa Curry to Diane Simpkins, February 21, 2007, Exhibit "E."* With respect to the Congressional mandate in the Reaffirmation Act that the new tribal government could not diminish the headright owner's interest in the minerals estate, the Bureau of Indian Affairs stated "[i]t is the position of the Bureau that the [Osage Nation] Constitution . . . upheld the intent and direction of the Congress in this regard." *Id.* The BIA further noted that upon the passage of the Reaffirmation Act, the Code of Federal Regulations governing the elections of the Tribal Council over the Minerals Estate became moot. *Id.*

51. Notably, Jim Gray as Chief of the Osage Nation does not dispute that the Osage Nation has complete control over the Mineral Estate, noting in a letter dated May 14, 2008, that "[w]hile the Minerals Council maintains authority to approve and execute mineral leases, it holds no authority under the Osage Constitution to stand as the legal representative for the Osage Nation in regards to the Osage Minerals Estate, which **belongs** to the Nation." *See Letter from Jim Gray to Chairman Mashunkashey, Osage Minerals Council, May 14, 2008 (emphasis added), Exhibit "F."*

52. The above-described actions result in a diminishment in the headright owners interests in the Minerals Estate because non-headright owners exercise primary

control and authority over the Mineral Estate contrary to the mandate of the 1906 Act and the Reaffirmation Act. Not unlike shareholders in a corporation, the headright owners' right to control the Minerals Estate through the weighted voting process is an inalienable property right granted by Congress in connection with headright ownership.

53. The Defendants' actions in refusing to administer the election for ratification of the Osage Nation Constitution, refusing to conduct the election of the Tribal Council and otherwise refusing to acknowledge the Mineral Estate as separate and independent from the Osage Nation disenfranchised the headright owners by revoking their control over the Minerals Estate, in violation of the 1906 Act, as amended and the Reaffirmation Act.

**First Cause of Action – Declaratory Judgment**

54. Plaintiffs reallege and restate paragraphs 1-53 above.

55. Plaintiffs are entitled to seek a judicial declaration of the rights of the parties involved in this case under 28 U.S.C. § 2201.

56. Plaintiffs are entitled to a declaratory judgment that:

- a. The Reaffirmation Act did not supersede or rescind the 1906 Act, but rather clarified the 1906 Act by differentiating between legal membership in the Osage Tribe and membership in the Osage Tribe for all purposes;
- b. The provisions of the 1906 Act with respect to the legal members and the Mineral Estate remain in full force and effect;

- c. The right to vote for a Tribal Council, Chief and Assistant Chief were fundamental and inalienable property rights associated with the ownership of a headright;
- d. The right that the value of a ballot is directly proportional to the amount of the headright is a fundamental and inalienable property right associated with the ownership of a headright;
- e. The DOI and BIA are required to conduct elections for the Minerals Estate and Tribal Council to manage and control the Minerals Estate pursuant to the 1906 Act and the Code of Federal Regulations.

**Second Cause of Action – Mandatory Injunction**

57. Plaintiffs reallege and incorporate paragraphs 1- 53 above.

58. Pursuant to 5 U.S.C. §§ 701-706, a person may challenge the action or inaction of an agency and force agency action that has been unlawfully withheld or unreasonably delayed.

59. The Defendants unlawfully failed to hold the election for the Osage Nation Constitution as it applied to the Minerals Estate; have further unlawfully failed to hold elections for Minerals Council in accordance with the 1906 Act and 25 C.F.R. Part 90 and are unlawfully recognizing the Osage Nation Constitution as applicable to the Minerals Estate.

60. Therefore, Plaintiffs seek a mandatory injunction requiring the Defendants to:

- a. Conduct an election for a Principal Chief, Vice-Chief and Minerals Council in accordance with 25 C.F.R. Part 90;

- b. take any and all action necessary to reinstate the Minerals Council and Mineral Estate as separate and independent from the Osage Nation.

WHEREFORE, Plaintiffs pray that the Court:

A. Enter a declaratory judgment, judicially determining that:

1. The Reaffirmation Act did not supersede or rescind the 1906 Act, but rather clarified the 1906 Act by differentiating between legal membership in the Osage Tribe and membership in the Osage Tribe for all purposes;
2. The provisions of the 1906 Act with respect to the legal members and the Minerals Estate remain in full force and effect;
3. The right to vote for a Tribal Council, Chief and Assistant Chief were fundamental rights associated with the ownership of a headright;
4. The right that the value of a ballot is directly proportional to the amount of the headright is fundamental right associated with the ownership of a headright;
5. The DOI and BIA are required to conduct elections for the Minerals Estate and Tribal Council to manage and control the Minerals Estate pursuant to the 1906 Act and the Code of Federal Regulations.

And

B. Issue a mandatory injunction requiring the Defendants to:

1. Conduct an election for a Principal Chief, Vice-Chief and Minerals Council in accordance with 25 C.F.R. Part 90;

2. take any and all action necessary to reinstate the Minerals Council and Mineral Estate as separate and independent from the Osage Nation.

Plaintiffs further request any additional relief that the Court deems just and equitable.

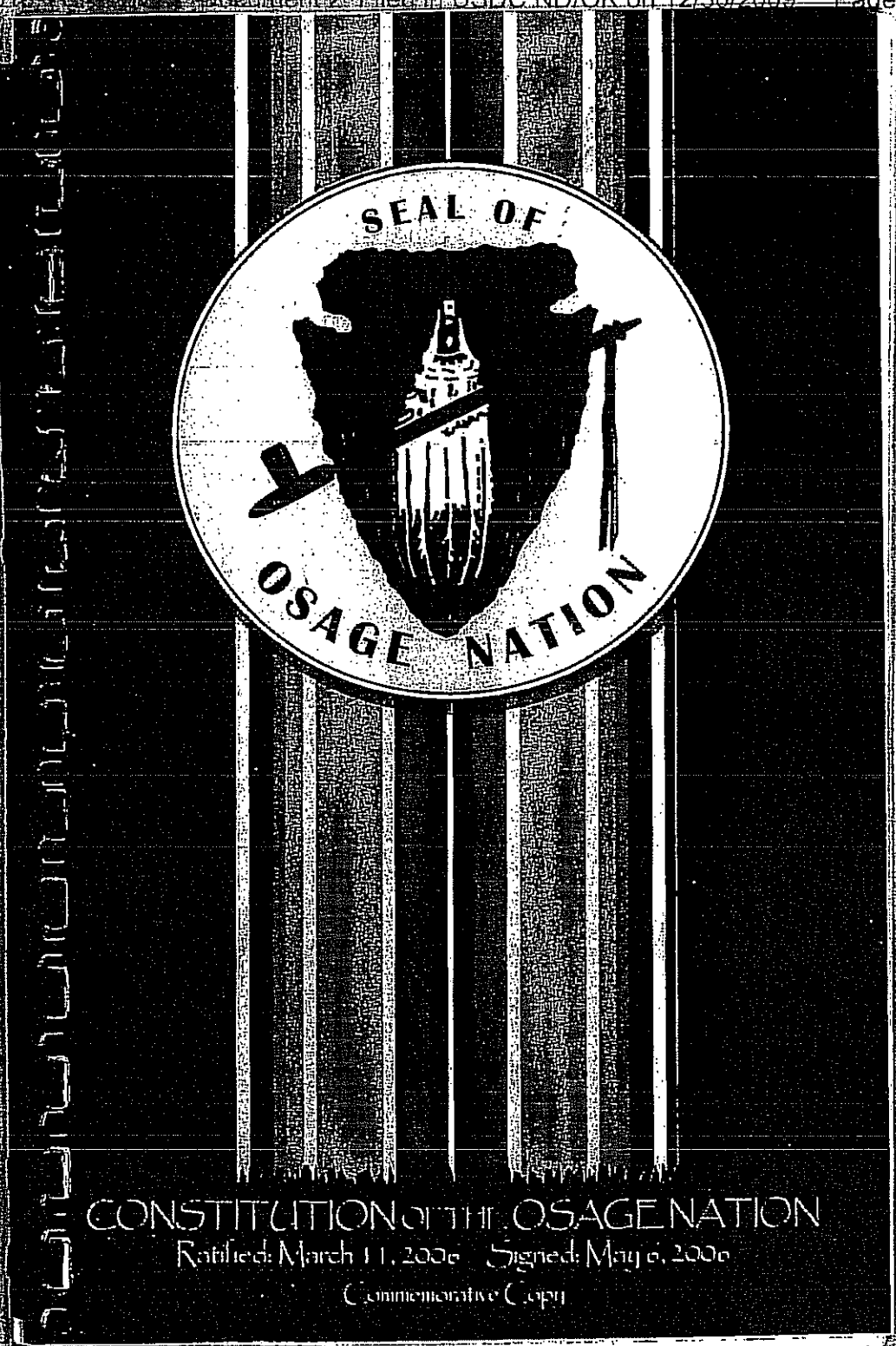
Respectfully Submitted,

BARROW & GRIMM, P.C.

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**EXHIBIT**  
tabbles  
"A"

THE  
CONSTITUTION  
OF THE  
OSAGE NATION

Ratified: March 11, 2006

Signed: May 6, 2006

Commemorative Copy

# Osage Nation Constitution

## ***PREAMBLE:***

We the WA ZA ZO (Wah-zha-zhe), known as the Osage People, having formed as Clans in the far distant past, have been a People and as a People have walked this earth and enjoyed the blessings of WA KA DA (Wah-kon-tah) for more centuries than we truly know.

Having resolved to live in harmony, we now come together so that we may once more unite as a Nation and as a People, calling upon the fundamental values that we hold sacred: Justice, Fairness, Compassion, Respect for and Protection of Child, Elder, All Fellow Beings, and Self.

Paying homage to generations of Osage leaders of the past and present, we give thanks for their wisdom and courage. Acknowledging our ancient tribal order as the foundation of our present government, first reformed in the 1881 Constitution of the Osage Nation, we continue our legacy by again reorganizing our government.

This Constitution, created by Osage People, hereby grants to every Osage citizen a vote that is equal to all others and forms a government that is accountable to the citizens of the Osage Nation.

We, the Osage People, based on centuries of being a People, now strengthen our government in order to preserve and perpetuate a full and abundant Osage way of life that benefits all Osages, living and as yet unborn.

## ***ARTICLE I - TITLE***

This tribe shall hereafter be referred to as The Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma.

## ***ARTICLE II - TERRITORY AND JURISDICTION***

**Section 1.** Territory: The territory of the Osage Nation shall include the Osage Reservation, duly established by the Congress of the United States pursuant to (1) the Treaty between the United States of America and the Great and Little Osage Indians, Sept. 29, 1865, 14 Stat. 687; (2) Article 16 of the Treaty between the United States of America and the Cherokee Nation of Indians, July 19, 1866, 14 Stat. 799; and (3) the Act of June 5, 1872, ch. 310, 17 Stat. 228 (An Act to Confirm to the Great and Little Osage Indians a Reservation in the Indian Territory), and all other lands under federally-restricted status title to which is held by the Nation or the People, or by the United States in trust on behalf of the Nation or the People, and any such additional lands as are hereafter acquired and similarly held by the Nation or the People or by the United States on behalf of the Nation or the People. Territory is defined as, but is not limited to, air, water, surface, sub-surface, natural resources and any interest therein, notwithstanding the issuance of any patent or right of way in fee or otherwise, by the governments of the United States or the Osage Nation, existing and/or in the future.

**Section 2.** Jurisdiction: The jurisdiction of the Osage Nation shall extend over all persons, subjects, property, and over all activities that occur within the territory of the Osage Nation and over all Osage citizens, subjects, property and activities outside such territory affecting the rights and laws of the Osage Nation.

Nothing in this Article shall be construed to limit or impair the ability of the Osage Nation to exercise its jurisdiction within or without its territory based upon its inherent sovereign authority as a nation of Osage People.

## ***ARTICLE III - MEMBERSHIP***

**Section 1.** Base Membership Roll: The base membership of the Osage Nation shall consist of those persons whose names appear on the final roll of the Osage tribe of Indians pursuant to the Act of June 28, 1906 (34 Stat. 539).

**Section 2.** 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.

**Section 3.** Dual Enrollment: An enrolled member of the Osage Nation can choose to be dually enrolled as a member of another Indian tribe without forfeiting Osage membership.

**Section 4.** Membership Laws: The Osage Nation Congress shall have the power and is required to regulate membership and maintain a correct roll of all Osages enrolled as members of the Osage Nation. The Osage Nation Congress shall enact laws, not inconsistent with this Constitution, prescribing rules and regulations governing membership, including application and appeal procedures, loss of membership, and the adoption of members.

## ***ARTICLE IV - DECLARATION OF RIGHTS***

**Section 1.** Popular Sovereignty: All political power is vested in and derived from the Osage People. All government of right originates with the Osage People, is founded upon their will only, and is instituted solely for the good of the whole.

**Section 2.** Self-Government: The Osage People have the exclusive right of governing themselves as a free, sovereign, and independent nation as done from time immemorial.

**Section 3.** Inalienable Rights of Osage Citizens: There shall be certain inalienable rights, which shall not be abridged or denied by any branch/department of the Osage Nation government or by any official of the government. Furthermore nothing in this Constitution shall be interpreted in a way that would diminish the rights and privileges of any person within the jurisdiction of the Osage Nation. The Osage Nation government in exercising sovereign powers shall not:

- A. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech or the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
- B. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- C. subject any person for the same offense to be twice put in jeopardy;
- D. compel any person in any criminal case to be a witness against himself or herself;
- E. take any private property for a public use that is not fully justified as being in the best interest of all the people nor take without just compensation;
- F. deny to any person in criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him or her, to have compulsory process for obtaining witnesses

- in his or her favor, and at his or her own expense to have the assistance of counsel for his or her defense;
- G. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any offense any penalty or punishment greater than imprisonment for a term of one year or a fine of five thousand dollars, or both;
  - H. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
  - I. pass any bill of attainder or ex post facto law;
  - J. deny any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

**Section 4.** Remedies: No person shall be entitled to an award of monetary damages, as a form of relief, in the Osage Trial Court for any violation of these rights; unless the Osage Nation Congress may by law provide for monetary damages as a form of relief for such violations, when relief would best serve the interests of the Osage Nation or that of justice.

**Section 5.** Rights of Mineral Royalty Interest Holders: The Osage Nation Government shall not create any law or ordinance pertaining to the mineral royalties from the Osage Mineral Estate that acts in conflict with Federal law and regulations.

## ***ARTICLE V - DISTRIBUTION OF POWERS OF GOVERNMENT***

**Section 1.** Governing Powers: The powers of the government of the Osage Nation shall be vested in three (3) separate branches: the Legislative, the Executive, and the Judicial.

**Section 2.** Separation of Powers: The Legislative, Executive and Judicial branches of government shall be separate and distinct and no person or collection of persons, charged with official duties under one of those branches, shall exercise any power properly vested in either of the others except as expressly provided in the Osage Nation Constitution.

**Section 3.** Supremacy Clause: The Osage Nation Constitution shall be the Supreme law for the Osage Nation over all territory and persons within the jurisdiction of the Osage Nation.

## ***ARTICLE VI - LEGISLATURE***

**Section 1.** Legislative Power: The legislative power of the Osage Nation, except for the initiative and referendum powers reserved to the People as provided in this Constitution, is hereby vested in one legislative body to be called the Osage Nation Congress.

**Section 2.** Composition: The Osage Nation Congress shall be composed of twelve (12) representatives to be initially elected at large, by qualified Osage voters, without regard to their district of residency. Nothing within this provision prohibits the Osage Nation Congress from equitably apportioning districts for the election of representatives hereafter.

**Section 3.** Term of Office: For the first election under this Constitution, the twelve (12) positions in the Osage Nation Congress shall be arranged in order to establish a system of staggered terms of office whereby six (6) representatives shall be elected to serve a six (6) year term and six (6) representatives shall be elected to serve a four (4) year term. Thereafter, all members of the Osage Nation Congress shall be elected to four (4) year terms with elections of half of the positions to be held every two (2) years or biennially commencing in 2010. All elected and/or appointed officials of the Osage Nation Congress shall serve until their successors are duly elected and installed.

**Section 4.** Qualifications: Enrolled members of the Osage Nation, who are at least twenty-five (25) years of age on that date of the election, who have never been convicted of a felony, are eligible to serve as members of the Osage Nation Congress.

**Section 5.** Disqualifications: No member of the Osage Nation Congress shall hold any other tribal office or position of profit under the Osage Nation during the term for which the member is elected or appointed. No member of the Osage Nation Congress shall hold any other tribal office under another Indian nation during his/her term of office. The Osage Nation Congress may prescribe further disqualifications.

**Section 6.** Vacancies: Any vacancy in the Osage Nation Congress shall be filled for the unexpired term in such manner as may be provided by law, or, if no provision be made by law, by appointment of the Principal Chief for the balance of the term.

**Section 7.** Compensation: The annual salary and expense allowance of members of the Osage Nation Congress shall be fixed at the first session of the legislature held after the Osage Nation Constitution takes effect. Presiding officers may receive increased compensation for their duties.

Compensation may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the Osage Nation Congress.

**Section 8.** Election of Officers: The Osage Nation Congress shall select from amongst its members a Speaker, who shall be the Presiding Officer, and such other officers as deemed necessary. The Speaker and other duly elected officers may vote on all matters before the Osage Nation Congress.

**Section 9.** Quorum: The presence of at least two-thirds (2/3) of the whole number of the members of the Congress shall be necessary to constitute a meeting of the congressional house for the exercise of its powers.

**Section 10.** Sessions: The Osage Nation Congress shall convene twice annually in regular session, so that six (6) months shall not intervene between the last sitting of the Congress and its first sitting in the next session. Regular sessions shall convene on such day and at such time as the Osage Nation Congress shall determine by law.

The first regular congressional session of each year shall be titled the  $\text{H}\lambda^{\wedge}\text{K}\lambda$  (Hun-kah) Session and the second regular congressional session of the year shall be titled the  $\text{P}\wedge\text{Z}\text{o}$  (Tzi-zho) Session. This schedule shall be in honor of the ancient moiety division of Earth and Sky and serves to remind all Osages of the responsibility to bring balance and harmony to the Nation.

At the written request of two-thirds (2/3) of the members, the Speaker shall convene the Osage Nation Congress in special session. The Principal Chief may convene the Osage Nation Congress in special session.

Regular sessions shall be limited to a period of twenty four (24) days, and special sessions shall be limited to a period of ten (10) days. Any session may be extended a total of not more than three (3) days. Such extension shall be granted by the Speaker at the written request of two-thirds (2/3) of the members or may be granted by the Principal Chief.

The Osage Nation Congress shall not adjourn during any session of the legislature for more than three (3) days, Sundays excepted, or to any other place.

The Osage Nation Congress may only meet in the interim, the period of time between two sessions, by Interim Committee(s) to study a particular subject or subjects in order to make recommendations to the next regular session of the legislature.

**Section 11.** Rules of Procedure: The Osage Nation Congress shall adopt uniform rules of procedure for conducting the business of the Congress. The Osage Nation Congress shall keep and publish a journal of its proceedings and the yeas and nays, when taken on any question, shall be entered in the journals. A member may be expelled from the floor for disorderly or contemptuous behavior by a vote of two-thirds (2/3) of all members of the Osage Nation Congress present.

**Section 12.** Enactment of Laws: The Osage Nation Congress shall establish the procedure for enactment of bills into law. No laws shall be made except by statute and no statute shall be enacted except by bill. No bill shall be passed without the concurrence of a majority of the members of the Osage Nation Congress. Each law shall embrace but one subject, which shall be expressed in its title. The enacting clause of each law of the Osage Nation shall be: "Be it enacted by the Congress of the Osage Nation." Every bill that has passed by an affirmative majority vote shall be signed by the presiding officer of the Osage Nation Congress to certify that the procedural requirements for passage have been met and shall be presented forthwith to the Principal Chief for approval.

**Section 13.** Presentation of Bills to Principal Chief. Veto: Every bill passed in conformity to the rules of the Osage Nation Congress shall be presented to the Principal Chief. If approved, the Principal Chief shall sign it and notify the Congress of that fact. If a bill is vetoed by the Principal Chief, it shall be returned with objections to the Osage Nation Congress. The objections shall be entered in the journal. If, after reconsideration, at least three-fourths (3/4) or nine (9) members of Congress vote to pass the bill, it shall become law. Any bill not returned by the Principal Chief within five (5) days, Sundays and holidays excepted, after it is presented becomes a law as if signed by the Principal Chief. Any bill passed during the last three (3) days of a session may be presented to the Principal Chief during the three (3) days following the day of final adjournment, and the Principal Chief may sign or not sign. If not signed, the bill does not become law.

If a bill presented to the Principal Chief contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time the bill is signed, the Principal Chief shall append to it a statement of the items vetoed, and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to Congress a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration, any item is approved by three fourths (3/4) of the members elected to Congress, it is a part of the law notwithstanding the objections.

Laws passed by the legislature become effective sixty (60) days after enactment. The Osage Nation Congress may, by concurrence of two-thirds (2/3) of the membership, provide for another effective date.

**Section 14.** Presentation of Orders, Resolutions, and Votes to Principal Chief: Each order, resolution or vote, except such as relate to the business or adjournment of the legislature, shall be presented to the Principal Chief and is subject to a veto with an override provision.

**Section 15.** Necessary Laws: The Osage Nation Congress shall pass all laws necessary to carry into effect the provisions of the Osage Nation Constitution.

**Section 16.** Disclosure of Private Interest: A member of the Osage Nation Congress who has a personal or private interest in any measure or bill, proposed or pending before the legislature, shall disclose the fact and shall not vote thereon.

**Section 17.** Power of Removal: The Osage Congress shall have the power to remove elected and appointed officials of the Osage Nation, and said removal must be conducted in accordance with Article XII of the Osage Nation Constitution.

**Section 18.** Public Proceedings: All proceedings of the Osage Nation Congress shall be open and public, except in cases that require confidentiality. In such cases, an Executive Session may be convened when duly voted upon in an open meeting.

**Section 19.** Executive Sessions: The Osage Nation Congress shall establish procedures to convene an Executive Session of its own members.

**Section 20.** Legislative Accountability: To assist the Osage People in holding their Legislature accountable, at the convening of each regular session of the Osage Nation Congress, the Speaker shall report the legislative priorities of Congress for said session and, at the close of each regular session, report the action taken by Congress.

**Section 21.** Legislative Committees, Commissions, etc.: The Osage Nation Congress may establish and appoint any subordinate commission, committee or other body. Members of the Osage Nation Congress may be appointed to serve on any such body, excepting any and all Tribal Enterprise Boards.

**Section 22.** Merit Based Employment System: The Osage Nation Congress shall establish a system under which the merit principle will govern the employment of persons by the Osage Nation excluding executive staff and other appointed positions serving at the will of the Office of the Principal Chief as described in Article VII, Section 14. The Congress shall include, within the merit principal system, a grievance procedure which must be exhausted before seeking review in the Trial Court. The Congress shall establish laws that define and limit nepotism in tribal government and Tribal Enterprise Board employment.

**Section 23.** Annual Budget: The Osage Nation Congress shall enact, by law, an annual expenditure of funds which shall include an appropriation of operating funds for each branch of the government for each fiscal year. The annual budget shall not exceed projected revenues.

**Section 24.** Legislative Referendum: The Osage Nation Congress and/or its delegate(s) may voluntarily refer proposed measures to the Osage People for final approval or rejection. The veto power of the Principal Chief shall not extend to measures voted on by the Osage People.

## ***ARTICLE VII - EXECUTIVE***

**Section 1.** Supreme Executive Power: The supreme executive power of the Osage Nation is hereby vested in a Principal Chief, who shall be titled "Principal Chief of the Osage Nation", and whose Osage title shall be "ꞑꞑ ꞑꞑ ꞑꞑ" (Ki-he-kah). These titles shall be reserved exclusively to this office. The Principal Chief shall dutifully support the Constitution and laws of the Osage Nation and shall see that the laws are faithfully executed, administered and enforced.

**Section 2.** Term of Office: The Principal Chief shall be elected by qualified Osage voters at a general election to a term of four (4) years and shall serve until a successor has been elected and installed. The Principal Chief shall be elected by a majority of votes.

**Section 3.** Qualifications: Enrolled members of the Osage Nation, who are at least thirty-five (35) years of age on that date of the election, who have never been convicted of a felony, are eligible to become a candidate for the office of Principal Chief of the Osage Nation.

**Section 4.** Disqualifications: The Principal Chief shall not hold any other office or position of profit under the Osage Nation nor hold any office, be it elected or appointed, under any other tribal government or state, county or federal government.

**Section 5.** Composition: The executive branch shall consist of the elected offices of Principal Chief and Assistant Principal Chief, and all other administrative offices, departments, agencies, and instrumentalities of the Osage Nation including, but not limited to, public trusts, boards, village committees, authorities, and commissions.

**Section 6.** Office of Assistant Principal Chief: There shall be an Assistant Principal Chief, whose Osage title shall be "ꞑꞑ ꞑꞑ ꞑꞑ ꞑ ꞑꞑ ꞑꞑ" (Ki-he-kah O-wah-ta), who shall have the same qualifications as the Principal Chief and serve for the same term and in the same manner. These titles shall be reserved exclusively to this office. The Assistant Principal Chief shall perform such duties as may be prescribed by Osage law and as may be delegated by the Principal Chief. The Assistant Principal Chief, shall, by virtue of his office, be an ex officio member of the Osage Nation Congress and shall have a right, when in committee of the whole, to join in debate; and, whenever the legislature shall be equally divided, the Assistant Principal Chief shall cast the deciding vote.

**Section 7.** Acting Principal Chief: The Assistant Principal Chief shall serve in the temporary absence of the Principal Chief and when serving will have all the privileges, duties and powers of that office.

**Section 8.** Vacancies; Absences: In the event of a vacancy to the office of Principal Chief for any reason, the Assistant Principal Chief shall succeed to the office for the remaining portion of the four (4) year term to which the Principal Chief was elected.

In the event of a vacancy to the office of Assistant Principal Chief for any reason, the Principal Chief shall appoint a successor to serve for the balance of the term, by and with the advice and consent of the Osage Nation Congress.

Whenever for a period of six (6) months, the Principal Chief has been continuously absent from office or unable to discharge the duties of the office by reason of mental or physical disability, the office shall be deemed vacant. The procedures for determining absence and disability shall be prescribed by Osage law.

**Section 9.** Further Succession: Provision shall be made by Osage law for succession to the office of Principal Chief and for an acting Principal Chief in the event that the Assistant Principal Chief is unable to succeed to the office or act as Principal Chief. In the event that the Assistant Principal Chief is unable to succeed to the office or act as Principal Chief, the Speaker of the Congress shall act as Principal Chief.

**Section 10.** Compensation: The annual salary and expense allowance for the offices of Principal Chief and Assistant Principal Chief shall be prescribed by Osage law and shall not be increased or diminished during that term of office.

**Section 11.** Veto: The Principal Chief may veto bills by the Osage Nation Congress. The Principal Chief may, by veto, strike or reduce items in appropriation bills. The Principal Chief shall return any vetoed bills, with a statement of the objection(s), to the Osage Nation Congress.

**Section 12.** Communicate with Legislature; Convene Legislature: The Principal Chief shall communicate to the Osage Nation Congress, by message at the opening of each regular session and at such other times as may be deemed necessary, the condition of the Nation, and shall in like manner recommend such measures as may be deemed desirable. The Principal Chief may convene the legislature by proclamation, and shall state when assembled, the purpose for which they shall have been convened in a special session whenever the Osage People's interest shall require.

**Section 13.** Establish Department of the Treasury: There shall be established, by Osage law, a Department of the Treasury in the Executive Branch and the Principal Chief shall appoint a Treasurer to act as the Chief Financial Officer and administer fiscal policy and ensure financial accountability of the Osage Nation, by and with the advice and consent of the Osage Nation Congress. The powers and duties of the Treasurer of the Osage Nation shall be prescribed by the Osage Nation Congress and will include the mandate that an annual financial statement for the Osage Nation government be audited by a Certified Public Accountant, approved by the Congress or by committee of the Congress and presented to the Congress in a timely manner. The Treasurer shall accept, receipt for, keep and safeguard all tribal funds as directed by the Congress and shall maintain and provide an accurate record of such tribal funds.

**Section 14.** Tribal Enterprise Boards: There shall be established, by Osage law, a Tribal Enterprise Board(s) in the Executive Branch, and the Principal Chief shall appoint qualified professionals to oversee operations of Osage Nation business enterprises, by and with the advice and consent of the Osage Nation Congress. The Osage Nation Congress shall reserve the right to review any action taken by the Board, and may approve the Annual Plan of Operation for the coming year. No Osage Nation elected official may be appointed to such Board.

**Section 15.** Appointments: The Principal Chief may appoint executive staff, in accordance with the budget approved by the Congress. The Principal Chief shall also appoint, subject to advice and consent by the Osage Nation Congress, the members of each board, commission or other instrumentality in the executive branch whose election or appointment is not provided by this Constitution or by law. All appointees shall serve at the pleasure of the Principal Chief and shall be exempt employees, not subject to the Merit System established at Article VI, Section 22.

Should the legislature be in regular session, the Principal Chief shall submit for confirmation the name of an appointee within forty-eight (48) hours after the appointment is made. Failure of the Osage Nation Congress to confirm the appointment, prior to the end of the session, shall constitute rejection.

If the legislature is not in regular session, the Principal Chief may make interim appointments, which shall expire at the end of the next regular session, unless submitted to and confirmed by the Osage Nation Congress during that session.

A person not confirmed by the Osage Nation Congress shall not be appointed to the same office during any recess of the legislature.

**Section 16.** Removal Power: The Principal Chief may remove from office a person appointed by the Principal Chief's office, except a person appointed for a term fixed by this Constitution or by Osage law. Removal shall be conducted in

accordance with Article XII of the Osage Nation Constitution. If the legislature is not in session when the Principal Chief desires to remove an officer, the Principal Chief shall call a special session for consideration of the proposed removal. The session may not exceed two days in duration.

**Section 17.** Offices and Records of Executive Officers: The Principal Chief, Treasurer and other Executive Officers shall keep the public records, books and papers at the seat of government in a manner relating to their respective offices as prescribed by Osage law.

**Section 18.** Seal of the Osage Nation: There shall be a seal of the Osage Nation which shall be officially used by the Principal Chief and shall be called the Great Seal of the Osage Nation.

## ***ARTICLE VIII - JUDICIARY***

**Section 1.** Judicial Powers: The Judicial powers of the Osage Nation are hereby vested in one Supreme Court, in a lower Trial Court and in such inferior Courts as the Osage Nation Congress may ordain and establish for the development, maintenance and administration of the Tribal Justice System. The judicial branch shall be responsible for interpreting the laws of the Osage Nation and its powers will include, but not necessarily be limited to, the trial and adjudication of certain civil and criminal matters, the redress of grievances, the resolution of disputes and judicial review of certain holdings and decisions of administrative agencies and of the Trial Court.

**Section 2.** Appellate Jurisdiction: The appellate jurisdiction of the Supreme Court may extend to all cases of law and equity. The Supreme Court, by appropriate order, may hear appeals, compel inferior Courts or their officials to act in accordance with the law, and exercise such other jurisdiction as may be conferred by statute. The Supreme Court shall promulgate rules and procedures relating to original and appellate jurisdiction. Decisions of the Supreme Court shall be published and indexed and shall be final.

**Section 3.** Composition of Supreme Court; Qualifications: The Supreme Court shall consist of one Chief Justice and two Associate Justices. Any member of the Osage Nation, who is at least forty (40) years of age and duly licensed to practice law for no less than ten (10) years, is eligible for the office of Chief Justice. Anyone duly licensed to practice law for no less than five (5) years, is eligible for the office of Associate Justice. The Justices shall serve until their successors are duly appointed and installed.

**Section 4.** Disqualification: Judicial officers shall not hold any other office or position of profit under the Osage Nation.

**Section 5.** Jurisdiction of Trial Court: The Trial Court shall have original jurisdiction, not otherwise reserved to the Supreme Court, over all cases and controversies arising under the Constitution, laws, and customs and traditions of the Osage Nation. Any such case or controversy arising within the jurisdiction of the Osage Nation shall be filed in Trial Court before it is filed in any other court, unless otherwise provided in this Constitution. This grant of jurisdiction by the Osage People shall not be construed to be a waiver of the Osage Nation's sovereign immunity.

**Section 6.** Composition of Trial Court; Qualifications: The Trial Court shall consist of one Chief Judge and, as deemed necessary and appropriate, additional Associate Judges. Any member of the Osage Nation, duly licensed to practice law for no less than five (5) years, is eligible for the office of Chief Judge.

**Section 7.** Appointment of Chief Justice, Associate Justices and Chief Judge: The Principal Chief shall appoint the Chief Justice and Associate Justices of the Osage Nation Supreme Court, as well as the Chief Judge of the Trial Court, by and with the advice and consent of the Osage Nation Congress. After serving one term of four (4) years, each will stand for retention by a vote of the qualified Osage electors and at the expiration of each four (4) year term thereafter.

**Section 8.** Appointment of Associate Judges: Once appointed and installed, the Chief Justice and Chief Trial Court Judge may jointly appoint such subordinate judges as are necessary and proper to carry into effect matters in which the Judicial Department is empowered to act now or in the future.

**Section 9.** Conflict of Interest: Any Justice or Judge of the Osage Nation who appears to have a direct personal or financial interest in any matter before the judiciary shall recuse himself/herself. Any party who believes that a Judge or Justice may have a personal or financial interest in the issues before the court, may challenge the participation of that Judge or Justice.

**Section 10.** Compensation: Supreme Court Justices and Trial Court Judges shall be reasonably compensated. No increase or decrease in compensation shall take effect until after the next general election or appointment to that office.

**Section 11.** Administration: The Chief Justice of the Osage Nation Supreme Court shall be responsible for the budget and the administration of all courts.

## ***ARTICLE IX - OATH OF OFFICE***

All elected and appointed officers of the Osage Nation, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

"I, \_\_\_\_\_(name)\_\_\_\_\_, do proudly swear (or affirm) to carry out the responsibilities of the office of \_\_\_\_\_(name of office)\_\_\_\_\_ to the best of my ability, freely acknowledging that the powers of this office flow from the Osage People and WA KA^ DA (Wah-kon-tah). I further swear (or affirm) always to place the interest of all Osages above any special or personal interests, and to respect the right of future generations to share the rich historic and natural heritage of our Osage People. In doing so, I will always uphold and defend the Constitution of the Osage Nation, so help me God."

The foregoing oath shall be administered by a member of the Osage Nation Judiciary.

## ***ARTICLE X - CODE OF ETHICS***

**Section 1.** Purpose: Recognizing the desire of the Osage people to establish a government that is fair and equitable to all people; elected or appointed tribal officials and employees of the Osage Nation, putting aside their personal or private interest, shall strive for the common good of the Osage People and shall administrate fair and equal treatment of all persons, claims, and transactions petitioning before the Osage Nation Government.

**Section 2.** Compliance with Law and Regulations: In the performance of their duties, all officials and employees of the Osage Nation shall comply with all laws and regulations of the Osage Nation not in conflict with this Constitution.

**Section 3.** The Conduct of Tribal Officials and Employees: All tribal officials and employees of the Osage Nation shall avoid even the appearance of impropriety in the performance of their duties. Officials and employees shall refrain from abusive conduct, personal charges, or verbal affronts upon the character, motives, or intents of other officials or Osage citizens.

Tribal officials and employees shall not hinder or obstruct the proper administration of the Osage Nation government in the administration of their duties.

**Section 4.** Conflicts of Interest: In order to assure independence and impartiality, tribal officials and employees are prohibited from using public positions to influence

or otherwise effect government decisions for personal gain. Tribal officials and employees shall fully and in a timely manner disclose any conflicts, real or apparent, that might be seen to influence their judgment in the performance of their duties. Tribal officials and employees shall abstain from participation in deliberations or decision-making where any conflicts are deemed to exist.

**Section 5.** Gifts and Public Favor: Tribal officials and employees shall not accept any special advantage of services or opportunities for personal gain, by virtue of public office, that is not available to the Osage People. Tribal officials and employees shall not accept any gift, favor, or promise of future benefit for themselves or their relatives in exchange for preferential treatment.

**Section 6.** Use of Tribal Resources: Tribal officials and employees shall refrain from the use of tribal resources when not acting in an official capacity.

**Section 7.** Advocacy: All official delegates of the Osage Nation shall accurately represent the official policies and positions of the Osage Nation government to the best of their abilities. When called upon to provide their own individual opinions or positions, all such delegates shall state explicitly that such information is not representative of the position of any administrative body within the Osage Nation government and shall not allow such an inference to occur.

**Section 8.** Independence of Boards and Commissions: Tribal officials and employees shall refrain from using tribal positions to improperly influence the deliberations, administrations, or decisions of established board or commission proceedings.

**Section 9.** Political Subdivisions: The Osage Nation Code of Ethics shall be applicable to all political subdivisions of the Osage Nation including members of the boards, commissions and other bodies.

**Section 10.** Provisions for Violations: The Osage Nation Congress shall enact provisions for violations of the above stated code.

## ***ARTICLE XI - CITIZEN INITIATIVE, REFERENDUM AND RECALL***

**Section 1.** Citizen Initiative and Referendum: The Osage People may propose and enact laws by the initiative or reject acts of the Osage Nation Congress by the referendum.

**Section 2.** Application of Initiative, Referendum or Recall: An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than (100) one hundred qualified Osage voters as sponsors and shall be filed with the person authorized by Osage law to receive the same. The application shall be certified, if found in proper form. Denial of certification shall be subject to judicial review.

**Section 3.** Petition for Initiative or Referendum: After certification of the application, a petition containing a summary of the subject matter shall be prepared by the person authorized by Osage law to do so for circulation by the sponsors. If signed by qualified Osage voters who are equal in number to at least (15) fifteen percent of the electorate, it may be filed.

**Section 4.** Initiative Election: An initiative petition may be filed at any time. The person authorized by Osage law to do so shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first election held after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

**Section 5.** Referendum Election: A referendum petition may be filed only within ninety (90) days after adjournment of the legislative session at which the act was passed. The person authorized by Osage law to do so shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first election held after adjournment of that session.

**Section 6.** Enactment and Rejection: If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The person authorized by Osage law to do so shall certify the election returns. An initiated law becomes effective ninety (90) days after certification, is not subject to veto by the Principal Chief, and may not be repealed by the Osage Nation Congress within two (2) years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by Osage law.

**Section 7.** Restrictions: The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, or to laws necessary for the immediate preservation of the public peace, health, or safety of the Osage People. No article,

section, or provision of the Osage Nation Constitution shall be amended except as provided in Article XX of this Constitution.

**Section 8.** Recall: All elected and/or appointed officials of the Osage Nation are subject to recall by the qualified Osage voters. The grounds for recall of a judicial officer shall be established by the Osage Nation Supreme Court. The grounds for recall of an officer other than a judge are serious malfeasance or nonfeasance, during the term of office, in the performance of the duties of the office or a conviction, during the term of office, of a felony or conviction of a misdemeanor involving moral turpitude. After certification of the Application, as set forth in Section 2 of this Article, a petition for recall shall be prepared by the person authorized by Osage law to do so and the petition shall set forth the specific conduct that may warrant recall. A recall petition may not be issued for circulation by the sponsors until the Osage Nation Supreme Court has determined that the facts alleged in the petition are true and are sufficient grounds for issuing a recall petition. A recall petition must be signed by qualified Osage voters who are equal in number to at least fifteen (15) percent of the electorate. Upon a determination by the person authorized by Osage law to so determine that a petition has been signed by at least the minimum number of eligible voters, a recall election must be conducted in the manner provided by Osage law. The incumbent shall continue to perform the duties of the office until the recall election results are officially declared and, unless the incumbent declines or no longer qualifies, the incumbent shall without filing be deemed to have filed for the recall election. A recall election may not occur less than six (6) months before the end of the officer's term. An officer who is removed from office by a recall election or who resigns from office after a petition for recall issues may not be appointed to fill the vacancy that is created. Additional procedures and grounds for recall may be prescribed by the Osage Nation Congress.

## ***ARTICLE XII - REMOVAL***

**Section 1.** Grounds for Removal: All elected and appointed officers of the Osage Nation shall be subject to removal from office for cause, including but not limited to willful neglect of duty, malfeasance in office, habitual abuse of alcohol or drugs, inability to meet qualifications to serve, conviction of a felony or conviction of a misdemeanor involving moral turpitude while in office.

**Section 2.** Rules and Procedures: Removal of Osage Nation Officers shall originate in the Osage Nation Congress, except as otherwise provided in the Osage Nation Constitution. The motion for removal shall list fully the basis for the proceeding and must be approved by a two-thirds (2/3) vote of the members. Trial on removal

shall then be conducted by the Osage Nation Congress with the accused afforded due process and an opportunity to be heard. An Osage Nation Supreme Court Justice, designated by the Supreme Court, shall preside at the trial. Concurrence of five-sixths (5/6) of the members of the Osage Nation Congress is required for a judgment of removal. The judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in the Osage Nation, but shall not prevent proceedings in the courts on the same or related charges.

The Osage Nation Congress may prescribe additional rules and procedures that are necessary to implement the provisions of this Article.

### ***ARTICLE XIII - SUFFRAGE AND ELECTIONS***

**Section 1.** Qualified Voters: All enrolled members of the Osage Nation who shall have attained the age of eighteen 18 years and are registered to vote as provided by Osage law shall be qualified to vote under the authority of this Constitution.

**Section 2.** Election Code: The Osage Nation Congress shall enact an election code governing all necessary election procedures.

**Section 3.** Election Board: The Osage Nation Congress shall enact a law creating an Election Board that shall be charged with conducting both General and Special Elections.

**Section 4.** General Elections: General Elections shall be held on the first Monday in June commencing in 2006 and next in 2010 and every even numbered year thereafter.

**Section 5.** Special Elections: Special Elections may be held as provided by Osage law. Special Elections shall provide ample notice to Osage voters as provided by Osage law.

**Section 6.** Contested Elections: Contested elections shall be determined by a Trial Court of the Osage Nation in such manner as shall be prescribed by Osage law.

**Section 7.** Secret Ballots: All elections shall be conducted by secret ballot, and a majority of the votes cast shall determine the action or result thereon unless otherwise provided by this Constitution or Osage law.

## ***ARTICLE XIV - VILLAGES***

**Section 1.** Recognized Villages: The recognized villages of the Osage Nation are: (a) the Grayhorse Indian Village, (b) the Pawhuska Indian Village, and (c) the Hominy Indian Village.

The Osage Nation Congress recognizes and respects that each village has its own traditions, customs, and history.

**Section 2.** Reserved Status: The Grayhorse Indian Village, the Pawhuska Indian Village and the Hominy Indian Village shall be reserved exclusively for the use and benefit of the Osage Indians pursuant to the act of June 28, 1906 (34 Stat. 539), as amended by the act of June 24, 1938 (52 Stat. 1034).

**Section 3.** Governance: The laws enacted by the Osage Nation Congress apply with equal force to all territory located within the jurisdiction of the Nation, including the three villages, and to the extent any action taken by a village is inconsistent with the laws of the Nation, such action shall be deemed void.

## ***ARTICLE XV - NATURAL RESOURCES AND MINERALS***

**Section 1.** General Authority: The legislature of the Osage Nation shall provide for the utilization, development and conservation of all natural resources within the territory of the Nation for the maximum benefit of the Osage People.

**Section 2.** Osage Mineral Estate: The oil, gas, coal, and/or other minerals within the boundaries of the Osage Reservation are hereby reserved to the Osage Nation pursuant to the Act of June 5, 1906, (34 Stat. 539), as amended, and is hereby designated the Osage Mineral Estate.

**Section 3.** Osage Mineral Royalties: The right to income from mineral royalties shall be respected and protected by the Osage Nation through the Osage Minerals Council formerly known as the Osage Tribal Council and composed of eight (8) members elected by the mineral royalty interest holders.

**Section 4.** 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.

To discharge those obligations, the Osage Nation hereby creates a minerals management agency, designated the Osage Minerals Council, consisting of members of the Osage Nation who are entitled to receive mineral royalty income from the Osage Mineral Estate, as provided by federal law. Only Osage mineral royalty interest holders shall be entitled to vote in electing the Osage Minerals Council.

The Osage Minerals Council is recognized by the Osage Nation government as an independent agency within the Osage Nation established for the sole purpose of continuing its previous duties to administer and develop the Osage Mineral Estate in accordance with the Osage Allotment Act of June 28, 1906, as amended, with no legislative authority for the Osage Nation government. As an independent agency within the Osage Nation, the Osage Minerals Council may promulgate its own rules and regulations as long as such rules and regulations are not inconsistent with the laws neither of the Osage Nation nor with the rules and regulations established by the United States Congress in the 1906 Allotment Act.

The Osage Minerals Council shall have the power to consider and approve leases and to propose other forms of development of the Osage Mineral Estate. Mineral leases approved and executed by the Council shall be deemed approved by the Osage Nation unless, within five (5) working days, written objection is received from the Office of the Principal Chief that the executed lease or other development activity violates Osage law or regulation. Any dispute that arises through this process may be heard before the Supreme Court of the Osage Nation Judiciary.

All leases or other forms of agreement for development of the Osage Mineral Estate shall comply with applicable federal law and all laws and regulations of the Osage Nation. The Osage Minerals Council shall exercise the administrative authority delegated under this Constitution, the laws of the Osage Nation, and as permitted by federal law.

**Section 5. Preservation of Hunting and Fishing:** Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the Osage People and shall be managed by Osage law and regulation for the public good.

## ***ARTICLE XVI - OSAGE CULTURE AND LANGUAGE***

**Section 1.** Preservation of Linguistic and Cultural Lifeways: The Osage People have the inherent right to preserve and foster their historic linguistic and cultural lifeways.

The Osage Nation shall protect and promote the language, culture and traditional ways of the Osage People.

## ***ARTICLE XVII - OSAGE HEALTH, EDUCATION, AND WELFARE***

**Section 1.** Health Care: The Osage Nation shall provide for the protection and advancement of a health care system for the Osage People by the ongoing development of services for the treatment, management and prevention of illnesses and chronic diseases, and of services that promote mental and physical well-being.

**Section 2.** Care of the Elders: The Osage Nation shall provide for the security of Osage elders by establishing and promoting programs to contribute to their economic, physical, and social well-being.

**Section 3.** Care of Our Children: The Osage Nation shall provide for the care and safety of Osage children by establishing and promoting programs that contribute to protecting, nurturing, and developing the minds, bodies and spirits of our children.

**Section 4.** Education: The education of Osage People is recognized as being essential to building a prosperous and self-determining society. The Osage Nation shall protect and promote education by providing for and supporting a system of high quality early childhood learning programs for its children, advocating on behalf of Osage students for improvements in the public elementary and secondary school systems within the Osage Reservation through intergovernmental agreements, and developing effective tribal education programs that allow Osage students to obtain the skills and resources necessary for a post-secondary education.

## ***ARTICLE XVIII - RESERVED POWERS***

The powers enumerated in this Constitution are not exclusive, and the remaining sovereign powers of the Osage Nation are reserved to the Osage People. Adoption of this Constitution does not constitute an agreement on the part of the Osage Nation to

limit the exercise by the Osage Nation of any right or power it may otherwise be entitled to exercise.

### ***ARTICLE XIX - SOVEREIGN IMMUNITY***

**Section 1.** Immunity of Osage Nation from Suit: As a sovereign Indian nation, the Osage Nation and all administrative offices, departments, agencies, and instrumentalities of the Osage Nation shall be immune from suit or process in any forum except to the extent that the Osage Nation Congress expressly waives its sovereign immunity. The Osage Nation's sovereign immunity shall extend to officials and employees of the Osage Nation when acting within the scope of their duties and authority.

### ***ARTICLE XX - AMENDMENT OF CONSTITUTION***

**Section 1.** Amendment by Legislature: Amendments to this Constitution may be proposed by the Osage Nation Congress. Proposed amendments agreed to by five-sixths (5/6) of the members in Congress shall be put before the Osage People for their approval or rejection at the next general election, except when the legislature shall order a special election for that purpose.

If at least sixty-five percent (65 %) of Osage electors voting on a proposed amendment approve the same, it shall become part of the Constitution and shall abrogate or amend existing provisions of the Constitution at the end of thirty (30) days after the date of the election at which it was approved.

**Section 2.** Amendment by Petition: Amendments may be proposed to this Constitution by petition of the qualified electors of the Osage Nation. Every petition shall include the full text of the proposed amendment, and be signed by qualified electors of the Osage Nation equal in number to at least twenty-five (25%) percent of the electorate. Such petitions shall be filed with the person authorized by law to receive the same at least ninety (90) days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by Osage law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least sixty (60) days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than ninety (90) days after it was filed, to the Osage electors at the next general election. Such proposed amendment, existing provisions of the Constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by Osage law. Copies of such publication shall be prominently posted in each polling place, at tribal administration offices, and furnished to news media as provided by Osage law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than one hundred (100) words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person who is so authorized by Osage law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by sixty-five percent (65%) of the electors voting on the question, it shall become part of the Osage Constitution, and shall abrogate or amend existing provisions of the Constitution at the end of thirty (30) days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

**Section 3.** No Veto Power: No proposal for amendment of the Osage Nation Constitution adopted in either manner provided by this article shall be subject to veto by the Principal Chief.

### ***ARTICLE XXI - SEVERABILITY***

If any provision of the Osage Nation Constitution shall, in the future, be declared invalid or unconstitutional by the Osage Nation Judiciary, the invalid portions shall be severed and the remaining provisions shall remain in full force and effect.

### ***ARTICLE XXII - SAVINGS CLAUSE***

**Section 1.** Savings Clause: All laws, resolutions, ordinances and acts of the Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma, taken before the effective date of this Constitution, including elections and terms of office, shall remain in full force and effect to the extent that said action is consistent with the Osage Nation Constitution and until said laws, resolutions, ordinances and acts are

altered by the Osage Nation government, as organized under this Constitution, after the effective date of this Constitution.

**Section 2.** Continuity of Governmental Authority and Jurisdiction: Upon the adoption of this Osage Nation Constitution by a vote of the Osage people, and the election of the members of the Osage Nation Congress and the Executive Officers, all powers, rights, responsibilities, and obligations of a government of, by, and for the Osage people shall pass from the Osage Tribal Council to the Osage Nation government established by this Constitution.

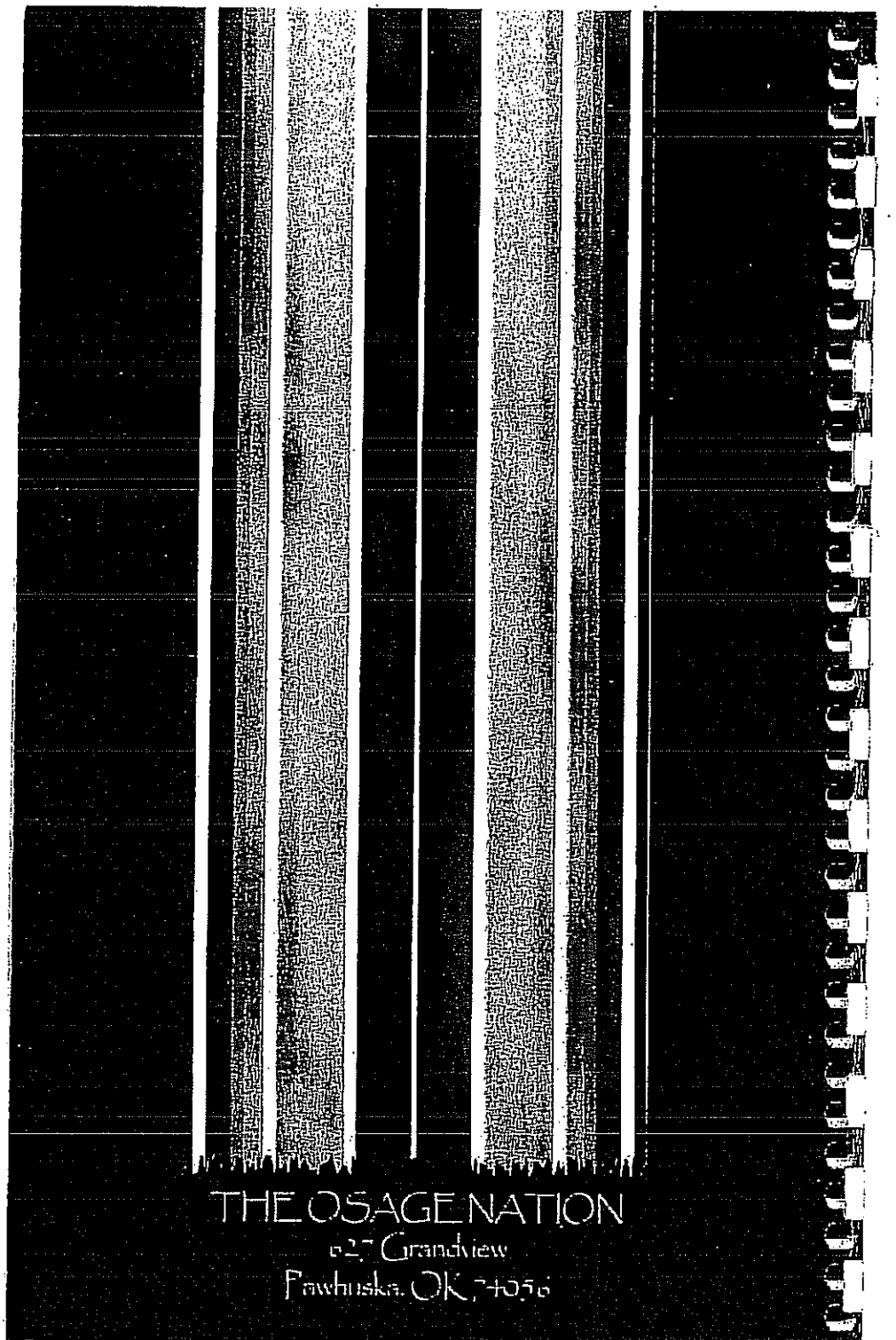
All officers of the Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma, on the effective date of this Constitution shall continue to perform the duties of their offices in a manner not repugnant of this Constitution until those officers are superseded by newly elected or appointed officers as organized under this Constitution.

Until the Osage Nation Supreme Court and Trial Court provided for in Article VIII of this Constitution are organized and established, the existing courts of the Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma, its jurisdiction, and the judicial system shall remain as constituted before the effective date of this Constitution, in a manner consistent with this Article.

### ***ARTICLE XXIII - RATIFICATION OF CONSTITUTION***

This Constitution, when ratified by a majority vote of the qualified voters of the Osage Nation voting in an election called for that purpose by the Osage Government Reform Commission, shall be effective from the date of approval by the Osage People. It shall be signed by the Principal Chief, the Assistant Principal Chief, members of the 31<sup>st</sup> Osage Tribal Council and the Osage Government Reform Commission, and sacredly preserved as the fundamental law of the Osage Nation.





Office of the Principal Chief  
Osage Nation

KAHOBA  
Jim Gray  
Principal Chief



KAHOBA OWA DZA  
John D. Red Eagle  
Assistant Principal Chief

October 19, 2006

RECEIVED  
OSAGE AGENCY  
PAWHUSKA, OK 74056  
2006 OCT 20 PM 1:31

Ms. Melissa Currey  
Superintendent  
Osage Agency  
Bureau of Indian Affairs  
P.O. Box 1539  
Pawhuska, OK 74056

Ms. Jeanette Hanna  
Director  
Eastern Oklahoma Regional Office  
Bureau of Indian Affairs  
3100 W. Peak Blvd.  
Muskogee, OK 74402-8002

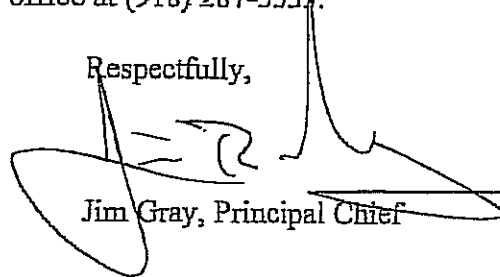
RE: Osage Nation Tribal Trust Account Budget

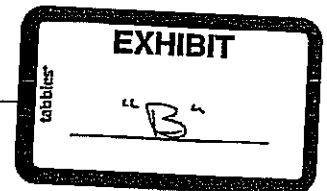
Dear Ms. Currey and Ms. Hanna:

On behalf of the Osage Nation and as Principal Chief, I formally submit the enclosed FY 2007 C-395 Budget ("FY 2007 Budget") as prepared and approved by resolution from the Osage Minerals Council. I request that the Osage Agency and the Eastern Oklahoma Regional Office review and upon approval release \$1 million, as allowable pursuant to the cap imposed by 25 U.S.C. § 123d, from the Osage Nation's own tribal trust account established by the Act of June 28, 1906.<sup>1</sup>

I further request that all future communication regarding this matter follow proper government to government protocol and principles. If you have any concerns or need additional information, please contact my office at (918) 287-5555.

Respectfully,

  
Jim Gray, Principal Chief



<sup>1</sup> Contrary to the understanding of Osage Agency personnel, the Osage Nation is the "direct trust beneficiary" of the Osage Mineral Estate and the Osage tribal trust account, generally referred to as the "C-395" account. *Osage Nation v. United States*, 57 Fed. Cl. 392,

**Osage Minerals Council**  
Osage Nation

KENNETH BIGHORSE  
CYNTHIA BOONE  
DAVID DUBLER  
ROBERT MARTIN



JOHN HENRY MASHUNKASHEY  
JEWELL PURCELL, CHAIRPERSON  
KATHRYN RED CORN  
TALEE RED CORN

Dear Shareholders,

The Osage Minerals Council is carrying on business as usual. We are proud to announce the Council has raised the bonus on leases by 25%, and in January this has added \$15,125; without the raise, the bonus amount would have been \$68,000. The Council discussed this with various entities of producers on the Osage Reservation and this was the outcome.

The March Headright Payment is \$6,175. The attached sheet explains the income of various minerals royalties paid for the last quarter from which the payment amount is figured. The Osage Mineral Council began sending out this information for you to better understand the Mineral Royalties that are being paid.

The council would like to make aware of some issues that have come up in meetings and in letters. The Osage Minerals Council is within the Osage Nation as stated in the Osage Nation Constitution. Also, the Constitution sets out that the Osage Minerals Council will have eight members. We have named a Chairperson, Jewell Purcell. The Osage Nation Constitution sets out that eight Council Members are to be elected, and we believe the trust and Sovereignty is the Osage Nation.

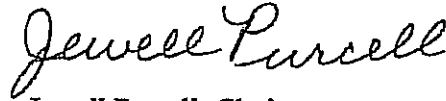
The Minerals Estate is in trust with the Secretary of Interior for the benefit of the Osage Tribe which is now governed by the Osage Nation Government and Constitution. The Osage Nation is now made up of members who are on the Membership Roll and are eligible to vote.

The Osage Minerals Council is very glad to be able to focus our attention and have jurisdiction over the development of the Osage Mineral Estate and representation of shareholders. We look forward to be able to further our minerals in updated technology and modern methods along with taking care of matters that have been on hold for quite some time, i.e., gross production tax paid to the State of Oklahoma, better monitoring of the minerals removed from the Mineral Estate, etc.



Last note of news, various Members of the Osage Minerals Council have been attending the Strategic Planning Sessions of the Osage Nation 25 Year Strategic Plan which was passed by Congress and carried out by the Executive Branch. It is going very well and we have been able to talk to Constituents and answer questions at these Sessions.

Sincerely,

A handwritten signature in cursive script that reads "Jewell Purcell".

Jewell Purcell, Chairperson  
On behalf of the Osage Minerals Council

*Charles O. Tillman, Jr.*

Rt. 1 Box 45-1  
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



Dec. 14, 2006  
Superintendent of the Osage Agency ltr  
Page 2

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

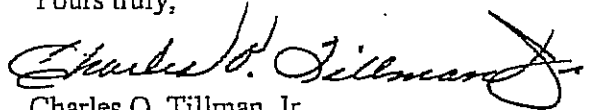
Dec. 14, 2006  
Superintendent of the Osage Agency ltr  
Page 3

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

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



February 21, 2007

Diane Simpkins  
#23 East Lake Drive  
Ponca City, Oklahoma 74604

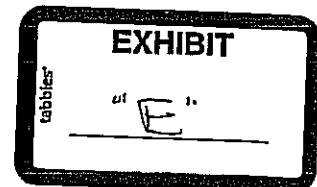
Dear Osage Annuitant,

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.



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

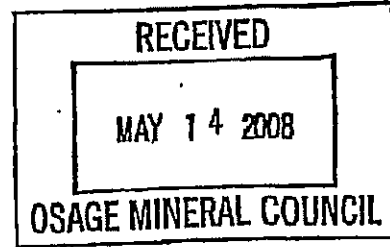
KA.SN.KA  
Jim Gray  
Principal Chief

**Osage Nation**  
Office of the Principal Chief

KA.SN.KA O.H.A.D.SA  
John D. Red Eagle  
Assistant Principal Chief



May 14, 2008



John Henry Mashunkashey, Chairman  
Osage Minerals Council

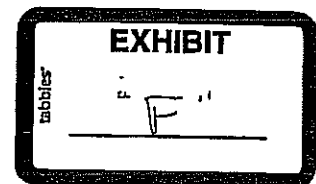
Dear Chairman Mashunkashey:

We, Speaker Mason and Principal Chief Jim Gray, are in receipt of a document titled "Memorandum of Agreement Among the Osage Minerals Council, the Osage Nation Executive Branch, and the Osage Nation Congress Concerning Osage Trust-Related Litigation" (the "Proposed MOA") that purports to completely replace the Memorandum of Agreement entered into by representatives of the Osage Congress, the Principal Chief, and the Minerals Council on the July 21, 2006 (the "MOA"). The Proposed MOA was signed by you and had signature spaces for both of us, as Principal Chief, and as Speaker for the Osage Congress.

On behalf of the Executive Branch and the Legislative Branch of the Osage Nation, we must return to you the Proposed MOA unsigned with the following objections. First, in the event the MOA needs to be revised in any manner, the appropriate manner to address any necessary revisions would be for all the parties to the MOA to first get together to discuss the issues in good faith. The very purpose of the MOA is for the Minerals Council, the Principal Chief, and the Osage Congress to have clear lines of communication regarding Osage trust matters. Any attempt by the Minerals Council to unilaterally revise the MOA without first discussing these issues with the other two parties to the MOA effectively ignores the plain intent behind the MOA. I, as Principal Chief, have previously requested that we meet to discuss your concerns because both Speaker Mason and I believe that we can develop a workable resolution to our differences.

In addition, we do not believe that revising the make-up of the Osage Trust Team as suggested in the Proposed MOA is lawful under the Osage Constitution. The Proposed MOA establishes a Trust Team consisting of all eight members of the Minerals Council, with the Chairperson serving as chairperson of the Trust Team. Although a representative from the Principal Chief's Office and a representative from the Osage Congress may be on the Trust Team, it is clear the majority of the power and decision making authority would lie with the Minerals Council. This is directly contrary to the agreed upon method as outlined in

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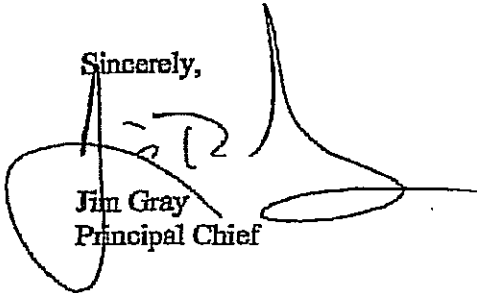


the MOA where the Trust Team would have delegated authority from each of the parties to make all decisions relating to Osage trust matters, save for three exceptions as provided in the MOA.

*A* While the Minerals Council maintains authority to approve and execute mineral leases, it holds no authority under the Osage Constitution to stand as the legal representative for the Osage Nation in regards to the Osage Mineral Estate, which belongs to the Nation. The revised make-up of the Trust Team, as suggested by the Proposed MOA, stands in direct conflict with the Osage Constitution by giving more authority to the Minerals Council than it can legally possess under the Constitution. Thus, a more workable approach to dealing with the overlapping roles and responsibilities of the Principal Chief, the Osage Congress, and the Minerals Council would be to continue with the current make-up of the Trust Team which is designed to use the delegated representative of each of the parties to make decisions.


Again, we stand united in our belief that discussion and interaction between the parties is the most appropriate method for dealing with issues of such importance.

Sincerely,



Jim Gray  
Principal Chief

Sincerely,



Archie L. Mason  
Archie Mason  
Speaker of the Osage Congress