11-5064

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CORA JEAN JECH, et al.,

Plaintiffs-Appellants,

v.

THE UNITED STATES, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Oklahoma

The Honorable Terence C. Kern
District Judge

District Court Case No. 09-CV-00818- TCK-TLW

APPELLANTS' REPLY BRIEF

Respectfully submitted,
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STATEMENT REGARDING ORAL ARGUMENT

Counsel does not request oral argument.

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The Appellants, Cora Jean Jech, Charles Tillman, Dudley Whitehorn, Joe Hall, Joanna Barbara, R.E. Yarbrough, Cody Tucker and John Johnson (collectively "Plaintiffs"), for their brief in reply to the Answering Brief ("Ans. Br.") of the United States Department of the Interior ("DOI"), Ken Salazar ("Salazar"), Secretary of the Interior, Bureau of Indian Affairs ("BIA"), Larry Echohawk ("Echohawk"), Assistant Secretary – Indian Affairs, and United States of America ("United States") (DOI, Salazar, BIA, Echohawk and United States collectively "Federal Defendants") state as follows:

I. RESPONSE TO FEDERAL DEFENDANTS' STATEMENT OF THE FACTS

Federal Defendants misstate the relief Plaintiffs seek through judicial review, repeatedly confuse the Osage Nation with the Osage Tribe and omit critical portions of both the Reaffirmation of Certain Rights of the Osage Tribe, Pub. L. 108-431, 118 Stat. 2609 ("Reaffirmation Act") and the Senate and House Reports on the Reaffirmation Act.

A. Plaintiffs Seek an Election for the Principal Chief, Assistant Principal Chief and Eight Member Tribal Council under the 1906 Act.

Plaintiffs have explained to the Federal Defendants, *ad nauseum*, that they do not seek to affect any change in the voting, membership, laws or governance of the Osage Nation. The Federal Defendants confusion possibly arises from the fact they repeatedly ignore and fail to recognize a distinction between the Osage Tribe and the Osage Nation.

The Osage Tribe was created by the United States Congress in the Osage Allotment Act of June 28, 1906, 34 Stat. 539, *as amended* (the "1906 Act").[1] The 1906 Act reserved the oil, gas, coal and other minerals from allotted lands ("Mineral Estate") to the Osage Tribe. See 1906 Act, §3 (*Attachment 1*). The Osage Tribe, through its tribal council ("Tribal Council"), is charged with the responsibility of administering the leases for the Mineral Estate. *Id.* Furthermore, the 1906 Act specifically provides for the election of the Osage Tribal Council. *See* 1906 Act, § 9 (*Attachment 1*).

The 1906 Act created a final tribal roll and limited *legal* membership in the tribe to persons that own headrights[2] ("Shareholders"), which are vested private property interests entitling the owner to a per capita distribution in the Mineral Estate production revenues. *Cohen's Handbook of Federal Indian Law*, (Nell Jessup Newton, ed., LexisNexis Mathew Bender 2005 ed.) (hereinafter "*Cohen*"), § 4.07(1)(d) (*Attachment 2*).

The Reaffirmation Act clarifies that *legal* membership in the Osage Tribe under the 1906 Act refers to headright owners, but does not affect membership in the Osage Tribe "for all purposes." Reaffirmation Act § 1(b)(1) (*Attachment 3*). The Reaffirmation Act reaffirms the Osage Tribe's right to determine membership for those other purposes "provided that the rights of any person to Osage mineral estate shares are not diminished

[1] 1906 Act, *as amended by* Act of March 2, 1929, §§ 5, 7, 45 Stat. 1478; Pub. L. No.85-192, 71 Stat. 471 (1957); Pub. L. 95-496 §§ 1, 5, 7 and 8, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[2] Reaffirmation Act, Findings (*Attachment 3*).

thereby." *Id*. In lieu of creating two classes of membership (legal and all other purposes) under the name "Osage Tribe", a delegation selected by the Osage Tribal Council drafted the Osage Nation Constitution. Aplt. App. at 37-63. The Osage Nation Constitution created a new government - the Osage Nation - and defined its membership to include both Shareholders and persons of Osage descent that do not own headrights ("Non-Headright Osage").[3] Aplt. App. at 39-40.

However, the Osage Nation Constitution did not and could not change the requirements for *legal* membership in the Osage Tribe under the 1906 Act, *i.e.* headright ownership. *See* Reaffirmation Act, § 1(b)(1) (*Attachment 3*). Consequently, the Osage Tribe continues under the 1906 Act and its membership is limited to headright owners, charged with the responsibility of administering the Mineral Estate through its Tribal Council. Non-Headright Osage, along with Shareholders, are included in the Osage Nation.

The Federal Defendants incorrectly suggest that the Osage Tribe simply became the Osage Nation. This is not true because only United States Congressional action can accomplish that feat. While many of the Osage Tribe's prior governmental functions are now performed by the Osage Nation, nothing in the Reaffirmation Act or any other

[3] As noted in Plaintiffs' Opening Brief, the Osage Nation Constitution was ratified by a vote of both Shareholders and Non-Headright Osage, which casts doubt on its validity (insofar as Non-Headright Osage were not members of the Osage Tribe until ratification and, thus, how could they vote for a new form of government). Notwithstanding, Plaintiffs do not seek to challenge the ratification of the Osage Nation Constitution in this litigation, only the BIA's refusal to conduct an election for the governing body of the Mineral Estate as explained herein.

federal law purported to change the requirements for *legal membership* in the Osage Tribe under the 1906 Act or administration of the Mineral Estate. *See* Reaffirmation Act, *generally (Attachment 3).*

Plaintiffs seek judicial review of the Federal Defendants' decision to not conduct an election for the Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council to independently govern the Mineral Estate in their capacity as legal members of the Osage Tribe, not citizens of the Osage Nation. Their rights as Shareholders were created by the 1906 Act and remain separate and distinct from the rights afforded to all members of the Osage Nation.

Contrary to the Federal Defendants' Statement of Facts, Plaintiffs do not seek to reallocate voting rights; do not seek to change the balance of power between Shareholders and other members of the Osage Nation with respect to matters under the jurisdiction of the Osage Nation; and do not claim that only Shareholders should be permitted to vote in elections for the Osage Nation. Plaintiffs maintain that the 1906 Act proscribes a form of government **for the Mineral Estate** and that the Reaffirmation Act did not change the governance **of the Mineral Estate**. As such, Plaintiffs seek an election for a Principal Chief, Assistant Principal Chief and Tribal Council **of the Mineral Estate**. Plaintiffs do not seek to change the manner in which the Osage Nation elects its government officials.

The Federal Defendants further claim confusion as to the agency action that the Plaintiffs seek to review under the Administrative Procedures Act, 5 U.S.C. § 701 et. seq. ("APA"). To be clear, the action by the BIA giving rise to the relief requested in this litigation is the BIA's refusal to conduct elections for the governing body of the Mineral Estate (not the Osage Nation). The BIA first made this decision when it did not, in fact, conduct the 2006 Elections for the Principal Chief, Assistant Principal Chief and Tribal Council. The BIA's decision has been repeated and reinforced over the years because it has continued to refuse to conduct elections for the Principal Chief, Assistant Principal Chief and Tribal Council of the Mineral Estate, as most recently evidenced by its refusal to conduct the 2010 Elections for the Mineral Estate. The BIA's obligation to the Shareholders is a matter of federal law under the 1906 Act. Its refusal to conduct the elective process provided for under the 1906 Act is the discrete act which gave rise to the issues asserted in this lawsuit, precisely, the 2006 Election.

The finality of the BIA's decision with respect to its refusal to conduct elections for the Mineral Estate is evidenced by the letters attached to Plaintiffs' Opening Brief and the other facts alleged therein. Stated otherwise, Plaintiffs seek judicial review of the BIA's final agency decision to not conduct elections for the Principal Chief, Assistant Principal Chief and Tribal Council to act as the independent governing body of the Osage Mineral Estate.

B. The House and Senate Reports Specifically State that there was no Intent to Change Existing Law

As the Federal Defendants acknowledge, the primary issue in this case is the interpretation of the rights of the Shareholders and responsibilities of the BIA under the 1906 Act as clarified by the Reaffirmation Act. In their Statement of Facts, the Federal Defendants note that the Senate and House Reports state that the purpose of the Reaffirmation Act is to reaffirm the right of the Osage Tribe to determine its membership and form of government. However, the Federal Defendants conspicuously omit that the House Report states "[i]f enacted, this bill would make no changes in existing law." H. Rep. 108-502, 108th Cong. 2d Sess. at 4 (May 19, 2004) (*Attachment 4*). Similarly, the Senate Report states "the enactment of H.R. 2912 [the Reaffirmation Act] will not affect any changes in existing law." S. Rep. 108-343, 108th Cong. 2d Sess. at 4 (Sept. 15, 2004) (*Attachment 5*).

As the plain language of the Senate Report and House Report make clear, the intent of the Reaffirmation Act was to allow the Osage Tribe to determine its own form of membership and government, *without affecting existing federal law*. The only interpretation of the Reaffirmation Act that would not affect federal law, but would allow the Osage Tribe to determine its own form of government, is if the Osage Tribe maintained the status quo for the governance of the Mineral Estate, yet determined its membership and own form of government for all matters outside of the Mineral Estate.

Indeed, the Congressional Record supports this interpretation, wherein Representative James Gibbons explained the intent of the Reaffirmation Act:

> But because of the 1906 act, they [Non-Headright Osage] are not eligible to be members of the tribe because they do not own a headright share in the Osage mineral estate. They are denied the basic benefit, as well as responsibilities, of tribal membership. Some are not eligible for certain services and benefits, such as Native American scholarships.
>
> ***
>
> It is past time to consider letting the Osage Tribe decide how to govern itself as it sees fit, ***providing that no one loses any property or other vested legal rights in the process. H.R. 2912 [the Reaffirmation Act] includes language to ensure that no one's interest in headright shares is touched. Headrights are private property, and there is no intent to affect them under this bill.*** 150 Cong. Rec. H3562 (daily ed. June 1, 2004) (statement of Rep. Gibbons) (emphasis added) (*Attachment 6*).

Rep. Lucas echoed this sentiment and noted that the Reaffirmation Act "is intended to put the Osage Tribe on equal footing with all other federally recognized tribes by allowing them to determine their own membership criteria and system of government, ***while protecting the headrights of the shareholders***." *Id*. (emphasis added) (*Attachment 6*).

The foregoing makes abundantly clear that the Congressional intent under the 1906 Act was to permit Non-Headright Osage to participate in tribal functions for all purposes apart from the Mineral Estate, not to diminish the Shareholders' control of the Mineral Estate. The BIA ignores the admonishment of Congress in this regard by refusing to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council to govern the Mineral Estate and, thereby, significantly limiting the Shareholders' right to control their vested private property interest, which right of governance and control is guaranteed by the 1906 Act.

II. ARGUMENT

A. Plaintiffs have Standing to Challenge the BIA's Final Agency Decision

Throughout their Answering Brief, the Federal Defendants claim Plaintiffs lack standing to challenge the BIA's refusal to conduct an election for the governing body of the Mineral Estate because the letter from the Assistant Secretary of Indian Affairs, among others, were not addressed to them personally. The Federal Defendants further make much of the fact that only one of the Plaintiffs was a party to one letter exchange included in Plaintiffs' Opening Brief. Notably, the Federal Defendants cite no authority for the proposition that persons affected by final agency decisions have no standing to seek judicial review unless such decisions are communicated directly to such person by an agency official.

To the contrary, 5 U.S.C. § 702 of the APA provides "[a] person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." This Court recognizes that "a plaintiff seeking judicial review pursuant to the APA must (i) identify some 'final agency action' and (ii) demonstrate that its claims fall within the zone of interests protected by the statute forming the basis of its claims." *Catron County Bd. of Com'rs, New Mexico v. U.S. Fish and Wildlife Serv.*, 75 F.3d 1429, 1434 (10th Cir. 1996). It is well-settled that there is a presumption in favor of judicial review under the APA. *Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 395, 399 (1987) (recognizing that in the past the "Court was unwilling to take so narrow a view of the APA's 'generous

review provisions'" and noting "Congress' evident intent to make agency action presumptively reviewable") (internal quotations and citations omitted).

Based on the foregoing, to establish standing, Plaintiffs are only required to identify a final agency decision and establish that they are persons within the zone of interest the 1906 Act and Reaffirmation Act intended to protect and/or benefit. There is no requirement that they be included as addressees on letters to and from the BIA evidencing the final agency decision, provided there is a final decision and provided they are aggrieved thereby.

Indeed, the Supreme Court recognizes the possibility that an agency action may be directed towards one person, yet affect others and that all those affected have a right to judicial review, provided they satisfy the zone of interest test.

> In cases where the plaintiff is not itself the subject of the contested regulatory action, the test denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit. The test is not meant to be especially demanding. *Clarke*, 479 U.S. at 399-400.

In the instant case, Plaintiffs challenge the BIA's refusal to conduct an election in accordance with the 1906 Act. Plaintiffs, as Shareholders, are clearly within the 'zone of interest' that the 1906 Act intended to protect. Therefore, Plaintiffs may seek review of final agency decisions affecting their headrights.

To adopt the Federal Defendants' position on this matter, this Court would have to find that not only does the APA require final agency decisions, but that each person aggrieved thereby must independently proceed through the administrative review process

as a condition precedent to judicial review. Such a conclusion is unsupported by the well-settled law on this issue, which requires only that a party seeking judicial review identify a final agency decision and establish that they are within the zone of interest protected by the statute at issue. Indeed, the Supreme Court recognizes that agency decisions may affect the broader public and has held that persons who are affected thereby may seek judicial review. *Sierra Club v. Morton*, 405 U.S. 727, 738-40 (1972). Similarly, Plaintiffs seek judicial review of an agency decision that affects all Shareholders, thus, it matters not whether there are agency letters addressed to them personally if they establish that the BIA's decision is final.

The Federal Defendants cite to *Forest Guardians v. U.S. Forest Serv*., 641 F.3d 423 (10th Cir. 2011) to suggest that Plaintiffs were required to personally present their issues to the BIA and their failure to do so precludes judicial review; however, such a liberal construction of *Forest Guardians* is not supported by the language of that case. In *Forest Guardians*, the Tenth Circuit found that Forest Guardians could not seek judicial review of the UFSF's failure to apply the Best Available Science standard to a project because such issue was not raised at the administrative level. *Id*. at 430-432. While it discussed a plaintiff's obligation to structure their arguments at the administrative stage, it was in the context of whether an issue was presented to an agency, it did not address or purport to suggest that only the parties to the administrative proceeding had standing to challenge agency decisions that were final. *Id*. In the instant case, Plaintiffs have identified the actions of the BIA (in not conducting the 2006 Election for the first time in

100 years) and letters from high ranking officials of the BIA proving that the BIA considered whether or not to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council of the Mineral Estate.

As explained in Plaintiffs' Opening Brief and below, the BIA's decision in refusing to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council is a final agency decision subject to judicial review.

B. The BIA's Decision was Final and Subject to Judicial Review and/or Exhaustion of Administrative Remedies would be Futile

Throughout this case the Federal Defendants claim ignorance of the Plaintiffs' demands, alleging they are unclear as to which BIA decision the Plaintiffs ask the District Court to review. Since the inception of this lawsuit, Plaintiffs have requested an election for the Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council as the governing body of the Mineral Estate in accordance with the 1906 Act. *See* Aplt. App. at 29-32, 35. This request has never wavered.

The BIA's refusal to conduct such an election is subject to immediate judicial review because (1) due to the unique circumstances of this case and the 1906 Act, the decision was final when the BIA did not conduct the 2006 Election because it was a decision from which immediate legal consequences flow to the Shareholders; (2) the letter from the Assistant Secretary of Indian Affairs is a final decision; (3) the series of letters from the Assistant Secretary of Indian Affairs and others in the BIA's organizational hierarchy refusing to conduct an election constitute a final agency decision; and, alternatively, (4) the BIA's actions in refusing to conduct an election

coupled with the sheer volume of letters from the BIA interpreting the Reaffirmation Act to eliminate its obligations to administer elections for the Mineral Estate make exhaustion futile in this case.

The Federal Defendants ask this Court to ignore common sense and confuse the issue with semantics by questioning which letter constituted the final agency decision. As noted in Plaintiffs' Opening Brief, due to the unique nature of the facts involved in this case, the BIA's decision not to conduct an election for the Principal Chief, Assistant Chief and Tribal Council to govern the Mineral Estate in accordance with the 1906 Act occurred when it did not, in fact, conduct the 2006 Election because that was a final decision from which consequences immediately flow to the Shareholders. *See Betheleham Steel Corp. v. EPA*, 669 F.2d 903, 908 (3rd Cir. 1982); *Barrick Goldstrike Mines, Inc. v. Browner*, 215 F.3d 45, 48 (D.C. Cir. 2000).

If that fact alone were not enough to constitute a final agency decision, the series of letters from the BIA that followed the decision not to conduct the 2006 Election for the Mineral Estate cemented the finality of the BIA's position.

Even the Federal Defendants acknowledge that decisions by the Assistant Secretary of Indian Affairs are final when rendered unless otherwise stated under 25 C.F.R. § 2.6 (c). *See* Ans. Br. At 25, n. 7, 33. The Plaintiffs have such a letter on this particular issue, yet the Federal Defendants again ask this Court to ignore logic and pretend that the letter is unclear. The letter from Assistant Secretary –Indian Affairs clearly references the Reaffirmation Act and clearly notes that the BIA only provided

"technical assistance" to the Nation during the 2006 Election. Aplt. App. at 351. The Assistant Secretary, in the very next sentence states that the Osage Nation Constitution upholds Congress' intent under the Reaffirmation Act. *Id*. It is clear from the context of the letter that Ms. Miller was complaining about the election for the Mineral Estate under the Osage Nation Constitution and the Assistant Secretary – Indian Affairs finally said that the Osage Nation Constitution complied with the intent of the Reaffirmation Act in that regard and technical assistance from the BIA is all that is required.[4]

If there be any doubt as to what the Assistant Secretary – Indian Affairs was referring to, the next letter to Ms. Miller dated February 28, 2008, from the Regional Director of the BIA makes clear that she was challenging the BIA's implementation of the Reaffirmation Act and, specifically notes that the Reaffirmation Act supersedes Part 90 of the Code of Federal Regulations which set forth the procedures for the elections and government for the Osage Tribe. Aplt. App. at 352-353. In such letter the Regional Director specifically references the letter from the Assistant Secretary – Indian affairs and repeats that the BIA will take no further action because it has fulfilled its obligations under the Reaffirmation Act. *Id*.

The letter from Plaintiff, Charles Tillman, to the BIA Superintendent Melissa Currey and BIA Regional Director Jeanette Hanna, dated December 21, 2006, explained

[4] The Federal Defendants also attempt to create a disputed fact with regard to level of assistance provided by the BIA in the 2006 Election. The BIA has never maintained that it provided any more than technical assistance, which essentially amounts to providing a list of the headright owners and their respective shares. The specific issue in this litigation is the election for Principal Chief, Assistant Principal Chief and Tribal Council of the Mineral Estate, which all parties agree the BIA did not administer.

the Plaintiffs' position in detail and specifically noted that the fact the BIA failed to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council to govern the Mineral Estate violated federal law. Aplt. App. at 358 – 360. The response to Mr. Tillman's letter came from the BIA Director at the time, the third-highest ranking official in the BIA, William Ragsdale, who advised Mr. Tillman that it was the BIA's position there was no need for the BIA to take any action to protect the Mineral Estate or the Shareholders. Aplt. App. at 347-348. A review of Mr. Tillman's letter and Director Ragsdale's response leaves no room for guessing, Mr. Tillman clearly requested an election and Director Ragsdale clearly informed him that the BIA would not conduct an election because it did not believe it was required to under the Reaffirmation Act. Aplt. App. At 358-60, 347-48.

The BIA's claim that the Shareholders' issues are not fully presented is disingenuous, at best. Plaintiffs have identified numerous letters from concerned Shareholders and the Osage Shareholders Association (of which all Plaintiffs are members) that make clear the action they demanded repeatedly from the BIA was an election for the Osage Tribal Council as the governing body of the Mineral Estate. The letter from the Osage Shareholders Association, dated March 20, 2006, to the BIA Superintendent and Area Director specifically informed the BIA of the Shareholders "strong opposition to the Osage Tribe's proposal to delegate authority for the upcoming June [2006] elections" and complained that proposed loss of a separate Principal Chief and Assistant Principal Chief of the Mineral Estate appeared to violate federal law. Aplt.

App. at 356 – 57. In addition to the letter from Plaintiff, Charles Tillman, explained above, there were numerous other letters from concerned Shareholders that all challenged the BIA's refusal to conduct an election for the Principal Chief and Assistant Principal Chief of the Mineral Estate elected solely by Shareholders. *See* (i) letter from John R. Davis, to BIA Superintendant Melissa Currey, dated January 12, 2007 (Aplt. App. at 361); (ii) letter from John Raymond Dennison to Senator James M. Inhofe, Members of the Indian Affairs Committee, Senator John McCain and BIA Superintendent Melissa Currey dated January 17, 2007 (Aplt. App. at 362); (iii) letter from Judith Soudan to the Department of Interior, Bureau of Indian Affairs, Osage Agency, attn: Melissa Currey dated October of 2007 (Aplt. App. at 364); and (iv) letter from Brenda Brunger to the Department of Interior, Bureau of Indian Affairs, Osage Agency, attn: Melissa Currey dated October of 2007 (Aplt. App. at 365-366).

In response to these and other requests, the BIA has repeatedly refused to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council under the 1906 Act, consistently stating its erroneous position that the Reaffirmation Act eliminates its obligations to do so. Specifically: (i) letter dated January 28, 2008 from the Assistant Secretary of Indian Affairs stating "[t]he BIA will take no further actions in this issue since it is an internal tribal matter . . . " (Aplt. App. at 351); (ii) letter dated March 19, 2007 from the Director of the BIA "[t]here is no need for the BIA to take any further or new action at this time to protect the Osage mineral estate" (Aplt. App. at 347-48); (iv) letter dated February 12, 2010 from the Director of the BIA - "[t]he

Department's existing position regarding the intent of the 2004 Act eliminates the BIA's authority under the Part 90 regulations [CFRs]" (Aplt. App. at 354-55); letter dated February 28, 2008 from the Regional Director of the BIA – "the position of the Bureau of Indian Affairs has not changed [since your last letter] . . . a meeting [with you] would not change the Bureaus position . . . " (Aplt. App. at 352-53); letter dated February 21, 2007 from the Melissa Currey Superintendent of the Osage Agency – "upon passage of the [Reaffirmation Act] any reference in the Code of Federal Regulations (CFR) became moot" (Aplt. App. 349-350).

Incomprehensibly, the Federal Defendants claim these letters are sporadic and that they are unclear as to exactly what action the BIA is taking or refusing to take. However, above, Plaintiffs have identified a letter from the Assistant Secretary of Indian Affairs, two letters from the Director of the Bureau of Indian Affairs, a letter from the Regional Director of the Bureau of Indian Affairs and a letter from the Superintendent of the Osage Agency, all referencing the Reaffirmation Act, noting that the BIA was upholding its obligations under such Act and, with the exception of the letter from the Assistant Secretary, all specifically noting that the Code of Federal Regulations governing the election procedures for the governing body of the Mineral Estate are moot. As noted in Plaintiffs' Opening Brief, letters or a series of letters stating agency positions may constitute final agency action under the APA. See *Barrick Goldstrike Mines, Inc.*, 215 F.3d 45, 48-49 (D.C. Cir. 2000).

It is helpful to understand the hierarchy of the Bureau of Indian Affairs. At the top is the Assistant Secretary of Indian Affairs, followed by the Principal Deputy – Assistant Secretary, then the Director of the BIA, followed by the Deputy Director – Field Operations, the Regional Directors and, finally, the Agency Superintendents. Bureau of Indian Affairs Organization Chart, www.bia.gov/whoweare/index.htm (*Attachment 7*). Of the six (6) person chain of command, Plaintiffs have identified letters from every official from the highest ranking official to the lowest ranking official, with the exception of the Principal Deputy and Deputy Director. Notably, in addition to the letter from the Assistant Secretary of Indian Affairs, Plaintiffs have identified two separate letters from the Director of the Bureau of Indian Affairs who is the third-highest ranking official in the Bureau of Indian Affairs.

As the foregoing makes clear, the Federal Defendants' claim that this issue has not been thoroughly considered and finally decided is disingenuous. Almost every official in the BIA that handles Osage matters has weighed in on this issue and the answer has always been the same: the BIA has no obligation to conduct an election for the Principal Chief, Assistant Principal Chief and Tribal Council to govern the Mineral Estate.

Even if the Court determines that the BIA's decision not to conduct the election was not final when rendered, that the letter from the Assistant Secretary is not a final agency decision and that the series of letters from the BIA do not together constitute a final agency decision, the actions of the BIA coupled with the sheer volume of letters from so many officials in the BIA hierarchy make clear that exhaustion would be futile.

Despite the Federal Defendants' attempts to confuse the issue, it is really quite simple: whether the BIA is required to conduct an election for the governing body of the Mineral Estate since the passage of the Reaffirmation Act. It is purely a matter of statutory interpretation and while the Federal Defendants claim that factual development is necessary, they have never identified one single fact that is in dispute. As such, the functions of the exhaustion requirement would not be served and this issue is ripe for immediate judicial review.

III. CONCLUSION

Plaintiffs have clearly identified a decision by the BIA that warrants immediate judicial review: the BIA's decision not to conduct an election for the Principal Chief, Assistant Principal Chief and eight (8) member Tribal Council to govern the Mineral Estate. The BIA made this decision first by not conducting the 2006 Election and its finality is evidenced by (1) the letter from the Assistant Secretary of the Interior, which is a final decision under the 25 C.F.R. § 2.6(c); (2) the series of letters from the Director of the BIA and others in the organization's hierarchy proclaiming settled agency positions; and (3) by the combination of the actions of the BIA in not conducting the 2006 and 2010 Elections, the letter from the Assistant Secretary of the Interior and the series of letters from BIA officials which collectively establish the finality of the decision and/or that exhaustion would be futile.

The Federal Defendants claims that the letters from Assistant Secretary of Indian Affairs and other BIA officials must be addressed to Plaintiffs to be a decision appealable

by Plaintiffs is unsupported by the well-settled law on judicial review of agency decisions. To establish standing, the APA only requires a final decision and that Plaintiffs are in the zone of interest contemplated by the particular statute at issue.

Based on the foregoing, Plaintiffs have clearly established a final decision by the BIA, that they have interests affected by that decision, and that they are in the zone of interest contemplated by the 1906 Act and, thus, entitled to pursue immediate judicial review.

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CERTIFICATE OF COMPLIANCE

Section 1. Word Count

As required by Fed. R. App. P. 32(a)(7)(c), I certify that this brief is proportionally spaced and contains 5,088 words.

Complete one of the following:

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I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

By s/Cori D. Powell
Cori D. Powell 21328

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that a copy of the foregoing **APPELLANT'S REPLY BRIEF,** as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the Trend Micro OfficeScan Client for Windows version 10.5.1083, Virus Definition File Dated: December 5, 2011, and according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

By s/Tracy L. Costa
Tracy L. Costa, Legal Assistant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2011, I electronically transmitted **APPELLANTS' REPLY BRIEF** to the following:

Katherine W. Hazard – Katherine.Hazard@usdoj.gov
Phil E. Pinnell – phil_pinnell@usdoj.gov

I further certify that on the 5th day of December, 2011, I served a true and correct copy of **APPELLANTS' REPLY BRIEF** by first class mail, with proper postage fully prepaid thereon, on the following, who is not a registered participant of the ECF System:

Barbara M R Marvin
U.S. Dept. of Justice
Environment & Natural Resources
601 D Street NW, Room 3129
Washington, DC 20004-0000

s/Cori D. Powell
Cori D. Powell

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12/5/2011 cdp

CHAP. 3569.—An Act To amend section twenty-eight hundred and forty-four of the Revised Statutes of the United States, and to provide for an authentication of invoices of merchandise shipped to the United States from the Philippine Islands.

June 28, 1906.
[H. R. 19786.]
[Public, No. 318.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section numbered twenty-eight hundred and forty-four of the Revised Statutes of the United States is hereby amended by adding thereto the following: "*Provided*, That the authentication may be made by the collector or a deputy collector of customs in the case of merchandise shipped to the United States from the Philippine Islands."

Invoices.
R. S., sec. 2844, p. 551, amended.

Authentications in Philippines.

Approved, June 28, 1906.

CHAP. 3570.—An Act To authorize the Monongahela Connecting Railroad Company to construct a bridge across the Monongahela River in the State of Pennsylvania.

June 28, 1906.
[H. R. 19850.]
[Public, No. 319.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Monongahela Connecting Railroad Company, a corporation organized under the laws of the State of Pennsylvania, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate a bridge and approaches thereto across the Monongahela River at Pittsburg, from a point on the north shore between Hazlewood avenue and the Glenwood highway bridge to a point on the south shore in the township of Baldwin or the township of Lower Saint Clair, in Allegheny County, in the State of Pennsylvania, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty third, nineteen hundred and six.

Monongahela River.
Monongahela Connecting Railroad Company may bridge, at Pittsburg, Pa.

Ante, p. 84.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Amendment.

Approved, June 28, 1906.

CHAP. 3571.—An Act To authorize the board of supervisors of Sunflower County, Mississippi, to construct a bridge across Sunflower River.

June 28, 1906.
[H. R. 19854.]
[Public, No. 320.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of supervisors of Sunflower County, Mississippi, be, and they are hereby, authorized to construct, maintain, and operate a bridge and approaches thereto across the Sunflower River at Lehrton, in Sunflower County, in the State of Mississippi, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

Sunflower River.
Sunflower County, Miss., may bridge, at Lehrton.

Ante, p. 84.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Amendment.

Approved, June 28, 1906.

CHAP. 3572.—An Act For the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes.

June 28, 1906.
[H. R. 15333.]
[Public, No. 321.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the roll of the Osage tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Okla-

Osage Indians, Okla.
Division of tribal land, etc.
Tribal roll.

ATTACHMENT 1

homa Territory, as it existed on the first day of January, nineteen hundred and six, and all children born between January first, nineteen hundred and six, and July first, nineteen hundred and seven, to persons whose names are on said roll on January first, nineteen hundred and six, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January first, nineteen hundred and six, including the children of members of the tribe who have, or have had, white husbands, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof: *Provided*, That the principal chief of the Osages shall, within three months from and after the approval of this Act, file with the Secretary of the Interior a list of the names which the tribe claims were placed upon the roll by fraud, but no name shall be included in said list of any person or his descendants that was placed on said roll prior to the thirty-first day of December, eighteen hundred and eighty-one, the date of the adoption of the Osage constitution, and the Secretary of the Interior, as early as practicable, shall carefully investigate such cases and shall determine which of said persons, if any, are entitled to enrollment; but the tribe must affirmatively show what names have been placed upon said roll by fraud; but where the rights of persons to enrollment to the Osage roll have been investigated by the Interior Department and it has been determined by the Secretary of the Interior that such persons were entitled to enrollment, their names shall not be stricken from the roll for fraud except upon newly discovered evidence; and the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him, after investigation, to be so entitled, whose applications were pending on the date of the approval of this Act; and the said Secretary of the Interior is hereby authorized to strike from the said roll the names of persons or their descendants which he finds were placed thereon by or through fraud, and the said roll as above provided, after the revision and approval of the Secretary of the Interior, as herein provided, shall constitute the approved roll of said tribe; and the action of the Secretary of the Interior in the revision of the roll as herein provided shall be final, and the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes at Large, page three hundred and five, granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided.

Proviso. Fraudulent enrollment.

Restriction.

Revision of roll.

Decision of Secretary final. Vol. 28, p. 305.

Division of lands.

SEC. 2. That all lands belonging to the Osage tribe of Indians in Oklahoma Territory, except as herein provided, shall be divided among the members of said tribe, giving to each his or her fair share thereof in acres, as follows:

First selection.

First. Each member of said tribe, as shown by the roll of membership made up as herein provided, shall be permitted to select one hundred and sixty acres of land as a first selection; and the adult members shall select their first selections and file notice of the same with the United States Indian agent for the Osages within three months after the approval of this Act: *Provided*, That all selections of lands heretofore made by any member of said tribe, against which no contest is pending, be, and the same are hereby, ratified and confirmed as one of the selections of such member. And if any adult member fails, refuses, or is unable to make such selection within said time, then it shall be the duty of the United States Indian agent for the Osages to make such selection for such member or members, subject to the approval of the Secretary of the Interior. That all said first selections for minors shall be made by the United States Indian agent for the Osages, sub-

Filing notice. Time limit.

Proviso. Ratification.

Failure to select.

First selections for minors.

ject to the approval of the Secretary of the Interior: *Provided*, That said first selections for minors having parents may be made by said parents, and the word "minor" or "minors" used in this Act shall be held to mean those who are under twenty-one years of age: *And provided further*, That all children born to members of said tribe between January first, nineteen hundred and six, and the first day of January, nineteen hundred and seven, shall have their selections made for them within six months after approval of this Act, or within six months after their respective births. That all children born to members of said tribe on and after the first day of January, nineteen hundred and seven, and before the first day of July, nineteen hundred and seven, shall have their selections made for them on or before the last day of July, nineteen hundred and seven, the proof of birth of such children to be made to the United States Indian agent for the Osages.

Parents may select.

Time of selection.

Second. That in making his or her first selection of land, as herein provided for, a member shall not be permitted to select land already selected by, or in possession of, another member of said tribe as a first selection, unless such other member is in possession of more land than he and his family are entitled to for first selections under this Act; and in such cases the member in possession and having houses, orchards, barns, or plowed land thereon shall have the prior right to make the first selection: *Provided*, That where members of the tribe are in possession of more land than they are entitled to for first selections herein, said members shall have sixty days after the approval of this Act to dispose of the improvements on said lands to other members of the tribe.

Prior rights protected.

Proviso. Disposal of improvements.

Third. After each member has selected his or her first selection as herein provided, he or she shall be permitted to make a second selection of one hundred and sixty acres of land in the manner herein provided for the first selection.

Second selection.

Fourth. After each member has selected his or her second selection of one hundred and sixty acres of land as herein provided, he or she shall be permitted to make a third selection of one hundred and sixty acres of land in the manner herein provided for the first and second selections: *Provided*, That all selections herein provided for shall conform to the existing public surveys in tracts of not less than forty acres, or a legal subdivision of a less amount, designated a "lot." Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable until otherwise provided by Act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, except as hereinafter provided.

Third selection.

Proviso. Surveys.

Homesteads inalienable, etc.

Surplus lands.

Fifth. After each member has selected his or her first, second, and third selections of one hundred and sixty acres of land, as herein provided, the remaining lands of said tribe in Oklahoma Territory, except as herein provided, shall be divided as equally as practicable among said members by a commission to be appointed to supervise the selection and division of said Osage lands.

Disposal of remaining lands.

Sixth. The selection and division of lands herein provided for shall be made under the supervision of, or by, a commission consisting of one member of the Osage tribe, to be selected by the Osage council, and two persons to be selected by the Commissioner of Indian Affairs subject to the approval of the Secretary of the Interior; and said commission shall settle all controversies between members of the tribe relative to said selections of land; and the schedules of said selections and division of lands herein provided for shall be subject to the approval of the Secretary of the Interior. The surveys, salaries of said com-

Commission.

Duties.

Expenses.

mission, and all other proper expenses necessary in making the selections and division of land as herein provided shall be paid by the Secretary of the Interior, out of any Osage funds derived from the sale of town lots, royalties from oil, gas, or other minerals, or rents from grazing land.

Authority to sell selected lands.

Seventh. That the Secretary of the Interior, in his discretion, at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of this Act,

Homesteads exempted.

except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully competent and capable of transacting his or her own business and caring for his or her own individual affairs: *Provided*,

Proviso. Taxation, etc.

That upon the issuance of such certificate of competency the lands of such member (except his or her homestead) shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States: *Provided*, That the surplus lands shall be nontaxable for the period of three years from the approval of this Act, except where certificates of competency are issued or in case of the death of the allottee, unless otherwise

Sale of oil, etc., lands prohibited.

provided by Congress: *And provided further*, That nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as

Individual ownership after 25 years.

hereinafter provided: *And provided further*, That the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years, unless otherwise provided for by Act of Congress.

Sisters of Saint Francis. Land donated to.

Eighth. There shall be reserved from selection and division, as herein provided, one hundred and sixty acres on which the Saint Louis School, near Pawhuska, is located, and the one hundred and sixty acres on which the Saint John's School, on Hominy Creek, Osage Indian Reservation, is located, said tracts to conform to the public surveys; and said tracts of land are hereby set aside and donated to the order of the Sisters of Saint Francis; and said tracts shall be conveyed to said order, the Sisters of Saint Francis, as early as practicable, by deed.

Lands reserved near Gray Horse.

There shall also be reserved from selection and division forty acres of land near Gray Horse, to be designated by the Secretary of the Interior, on which are located the dwelling houses of John N. Florer, Walter O. Florer, and John L. Bird; and said John N. Florer shall be allowed to purchase said forty acres at the appraised value placed thereon by the Osage Allotting Commission, the proceeds of the sale to be placed to the credit of the Indians and to be distributed like other funds herein provided for.

Lands reserved for dwelling purposes.

Ninth. There shall be reserved from selection and division, as herein provided, the northeast quarter of section three, township twenty-five, range nine east, of the Indian meridian, and one hundred and sixty acres to conform to the public survey at the town of Gray Horse, including the Government doctor's building, other valuable buildings, and the cemetery, and the one hundred and sixty acres to conform to the public survey, adjoining or near the town site of Hominy; said lands or tracts are hereby set aside for the use and benefit of the Osage Indians, exclusively, for dwelling purposes, for a period of twenty-five years from and after the first day of January, nineteen hundred and

Proviso. Sale of reserved lands.

seven: *Provided*, That said land may, in the discretion of the Osage tribe, be sold under such rules and regulations as the Secretary of the Interior may prescribe; and the proceeds of the same under such sale shall be apportioned and placed to the credit of the individual members of the tribe according to the roll herein provided for.

Osage Boarding school reserve, etc.

Tenth. The Osage Boarding School reserve of eighty-seven and five-tenth acres, and the reservoir reserve of seventeen and three-tenths acres, and the agent's residence reserve, together with all the buildings located on said reservations in the town site of Pawhuska, as shown by the official plat of the same, are hereby reserved from selection and division as herein provided; and the same may be sold in the discretion of the Osage tribe, under such rules and regulations as the Secretary of the Interior may provide: and the proceeds of such sale shall be apportioned and placed to the credit of the individual members of said tribe according to the roll herein provided for.

Sale of.

Proceeds.

Sale of Government buildings, etc.

Eleventh. That the United States Indian agent's office building, the Osage council building, and all other buildings which are for the occupancy and use of Government employees, in the town of Pawhuska, together with the lots on which the said buildings are situated, shall be sold to the highest bidder as early as practicable, under such rules and regulations as the Secretary of the Interior may prescribe; and with the proceeds he shall erect other suitable buildings for the uses mentioned, on such sites as he may select, the remaining proceeds, if any, to be placed to the credit of the individual members of the Osage tribe of Indians: *Provided*, That the house known as the chief's house, together with the lot or lots on which said house is located, and the house known as the United States interpreter's house, in Pawhuska, Oklahoma Territory, together with the lot or lots on which said houses are located, shall be reserved from sale to the highest bidder and shall be sold to the principal chief of the Osages and the United States interpreter for the Osages, respectively, at the appraised value of the same, said appraisement to be made by the Osage town-site commission, subject to the approval of the Secretary of the Interior.

Erection of new buildings.

Proviso.
Buildings reserved from sale.

Cemetery reserve donated to Pawhuska.

Twelfth. That the cemetery reserve of twenty acres in the town site of Pawhuska, as shown by the official plat thereof, is hereby set aside and donated to the town of Pawhuska for the purposes of sepulture, on condition that if said cemetery reserve of twenty acres, or any part thereof, is used for purposes other than that of sepulture, the whole of said cemetery reserve of twenty acres shall revert to the use and benefit of the individual members of the Osage tribe, according to the roll herein provided, or to their heirs; and said tract shall be conveyed to the said town of Pawhuska by deed, and said deed shall recite and set out in full the conditions under which the above donation and conveyance are made.

Reversion.

Osage town-site commission.

Present law not affected.

That the provisions of an Act entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and six, and for other purposes," approved March third, nineteen hundred and five, relating to the Osage Reservation, pages one thousand and sixty-one and one thousand and sixty-two, volume thirty-three, United States Statutes at Large, be, and the same are hereby, continued in full force and effect.

Vol. 33, pp. 1061, 1062.

Oil and mineral lands. Leases

SEC. 3. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: *Provided*, That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: *And provided further*, That no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the

Provisos.
Royalties.

Prospecting restricted.

written consent of the Secretary of the Interior: *Provided, however*, That nothing herein contained shall be construed as affecting any valid existing lease or contract.

Existing contracts, etc., not affected.

Trust fund.

SEC. 4. That all funds belonging to the Osage tribe, and all moneys due, and all moneys that may become due, or may hereafter be found to be due the said Osage tribe of Indians, shall be held in trust by the United States for the period of twenty-five years from and after the first day of January, nineteen hundred and seven, except as herein provided:

Segregation of funds.

First. That all the funds of the Osage tribe of Indians, and all the moneys now due or that may hereafter be found to be due to the said Osage tribe of Indians, and all moneys that may be received from the sale of their lands in Kansas under existing laws, and all moneys found to be due to said Osage tribe of Indians on claims against the United States, after all proper expenses are paid, shall be segregated as soon after January first, nineteen hundred and seven, as is practicable and placed to the credit of the individual members of the said Osage tribe on a 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, said credit to draw interest as now authorized by law; and the interest that may accrue thereon shall be paid quarterly to the members entitled thereto, except in the case of minors, in which case the interest shall be paid quarterly to the parents until said minor arrives at the age of twenty-one years: *Provided*, That if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest: *And provided further*, That said interest of minors whose parents are deceased shall be paid to their legal guardians, as above provided.

Pro rata division.

Interest payments.

Provisos.
Misuse of interest money of minors.

Payments to guardians.

Deposit of funds to credit of Indians.

Second. That the royalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this Act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States, except as herein provided.

Distribution of.

Royalties reserved for school purposes.

Third. There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School and for other schools on the Osage Indian Reservation conducted or to be established and conducted for the education of Osage children.

For agency purposes.

Fourth. There shall be set aside and reserved from the royalties received from oil, gas, coal, or other mineral leases, and moneys received from the sale of town lots, and rents from grazing lands not to exceed thirty thousand dollars per annum for agency purposes and an emergency fund for the Osage tribe, which shall be paid out from time to time, upon the requisition of the Osage tribal council, with the approval of the Secretary of the Interior.

Termination of trust fund.

SEC. 5. That at the expiration of the period of twenty-five years from and after the first day of January, nineteen hundred and seven, the lands, mineral interests, and moneys, herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands

shall be issued to said members, or to their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided, and said members shall have full control of said lands, moneys, and mineral interests, except as hereinbefore provided.

Right of inheritance.

SEC. 6. That the lands, moneys, and mineral interests, herein provided for, of any deceased member of the Osage tribe shall descend to his or her legal heirs, according to the laws of the Territory of Oklahoma, or of the State in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys, and mineral interests must go to the mother and father equally.

Exception.

Leases for farming purposes.

SEC. 7. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said members shall have full control of the same, including the proceeds thereof: *Provided*, That parents of minor members of the tribe shall have the control and use of said minors' lands, together with the proceeds of the same, until said minors arrive at their majority: *And provided further*, That all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs, shall be subject only to the approval of the Secretary of the Interior.

Provisos.
Parents to control minors' lands.

Approval of leases.

Deeds.

SEC. 8. That all deeds to said Osage lands or any part thereof shall be executed by the principal chief for the Osages, but no such deeds shall be valid until approved by the Secretary of the Interior.

Tribal officers. Elections, etc.

SEC. 9. That there shall be a biennial election of officers for the Osage tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year nineteen hundred and six, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma Territory, on the first Monday in June; and the first election for said officers shall be held on the first Monday in June, nineteen hundred and eight, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of two years, commencing on the first day of July following said election, and in case of a vacancy in the office of principal chief, by death, resignation, or otherwise, the assistant principal chief shall succeed to said office, and all vacancies in the Osage tribal council shall be filled in a manner to be prescribed by the Osage tribal council, and the Secretary of the Interior is hereby authorized to remove from the council any member or members thereof for good cause, to be by him determined.

Public highways.

SEC. 10. That public highways or roads, two rods in width, being one rod on each side of all section lines, in the Osage Indian Reservation, may be established without any compensation therefor.

Lands for railroad purposes.
Vol. 32, p. 47.

SEC. 11. That all lands taken or condemned by any railroad company in the Osage Reservation, in pursuance of any Act of Congress or regulation of the Department of the Interior, for rights of way, station grounds, side tracks, stock pens and cattle yards, water stations, terminal facilities, and any other railroad purpose, shall be, and are hereby, reserved from selection and allotment and confirmed in such railroad companies for their use and benefit in the construction, operation, and maintenance of their railroads: *Provided*, That such railroad companies shall not take or acquire hereby any right or title to any oil, gas, or other mineral in any of said lands.

Proviso.
Restriction.

Enforcement.

SEC. 12. That all things necessary to carry into effect the provisions of this Act not otherwise herein specifically provided for shall be done under the authority and direction of the Secretary of the Interior.

Approved, June 28, 1906.

[d]—Osage Nation

[i]—Tribal Government

The Osage Act of 1906, as amended, includes several provisions affecting the tribal government.[835] It specifies the officers of the Osage Tribe and the requirements for elections of the Osage Tribal Council.[836] It further empowers the Secretary of the Interior to remove council members or officers for cause,[837] and severely restricts tribal council control over tribal funds.[838] Nonetheless, the tribal council constituted under the 1906 Act exercises general governmental authority,[839] and the 1978 amendment specifies that "the tribal government so constituted shall continue in full force and effect . . . until otherwise provided by Act of Congress."[840]

The 1906 Act defined the "legal membership" of the Osage Tribe as those persons on the Osage roll as of January 1, 1906 and all children born to such persons by July 1, 1907.[841] It provided that tribal funds "shall be equally divided among the members" of the tribe as specified,[842] although subsequent amendments permitted heirs and devisees of original "members" to share in tribal income.[843]

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[835] Act of June 28, 1906, §§ 1, 4, 9, 34 Stat. 539; Act of Mar. 2, 1929, §§ 5, 7, 45 Stat. 1478; Pub. L. No. 85-192, 71 Stat. 471 (1957); Pub. L. No. 95-496, § 1, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). The Oklahoma Indian Welfare Act does not apply to the Osage Reservation; *see* 25 U.S.C. § 508.

[836] Act of June 28, 1906, § 9, 34 Stat. 539, as *amended by* Act of Mar. 2, 1929, § 7, 45 Stat. 1478; Pub. L. No. 95-496, § 1, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections); *see also generally* 25 C.F.R. pt. 90.

[837] Act of June 28, 1906, § 9, 34 Stat. 539.

[838] The Act requires that most tribal funds be distributed per capita to headright owners and provides that Congress controls the amounts retained for tribal purposes. Act of June 28, 1906, § 4, 34 Stat. 539; Act of Mar. 2, 1929, § 1, 45 Stat. 1478. In addition, the Osage Tribal Council has no control over a $1 million tribal fund established under a 1972 federal law. 25 U.S.C. §§ 883–883d. The Act commits administration of this fund to the Secretary, who has established an Osage Education Committee to manage it. *See* 25 C.F.R. pt. 122.

[839] Logan v. Andrus, 640 F.2d 269, 270 (10th Cir. 1981) (nothing in Act "limited the authority of the officers therein named to mineral administration or any other specific function").

[840] Pub. L. No. 95-496, § 1, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[841] For many years after 1906, the term "members" of the Osage Tribe meant only persons on the 1906 Act roll. After passage of the 1929 Act, the term came to include unenrolled Osages who succeeded to trust or restricted property. *See* Act of Mar. 2, 1929, § 5, 45 Stat. 1478. The term is now used to include all persons of Osage ancestry on the Bureau of Indian Affairs records.

[842] Act of June 28, 1906, §§ 1, 4, 34 Stat. 539; *see also* Act of Mar. 2, 1929, § 1, 45 Stat. 1478.

[843] Act of Mar. 2, 1929, § 4, 45 Stat. 1478; Pub. L. No. 95-496, §§ 5–6, 9, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

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The Interior Department has interpreted the Act to confine political rights to persons of Osage ancestry within the same class.[844] As a result, the only persons eligible to hold elected office or to vote in Osage elections are headright owners of Osage blood,[845] but most persons of Osage Indian ancestry own no headrights and thus receive no tribal income and cannot vote in tribal elections.[846] Votes of Osage headright owners are apportioned according to headright ownership.[847]

In a lawsuit filed in the 1970s, a federal district court ordered formation of an Osage constitutional commission, an expansion of the franchise to all lineal descendants of the original Osage roll, and a referendum on the new constitution.[848] In 1994, the expanded Osage electorate voted to adopt the proposed constitution, and the Osage Nation was governed by a National Council for a short period of time.[849] The Tenth Circuit held, however, that the new Osage government was invalid, on the ground that it was a new form of government inconsistent with the form Congress prescribed in the 1906 Act.[850] The court further held that the franchise extension was also invalid, although it expressly did not decide whether the 1906 Act terminated the tribe's right to extend the vote to persons without headrights.[851]

Legislation to address these issues was introduced in the 108th Congress, and passed the House on June 1, 2004.[852] The Osage bill became law on December 3, 2004.[853] The Act "clarifies" that the 1906 Act determined Osage "legal membership" only for purposes of eligibility for allotments and a share of the mineral estate income, and did not affect "the inherent sovereign right of the Osage Tribe to determine its own membership."[854] In addition, the Act specifies that, notwithstanding the 1906 Act, "Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government."[855]

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[844] 25 C.F.R. § 90.21. For critique, see Alex Tallchief Skibine, *The Cautionary Tale of the Osage Indian Nation's Attempt to Survive Its Wealth*, 9 Kan. J.L. & Pub. Policy 815 (2000).

[845] 25 C.F.R. § 90.21. The right to share in Osage tribal mineral and other income has come to be called an Osage headright. *See* § 4.07[1][d][ii]. Some headrights are now owned by non-Osages.

[846] *See* S. Rep. No. 95–1157, 95th Cong., 2d Sess. 7 (1978). As of 1977, there were 9205 Osages, 7022 of whom had no headright interests.

[847] 25 C.F.R. § 90.21.

[848] *See* Fletcher v. United States, 116 F.3d 1315, 1319 (10th Cir. 1997).

[849] *See* Fletcher v. United States, 116 F.3d 1315, 1320 (10th Cir. 1997).

[850] Fletcher v. United States, 116 F.3d 1315, 1328–1329 (10th Cir. 1997).

[851] Fletcher v. United States, 116 F.3d 1315, 1329 (10th Cir. 1997).

[852] H.R. 2912, 108th Cong., 2d Sess. (2004).

[853] Pub. L. No. 108-431, 118 Stat. 2609 (2004).

[854] Pub. L. No. 108-431, § 1(b)(1), 118 Stat. 2609 (2004).

[855] Pub. L. No. 108-431, § 1(b)(2), 118 Stat. 2609 (2004).

[ii]—Special Property Laws

In 1872, Congress confirmed to the Osage Nation a reservation in north central Indian Territory.[856] An 1896 oil and gas lease of the reservation was followed by substantial discoveries of oil and gas in 1904 and 1905.[857] The Osage Nation quickly accumulated a large tribal trust fund in the Treasury from oil and gas leases, grazing leases, sales of townsite lots, permit taxes, and sale of an earlier tribal reservation in Kansas.[858] Tribal wealth made the Osages targets of various forms of fraud and overreaching.[859]

In 1906, Congress enacted a complex statute attempting to individualize much of the Osage tribal property and to provide some protection for tribal members.[860] The 1906 Osage Act authorized a tribal roll of the members entitled to share in property distributions; the roll was limited to Osages born by July 1, 1907.[861] The tribal mineral estate was severed and retained in tribal trust ownership, but most of the mineral income, as well as most tribal income from other sources, was to be paid per capita to the persons on the membership roll or their heirs.[862] In addition, most Osage land other than the mineral estate was allotted in severalty to tribal members.[863]

The 1906 Act retained the valuable Osage mineral estate in trust for the tribe.[864] In some respects the mineral estate resembles property held in trust for

[856] Act of June 5, 1872, 17 Stat. 228. The reservation was originally Osage country, ceded to the United States in 1825, Treaty with the Osages, June 2, 1825, 7 Stat. 240, granted by the United States to the Cherokee Nation and subsequently ceded back to the United States after the Civil War. Treaty with the Cherokees, July 19, 1866, art. 17, 14 Stat. 799. The Osage Nation was required to purchase the reservation. *See* Appropriations Act of July 15, 1870, § 12, 16 Stat. 335; Act of June 5, 1872, 17 Stat. 228. The reservation coincides with present day Osage County, Oklahoma.

[857] John W. Morris, Charles R. Goins & Edwin C. McReynolds, Historical Atlas of Oklahoma 53 (3d ed. Univ. Okla. Press 1986).

[858] *See* McCurdy v. United States, 246 U.S. 263, 265 (1918); Osage Agency, Bureau of Indian Affairs, The Osage People and Their Trust Property iv, 7 (1953).

[859] Osage Agency, Bureau of Indian Affairs, The Osage People and Their Trust Property v (1953). *See also* Dennis McAuliffe, Jr., The Deaths of Sybil Bolton: An American History (Times Books 1994). Congress passed laws to try to combat the excesses of traders among the Osages. *See, e.g.*, Appropriations Act of Mar. 3, 1901, 31 Stat. 1058, 1065–1066.

[860] Act of June 28, 1906, 34 Stat. 539.

[861] Act of June 28, 1906, § 1, 34 Stat. 539. The final roll was approved on April 11, 1908, and subsequent attempts to gain enrollment were not successful. *See, e.g.*, United States ex rel. Kohpay v. Chapman, 190 F.2d 666 (D.C. Cir. 1951); United States ex rel. Jump v. Ickes, 117 F.2d 769 (D.C. Cir. 1940); 67 Interior Dec. 89 (1960).

[862] Act of June 28, 1906, §§ 3–4, 34 Stat. 539.

[863] Act of June 28, 1906, § 2, 34 Stat. 539.

[864] Act of June 28, 1906, § 3, 34 Stat. 539. The 1906 Act retained the trust status for 25 years. A series of subsequent statutes extended the tribal trust, which was finally extended "in perpetuity" by Pub. L. No. 95–496, § 2(a), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). *See also* Adams v. Osage Tribe, 59 F.2d 653 (10th Cir. 1932) (sustaining validity of earlier extensions).

other tribes: leasing requires the approval of the Osage Tribal Council and the Secretary of the Interior,[865] and some of the mineral income is used for Council expenses or other tribal purposes as the Council determines.[866] But the statutory scheme requires that most of the income be distributed per capita,[867] and Congress controls the amounts retained for tribal purposes.[868]

The most distinctive feature of the Osage scheme is the use of the 1906 Act roll as the permanent basis for per capita distributions of tribal income and property. Osage Indians born since the 1906 Act roll closed do not acquire the usual rights of persons born into an Indian tribe to share in distributions of tribal property.[869] Rather, the 1906 Act converted the right to receive tribal property distributions into a restricted tenancy in common in the persons on the 1906 roll. This right, which has come to be called an Osage headright,[870] passes to the

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[865] Act of June 28, 1906, § 3, 34 Stat. 539. Other provisions bearing on tribal leasing include: Act of Mar. 3, 1921, § 1, 41 Stat. 1249 (extending existing valid leases until 1946, so long as minerals produced in paying quantities); Act of Mar. 2, 1929, § 1, 45 Stat. 1478 (authorizing certain oil and gas leases); Act of June 24, 1938, § 3, 52 Stat. 1034 (authorizing certain leases of oil and gas and other minerals); Pub. L. No. 95–496, § 4, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections) (authorizing federal regulations on unitization of oil and gas leases). In addition, Congress authorized the tribal council to determine bonus values, Act of July 25, 1947, 61 Stat. 459, and royalties, Act of June 15, 1950, 64 Stat. 215. Special regulations apply to Osage mineral leasing [25 C.F.R. pt. 214 (minerals other than oil and gas); 25 C.F.R. pt. 226 (oil and gas)], and the Osage Reservation is excepted from most general mineral leasing laws; *see* 25 U.S.C. § 396f.

[866] *See* Act of June 28, 1906, § 4, 34 Stat. 539; Act of June 24, 1938, § 2, 52 Stat. 1034; Pub. L. No. 95–496, § 8(b), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[867] Act of June 28, 1906, § 4, 34 Stat. 539; Act of Mar. 2, 1929, § 1, 45 Stat. 1478; Act of June 24, 1938, § 3, 52 Stat. 1034. Individual rights in the mineral income become vested, however, only when the Secretary segregates shares. 58 Interior Dec. 378 (1943).

[868] Act of Mar. 3, 1921, § 4, 41 Stat. 1249; Act of Feb. 27, 1925, § 1, 43 Stat. 1008; Act of Mar. 2, 1929, § 1, 45 Stat. 1478; Act of June 24, 1938, § 3, 52 Stat. 1034.

[869] *See* H.R. Rep. No. 92–963; 92d Cong., 2d Sess. 9 (1972). The 1929 Act applies the restrictions on property of "allotted Osage Indians" to the property of "unallotted Osage Indians" born after the 1906 Act roll closed. Act of Mar. 2, 1929, § 5, 45 Stat. 1478. This provision, however, does not entitle Osages born after the roll closed to any rights in tribal income or property. Rather, it imposes restrictions on property inherited by or willed to "unallotted Osages." Prior to 1929, the property was unrestricted in some circumstances, and restricted in others. *See* 58 Interior Dec. 464 (1943); Op. Sol. Int., Jan. 4, 1922, *reprinted in* 1 Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs 1917–1974, at 36.

[870] *See* Pub. L. No. 95–496, §§ 5–9, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). The Osage Nation has standing to bring suit for mismanagement of tribal trust funds derived from mineral royalties, even though virtually all of the royalty income is paid to headright owners. Osage Nation v. United States, 57 Fed. Cl. 392, 395 (2003). All rights to share in tribal income are generally subject to the same rules as headrights; *see* Choteau v. Burnet, 283 U.S. 691, 692 (1931). Other forms of tribal income are subject to the same allocation. Act of June 28, 1906, § 4, 34 Stat. 539; Act of Mar. 3, 1921, § 4, 41 Stat. 1249; Act of Feb. 27, 1925, § 1, 43 Stat. 1008.

heirs, devisees, and assigns of owners.[871] Most persons of Osage Indian ancestry own no headrights, and thus receive no tribal income.[872] Some persons own more than one headright, or own fractional shares of headrights, and some headrights are owned by non-Osages.[873]

Alienation of Osage headrights is severely restricted. Headrights owned by non-Indians may be alienated, but only upon approval of the Secretary of the Interior and subject to the preferential right of the Osage Nation to purchase them.[874] Headrights owned by Indians may not be alienated inter vivos.[875] Adult Osages may make testamentary dispositions by will,[876] or by an inter vivos trust that operates as a will substitute.[877] All such wills and trusts are subject to the Secretary's approval, and beneficiaries under them who are non-Osages may not

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[871] Pub. L. No. 95-496, §§ 5(a), 5(c), 7, 8(a), 92 Stat. 1660 (1978). There was one modification of this scheme. In 1971, the Osage Tribe obtained an Indian Claims Commission judgment exceeding $15 million for Osage lands taken by the United States in the 19th century. Under Pub. L. No. 92-586, 86 Stat. 1295 (1972), $1 million was set aside for tribal purposes and administered by the Secretary of the Interior; the Secretary created an Osage Tribal Education Committee to administer the monies. *See* 25 C.F.R. pt. 122. The remaining millions were distributed per capita based on the 1906 Act roll. The shares of deceased allottees, however, were not allocated to their actual successors, but to those who would have been their heirs had they died intestate.

[872] *See* S. Rep. No. 95-1157, 95th Cong., 2d Sess. 7 (1978). Of 9205 Osages in 1977, an estimated 7,022 have no headright interests. The right to vote in Osage tribal elections and hold office also depends on headright ownership; *see* § 4.07[1][d][i].

[873] *See* H.R. Rep. No. 92-963, 92d Cong., 2d Sess. 9 (1972) (shares range "from.00065 of a share to multiple shares"). This fractionation is a result of succession to headrights by inheritance and devise. Succession by non-Indians is now severely limited [*see* Pub. L. No. 95-496, § 5(c), 92 Stat. 1660 (1978)], but during earlier periods there were fewer restrictions. Because of tribal wealth, many non-Indians sought to marry Osages prior to the imposition of restrictions on succession. *See* Memo. Sol. Int., Sept. 20, 1943, *reprinted in* 2 Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs 1917-1974, at 1229.

[874] Pub. L. No. 95-496, § 8(a), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). Before 1978, alienation required only the Secretary's approval. Act of Apr. 12, 1924, 43 Stat. 94.

[875] Pub. L. No. 95-496, § 7, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). *See also* Taylor v. Tayrien, 51 F.2d 884, 890 (10th Cir. 1931); Taylor v. Jones, 51 F.2d 892 (10th Cir. 1931); Memo. Sol. Int., M-34857 (Feb. 13, 1947). One court has found that for restrictions such as these, the term "Osage Indian" in modern legislation includes more than the original 1906 Act members of the tribe, but not everyone with any quantum of Osage blood. Akers v. Hodel, 871 F.2d 924, 932 (10th Cir. 1989).

[876] Pub. L. No. 95-496, § 5(a), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections); *see also* 25 C.F.R. pt. 17.

[877] Pub. L. No. 95-496, § 6, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). *See also* H.R. Rep. No. 95-1459, 95th Cong., 2d Sess. 4 (1978). Osages with certificates of competency may name a bank or trust company as trustee; Osages without certificates must name the Secretary of the Interior as trustee. Pub. L. No. 95-496, § 6, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

take more than a life estate.[878] If an Osage owner dies intestate, the headright passes only to the heirs of Osage blood, except that a non-Osage heir, as determined by Oklahoma state law, may take a life estate.[879] For purposes of these rules, a legally adopted non-Osage child of an Osage Indian, and the lineal heirs of that child, are treated the same as Osage Indians.[880]

Headright interests are the only restricted property interest that are not necessarily affected by a certificate of competency. The 1906 Act authorizes the Secretary of the Interior to issue certificates of competency to adult Osage Indians competent to manage their restricted property.[881] A certificate of competency requires an application from the Osage tribal member.[882] If a certificate is issued, the trust is terminated as to all restricted property except, in the case of adult Osage members of one-half or more Indian blood, the headright interests.[883] Those headrights remain restricted. If the Secretary finds that an Osage with a

[878] Pub. L. No. 95–496, §§ 5(a), 5(d), 6–7, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). Prior to 1978, an Osage will, if approved by the Secretary, could devise the testator's full interest to a non-Indian. *See* Act of Apr. 18, 1912, § 8, 37 Stat. 86. The Secretary of the Interior has the authority to modify an Osage will so that a non-Osage devisee receives only a life estate in headrights. Crawley v. United States, 977 F.2d 1409, 1410–1411 (10th Cir. 1992).

[879] Pub. L. No. 95-496, § 5(c)–(d), 7, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, § 7(b), 98 Stat. 3163 (1984). Under the 1906 Act, restricted property passed to an intestate Osage's heirs at law, whether or not the heirs were Indian. Act of June 28, 1906, § 6, 34 Stat. 539. Subsequent statutes restricted inheritance to specified persons, and the 1978 Act superseded all earlier provisions.

[880] Pub. L. No. 95–496, § 5(d), 7, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[881] Act of June 28, 1906, § 2, 34 Stat. 539; *see also* Act of Apr. 18, 1912, § 9, 37 Stat. 86 (definition of "competency"). The Act of March 2, 1929, § 5, 45 Stat. 1478, similarly authorizes the issuance of certificates to unallotted Osage Indian heirs of allottees. A requirement that the Secretary issue certificates to all adult Osages of less than one-half Indian blood [Act of Feb. 5, 1948, § 3, 62 Stat. 18], was repealed in 1978. Pub. L. No. 95–496, § 3, 92 Stat. 1660(1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). The 1978 statute also entitled Osages who had received certificates under the 1906 or 1948 Acts, or section 3 of the 1929 Act, to have the certificates revoked upon application. *Id.* The 1978 Act does not refer to certificates issued under section 5 of the 1929 Act, although the 1978 statutory purpose seems to include them. Possibly the reference to section 2 of the 1906 Act will be read to include section 5 of the 1929 Act implicitly. The 1978 Act is also ambiguous about application of the revocation right to certificates issued after 1978 under the 1906 Act. Again, the purpose appears to include them; there is no rational difference between certificates issued under the 1906 Act before or after 1978.

[882] The 1906 Act allows issuance of a certificate to allotted Osages only at the request of the Indian. Act of June 28, 1906, § 2, 34 Stat. 539. Although the 1929 Act does not require an application from unallotted heirs, *see* Act of March 2, 1929, § 5, 45 Stat. 1478, current regulations require an application from any Osage requesting a certificate. 25 C.F.R. §§ 152.7, 152.9.

[883] 25 C.F.R. § 152.7 (certificates of competency); 25 C.F.R. § 152.9 (certificates for Osage adults of one-half or more Indian blood).

certificate is "squandering or misusing his or her funds," the certificate may be revoked after notice and hearing.[884]

Osage land other than the mineral estate, with minor exceptions, was allotted in severalty to tribal members.[885] Each Osage on the 1906 Act roll was allotted over 650 acres of reservation land, subject to the tribal mineral estate.[886] Each allottee was designated 160 acres as a "homestead allotment;" the rest was a "surplus allotment."[887] Both classes were "restricted fee" lands, alienable only as permitted by federal statute.[888] Restricted allotments may be alienated with permission of the Secretary of the Interior by deed,[889] will,[890] or trust,[891] and those of intestates descend to certain of their heirs.[892] The restrictions on alienation of most Osage allotments have been removed by issuance of certificates of competency,[893] but restrictions are reimposed if the allotments are inherited

[884] Act of Feb. 27, 1925, § 4, 43 Stat. 1008, *as amended by* Pub. L. No. 95–496, § 3(c), 92 Stat. 1660 (1978), *and* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections); *see also* 25 C.F.R. § 117.5.

[885] Act of June 28, 1906, § 2, 34 Stat. 539. Among the specific parcels excepted from allotment were tracts reserved "for the use and benefit of the Osage Indians, exclusively, for dwelling purposes." *Id.* The Act authorized the tribe to sell these tracts, and the trust was to expire in 25 years. But the tracts were not sold, and the trust was extended indefinitely with other general extensions of the Osage trust period. The tracts have come to be called "Indian villages" and are governed by regulations set out at 25 C.F.R. pt. 91.

[886] Act of June 28, 1906, § 2, 34 Stat. 539. The average per allottee has been estimated at 656.5 acres. Osage Agency, Bureau of Indian Affairs, The Osage People and Their Trust Property 166 (1953). Slightly different figures appear in other sources.

[887] Act of June 28, 1906, § 2, 34 Stat. 539; S.J. Res. 76, 60th Cong., 35 Stat. 1167 (1909); *see also* 25 C.F.R. § 158.51 (definitions). The principal importance of the distinction is that some homestead allotments are tax exempt, but surplus allotments are not. In addition, federal regulations specify procedures for oil and gas leases on homestead allotments. *See* 25 C.F.R. § 226.17. Allottees may exchange the designations of their homestead and surplus allotments of "an equal area" with the Secretary's permission. Act of May 25, 1918, § 17, 40 Stat. 561; 25 C.F.R. § 158.52.

[888] The 1906 Act made both homestead and surplus allotments inalienable for 25 years, Act of June 28, 1906, § 2, 34 Stat. 539. Restrictions preclude involuntary as well as voluntary alienation, *see* Taylor v. Tayrien, 51 F.2d 884 (10th Cir. 1931) (headright), as well as liens, levies, attachments, or forced sales to satisfy any obligation arising before restrictions have been removed. Act of Apr. 18, 1912, § 7, 37 Stat. 86, *construed in* Drummond v. United States, 324 U.S. 316 (1945); Act of Aug. 4, 1947, 61 Stat. 747; *see* Act of Feb. 27, 1925, § 3, 43 Stat. 1008.

[889] Act of Feb. 27, 1925, § 3, 43 Stat. 1008 (sale by heir or devisee); Appropriations Act of May 25, 1918, § 17, 40 Stat. 561 (sale by allottee); Act of Apr. 18, 1912, §§ 3, 6, 37 Stat. 86 (sale by guardian, administrator, or executor).

[890] Pub. L. No. 95–496, § 5(a), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections); *see* 25 C.F.R. pt. 17.

[891] Pub. L. No. 95–496, § 6, 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[892] Pub. L. No. 95–496, § 5(c), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). Except for parents and adopted children, only heirs of Indian blood may inherit.

[893] Various statutes before 1948 provided for removal of restrictions from particular classes of allot-

by or devised to Osage Indians without certificates.[894] Restricted allotments may also be exchanged,[895] partitioned,[896] or leased,[897] with secretarial approval. Allotment owners and lessees have a statutory right to compensation for damage to the surface caused by oil and gas mining operations.[898]

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ments. All were subsumed under the Act of February 5, 1948, 62 Stat. 18, which removed restrictions against alienation from all property of Osage tribal members with certificates of competency, and mandated certificates for all members of less than one-half Indian blood on reaching the age of 21. As the reference to age 21 implies, "members" included "unallotted" Osages as well as those on the 1906 Act roll. The 1948 Act was repealed in 1978, and Osages with certificates were entitled to have them revoked. Pub. L. No. 95–496, § 3(a)–(b), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). But the repeal provides that restrictions against alienation previously removed are not reimposed. *Id.* § 3(b). The only allotments restricted in 1978, were those owned by Osages who were minors or who were at least half-blood and did not have certificates of competency. Under the 1978 Act, restrictions on these lands continue as long as they are owned by Osage Indians without certificates.

[894] Before 1925, all devised and some inherited allotments were free of restrictions. *See* La Motte v. United States, 254 U.S. 570, 578–580 (1921). The Act of February 27, 1925, § 3, 43 Stat. 1008, *as amended by* Pub. L. No. 95–496, § 3(c), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections), restricts lands inherited by or devised to Osage tribal members without certificates of competency. In 1925 "members" meant only persons on the 1906 Act roll. But the Act of March 2, 1929, § 5, 45 Stat. 1478, applies the same restrictions to "unallotted" Osages born after the 1906 Act roll closed. Read literally, the 1925 provision restricts any lands inherited by Osages without certificates, but the Interior Department has interpreted it to apply only to lands previously restricted under the Osage laws. 58 Interior Dec. 117 (1942). There are some questions about the effect on alienability of certificates of competency issued after passage of the 1978 Act. The Act of June 28, 1906, § 2, 34 Stat. 539, provides that certificates remove the restrictions from surplus allotments but not from homesteads. Section 3 of the 1925 Act, as expanded by section 5 of the 1929 Act, can be read to imply that certificates obtained after land is inherited or devised cause restrictions to be removed, but the inference is doubtful for homestead allotments. Hence, post–1978 certificates may have no effect on alienability of restricted homestead allotments.

[895] The Act of April 18, 1912, § 2, 37 Stat. 86, authorizes exchanges of surplus allotments only. The applicable regulation allows any exchange. 25 C.F.R. § 158.54. The regulatory extension appears justified based on the broad power to approve sales of any restricted lands, and the Secretary's power to reinvest proceeds of any allotment sale in land subject to the same restrictions. 25 U.S.C. § 409a.

[896] The 1912 Act provides for partition proceedings in Oklahoma courts, but partition deeds must be approved by the Secretary. Act of April 18, 1912, § 6, 37 Stat. 86; *see also* Kenny v. Miles, 250 U.S. 58 (1919); 25 C.F.R. § 158.55 (authorizing partition proceedings in "a court of competent jurisdiction").

[897] The Act of June 28, 1906, § 3, 34 Stat. 539, requires approval of the Secretary for any mining or prospecting on restricted homestead allotments. *See* 25 C.F.R. § 214.15 (minerals other than oil and gas); 25 C.F.R. § 226.17 (oil and gas).

[898] Act of Mar. 2, 1929, § 2, 45 Stat. 1478. This statute protects any surface owner or lessee, restricted Indian or not. *See* 25 C.F.R. § 226.20. Surface owners must submit claims for damages to arbitration, *see* Act of Mar. 2, 1929, § 1, 45 Stat. 1478; 25 C.F.R. § 226.21, but the arbitration requirement is limited to claims arising under section 2 of the 1929 Act. Quarles v. United States, 372 F.3d 1169 (10th Cir. 2004).

Several other categories of individual Osage property are similarly held in trust or restricted status only for Osage Indians without certificates of competency. "Segregated trust funds" include shares in a tribal trust fund that existed at the time of the 1906 Act, as well as proceeds of partition sales.[899] "Surplus funds" include accumulated tribal and interest income, proceeds from land sales, and other funds of minors.[900] Neither type of fund is subject to lien, levy, or attachment to satisfy obligations arising prior to the issuance of a certificate of competency,[901] although funds may be used to pay the owner's taxes and certain other expenses.[902] Both types of funds remain in trust if they are inherited by or devised to Osages without certificates of competency.[903] Surplus funds may be invested in restricted securities, mortgages, or livestock, or in land held in restricted fee title.[904] Unlike the shares of Osages without certificates of competency, however, per capita shares of tribal income accruing to Osage Indians holding certificates, or to non-Osage headright owners, are fully distributed in quarterly payments.[905]

The Osage Act of 1906 applies most Oklahoma laws of descent, wills, partition, and guardianship to the trust and restricted property of Osage Indians.[906] Wills

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[899] Act of June 28, 1906, § 4, 34 Stat. 539 (tribal trust fund); Act of Apr. 18, 1912, § 6, 37 Stat. 86 (partition sales); 25 C.F.R. § 117.1(g) (same). The original 25-year trust period has been extended indefinitely. *See* Pub. L. No. 95-496, § 2(b)-(c), 92 Stat. 1660 ("until otherwise provided by Congress"). Upon application, all or part of a trust fund share can be paid to the owner if found competent, or to the owner's guardian, in the Secretary's discretion. Act of Apr. 18, 1912, § 5, 37 Stat. 86; 25 C.F.R. § 117.18. Before 1978, it was clear that trust fund shares of Osages with certificates of competency were unrestricted under the Act of Feb. 5, 1948, 62 Stat. 18. But Pub. L. No. 95-496, § 3(a), 92 Stat. 1660, repealed the 1948 Act, and it is arguable that trust shares that come to be owned by Osages with certificates after the repeal remain in trust. *See* 55 Interior Dec. 489 (1936).

[900] *See* 25 C.F.R. § 117.1(e). The Act of June 28, 1906, §§ 4, 6, 34 Stat. 539, required quarterly distribution of the income accruing to all adult Osages or their heirs. Beginning with the Act of March 3, 1921, § 4, 41 Stat. 1249, mandatory distributions to Osages without certificates of competency have been limited, and the excess retained as "surplus funds." The current provisions are found in the Act of February 27, 1925, § 1, 43 Stat. 1008, and the Act of June 24, 1938, § 3, 52 Stat. 1034, both as amended by Pub. L. No. 95–496, § 3(c), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). The Secretary has discretion to disburse surplus funds with the consent of the owner. Act of June 24, 1938, § 1, 52 Stat. 1034; 25 C.F.R. §§ 117.7, 117.9–117.10, 117.14.

[901] Act of Apr. 18, 1912, § 7, 37 Stat. 86; Act of Aug. 4, 1947, 61 Stat. 747.

[902] Act of June 24, 1938, § 1, 52 Stat. 1034. *See generally* 25 C.F.R. pt. 117.

[903] Act of Apr. 18, 1912, § 6, 37 Stat. 86; Act of Mar. 2, 1929, §§ 4–5, 45 Stat. 1478; Pub. L. No. 95–496, § 3(c), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[904] Act of Feb. 27, 1925, §§ 1, 3, 43 Stat. 1008; 25 C.F.R. § 117.8 (purchase of land).

[905] Act of Feb. 27, 1925, § 1, 43 Stat. 1008.

[906] Act of June 28, 1906, § 6, 34 Stat. 539; Act of Apr. 18, 1912, § 6, 37 Stat. 86; Pub. L. No. 95–496, § 5(a)–(b), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163

are subject to approval of the Secretary of the Interior, and will contests must be heard in federal court.[907] The Oklahoma courts have other probate jurisdiction and jurisdiction over guardianship, subject to federal statutory provisions.[908]

Taxation of Osage property is complex. Homestead allotments were nontaxable under the 1906 Act;[909] amendments have continued this restriction for Osages without certificates of competency, subject to a limitation of 160 acres of tax-exempt land per person.[910] Property, income, and death taxes levied by the state or federal governments are precluded.[911] By contrast, surplus allotments and most purchased lands are taxable.[912] In addition, trust funds, surplus funds, and

(1984) (technical corrections). The general application of Oklahoma law, however, is subject to numerous exceptions and provisos. *See, e.g.*, Act of June 28, 1906, § 6, 34 Stat. 539; Act of Apr. 18, 1912, § 6, 37 Stat. 86; Act of Feb. 27, 1925, §§ 1, 5, 43 Stat. 1008; Pub. L. No. 95-496, §§ 5(a)–(c), 7, 92 Stat. 1660. Exploitation of Osages by dishonest guardians and lawyers is related in Osage Agency, Bureau of Indian Affairs, The Osage People and Their Trust Property 50-81 (1953) (Osage Agency Report). A provision of the 1925 Act of Feb. 27, 1925, § 5, Act, 43 Stat. 1008, which prohibits anyone convicted of killing an Osage from inheriting the victim's estate, was passed in response to actual cases. Osage Agency Report at 50.

[907] Pub. L. No. 95–496, § 5(a), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections); 25 C.F.R. pt. 17.

[908] Pub. L. No. 95–496, § 5(a)–(b), 92 Stat. 1660 (1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections).

[909] Act of June 28, 1906, § 2, 34 Stat. 539; *see also* McCurdy v. United States, 264 U.S. 484 (1924).

[910] Act of Mar. 2, 1929, § 1, 45 Stat. 1478; Act of June 24, 1938, § 3, 52 Stat. 1034; Pub. L. No. 95–496, § 3(b), 92 Stat. 1660(1978), *as amended by* Pub. L. No. 98-605, 98 Stat. 3163 (1984) (technical corrections). The 1978 Act entitles Osages with certificates of competency to have them revoked upon application. The statutory wording appears to restore to Osages whose certificates are revoked the right to have their homestead allotments restricted against taxation. 25 U.S.C. § 412a authorized "homesteads" previously purchased out of any Indian's trust or restricted funds to be restricted against alienation or taxation, limited to 160 acres or $5,000 worth of city property. A number of Osage Indians sought to restrict lands under this provision. The courts and the Secretary of the Interior held that Osages were not implicitly excluded from § 412a, that Osage allotments previously made taxable under the Osage laws could be restricted against taxation under this section, and that the 160-acre limitation on tax exempt lands under the Osage laws did not preclude Osages from acquiring an additional tax exempt parcel under § 412a. United States v. Bd. of Comm'rs, 26 F. Supp. 270 (N.D. Okla. 1939), *aff'd*, Bd. of County Comm'rs v. United States, 145 F.2d 1022 (10th Cir. 1944); 57 Interior Dec. 67 (1939); 56 Interior Dec. 48 (1937).

[911] *See* United States v. Mullendore, 35 F.2d 78 (8th Cir. 1929); McCurdy v. United States, 264 U.S. 484 (1924).

[912] Surplus allotments were nontaxable for three years. Act of June 28, 1906, § 2, 34 Stat. 539. That period was not extended, and the allotments became taxable. United States v. Bd. of Comm'rs, 216 F. 883 (8th Cir. 1914); *cf.* United States v. Bd. of County Comm'rs, 251 U.S. 128, 130 (1919) (United States may sue to protect taxable Osage allotments from "arbitrary, grossly excessive, discriminatory, and unfair" tax valuations). In addition, lands purchased with segregated trust funds released to an Osage without a certificate of competency are taxable [McCurdy v. United States, 246 U.S. 263 (1918)], as are lands purchased with trust funds pursuant to the Act of February 27, 1925, § 1, 43 Stat. 1008. *See* Shaw v. Gibson-Zahniser Oil Corp., 276 U.S. 575 (1928). Excepted from this are lands subject to 25 U.S.C. § 412a, which are nontaxable under that statute.

securities of individual Osages are subject to estate and inheritance taxes.[913]

Congress has expressly authorized the levy of the Oklahoma gross production tax on oil and gas produced from the Osage mineral estate.[914] The tribal mineral estate is otherwise nontaxable.[915] The taxability of headrights depends upon whether the headright owner has a certificate of competency. The Supreme Court has upheld state and federal income taxes on the headright income of Osages with certificates of competency.[916] Lower federal courts have held that the income of Osages without certificates is not subject to federal income tax.[917] In addition, the Supreme Court has sustained the imposition of state inheritance taxes on the transfer of headrights of Osages with or without certificates of competency.[918] The federal estate tax is imposed only on headrights in estates of Osages with certificates of competency.[919]

[2]—Pueblo Indians

[a]—History

The Pueblo[920] peoples have lived in the Southwest since time immemorial.[921]

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[913] West v. Okla. Tax Comm'n, 334 U.S. 717 (1948) (state inheritance tax). For critique of *West*, see Ch. 8, § 8.03[1][e]. *See also* Shelton v. Lockhart, 154 F. Supp. 244, 247 (W.D. Mo. 1957) (if property subject to federal estate tax is removed from estate by gift, gift becomes subject to federal gift tax).

[914] H.J. Res. 289, 76th Cong., 54 Stat. 168 (1940) (tax on Osage royalties may not exceed five percent) (*amending* Act of Mar. 3, 1921, § 5, 41 Stat. 1249). *See* Okla. Tax Comm'n v. Texas Co., 336 U.S. 342 (1949) (lessees of Osage mineral estate subject to non-discriminatory state taxes); 33 Op. Att'y Gen. 60 (1921) (sustaining constitutionality of 1921 Act).

[915] Tribal trust property is generally immune from state taxes levied on the tribal interest. *See* Ch. 8, § 8.03[1][b]. H.J. Res. 289, 76th Cong., 54 Stat. 168 (1940), expressly provides that the gross production tax is "in lieu of all other State and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma." This provision may immunize non-Indian lessees from other production taxes.

[916] Leahy v. State Treasurer, 297 U.S. 420 (1936)-(state); Choteau v. Burnet, 283 U.S. 691 (1931) (federal). Interests held by non-Indians are taxable. Choteau v. Comm'r, 38 F.2d 976 (10th Cir. 1930).

[917] Choteau v. Comm'r, 38 F.2d 976 (10th Cir. 1930); Big Eagle v. United States, 300 F.2d 765 (Ct. Cl. 1962). The state of Oklahoma does not impose its income tax. *See* H.R. Rep. No. 95-1459, 95th Cong., 2d Sess. 13 (1978).

[918] West v. Okla. Tax Comm'n, 334 U.S. 717 (1948). In United States v. Mason, 412 U.S. 391 (1973), the Court held that *West* had not been undermined by later cases to a sufficient degree that the BIA as trustee should have challenged *West*. A 1978 attempt to overrule *West* legislatively failed to pass. *See* 124 Cong. Rec. H11, 402 (Oct. 3, 1978).

[919] *See* H.R. Rep. No. 95-1459, 95th Cong., 2d Sess. 13 (1978).

[920] "Pueblo" is the Spanish word for village, but the term came to be used by American officials to refer to the Indians they found living in adobe-walled villages in the Rio Grande Valley of New Mexico. *See, e.g.*, Act of July 22, 1854, 10 Stat. 308; Sharon O'Brien, American Indian Tribal Governments 27 (Univ. Okla. Press 1989). Each Pueblo group identifies itself in its own language.

PL 108–431, December 3, 2004, 118 Stat 2609

UNITED STATES PUBLIC LAWS
108th Congress - Second Session
Convening January 7, 2004

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 108–431 (HR 2912)
December 3, 2004
REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE

An Act To reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.

(a) FINDINGS.—The Congress finds as follows:

(1) The Osage Tribe is a federally recognized tribe based in Pawhuska, Oklahoma.

(2) The Osage Allotment Act of June 28, 1906 (34 Stat. 539), states that the "legal membership" of the Osage Tribe includes the persons on the January 1, 1906 roll and their children, and that each "member" on that roll is entitled to a headright share in the distribution of funds from the Osage mineral estate and an allotment of the surface lands of the Osage Reservation.

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

(4) Adult Osage Indians without a headright interest cannot vote in Osage government elections and are not eligible to seek elective office in the Osage Tribe as a matter of Federal law.

(5) A principal goal of Federal Indian policy is to promote tribal self-sufficiency and strong tribal government.

(b) REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.—

(1) MEMBERSHIP.—Congress hereby clarifies that the term "legal membership" in section 1 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), 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 Osage mineral estate shares are not diminished thereby.

(2) GOVERNMENT.—Notwithstanding section 9 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government.

PUBNUM=0006793STAT.2609(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.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.R. 2912:

HOUSE REPORTS: No. 108–502 (Comm. on Resources).

SENATE REPORTS: No. 108–343 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

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June 1, considered and passed House.

Nov. 19, considered and passed Senate.

End of Document

108TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 108–502

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

MAY 19, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. POMBO, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 2912]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

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

BACKGROUND AND NEED FOR LEGISLATION

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

The Osage Tribe is a federally recognized tribe with a nearly 1.5 million-acre reservation in northeast Oklahoma. In 1906, Congress enacted the Osage Allotment Act ("1906 Act"), which is unique among federal Indian laws in that it restricts the Osage Tribe from defining its own membership rules, and prescribes a particular form of government which the tribe cannot change. All other federally recognized Indian tribes generally have the sovereign right to

ATTACHMENT 4

make their own internal membership rules and to form suitable tribal governments.

In brief, the 1906 Act—

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

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

As a result, the 1906 Act excludes many thousands of Osage persons from being members of the tribe because they do not have headright shares. Ironically, in the eyes of the federal government, such individuals (including full-blooded Osages) are not "Indians" because one must be a member of a federally recognized tribe to be an Indian. Those Osage people who are precluded from being members of the tribe under the terms of the 1906 Act are thus denied important services and benefits, such as Native American academic scholarships, and more importantly, a role in participating in the life and government of the tribe. Without clarifying the 1906 Act, the Osage Tribe is prevented from attaining the self-sufficiency and strength of all other tribes who have the sovereign right and freedom to form their own rules.

H.R. 2912 clarifies the 1906 Act and enables the Osage Tribe to craft its own membership and tribal government rules on the same footing as all other federally-recognized tribes. The bill provides that no one's rights to shares in the mineral estate are diminished through the Osage Tribe's new ability to determine its own membership. Significantly, in a hearing on this bill, a representative of an association of headright owners testified in support of the legislation. The bill additionally provides that the Secretary of the Interior shall assist the tribe in holding appropriate elections and referenda at the request of the tribe.

The full committee hearing on H.R. 2912 was held on the Osage Reservation on March 15, 2004, where testimony was received from the regional director of the Bureau of Indian Affairs, the tribal chief, a tribal councilman, a representative of the Osage Shareholders Association, and two young Osage Indians who are currently denied membership in the tribe because of the 1906 Act. All testified in support of the legislation.

COMMITTEE ACTION

H.R. 2912 was introduced on July 25, 2003, by Congressman Frank Lucas (R–OK). The bill was referred to the Committee on

Resources. On March 15, 2004, the full Committee held a hearing on the bill. On May 5, 2004, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2004.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2912, a bill to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

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

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2912—A bill to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government

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

S. 1423 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the Osage Tribe.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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Calendar No. 697

108TH CONGRESS, 2d Session | SENATE | REPORT 108–343

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

SEPTEMBER 15, 2004.—Ordered to be printed

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

REPORT

[To accompany H.R. 2912]

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

PURPOSE

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

BACKGROUND AND NEED FOR LEGISLATION

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

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

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

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ATTACHMENT 5

ship rules and to form suitable tribal governments. In brief, the 1906 Act—

—Defined the legal membership of the tribe to consist of all living Osage Indians who were on the Secretary of the Interior's 1906 roll for the tribe, plus their children born before July 1, 1907;

—Allotted a certain amount of surface land in the Osage Reservation to the tribal members;

—Provided that the tribe retained all mineral rights to the entire reservation in undivided ownership; and

—Provided for the distribution of royalties from the development of mineral resources to each of the enrollees, such shares in the royalties are called "headright shares."

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

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

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

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

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

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

LEGISLATIVE HISTORY

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

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

COMMITTEE RECOMMENDATION

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

COST AND BUDGETARY CONCERNS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

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

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

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

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

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

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

On May 17, 2004, CBO transmitted a cost estimate for H.R. 2912, as ordered reported by the House Committee on Resources on

May 5, 2004. The two versions of the legislation and the CBO cost estimates are identical.

The CBO staff contact for this estimate is Mike Waters. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

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

REGULATORY AND PAPERWORK IMPACT STATEMENT

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

CHANGES IN EXISTING LAW

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

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this act will have no significant impact on the budgets of State, local, or tribal governments. In addition, the CBO found that annual maintenance spending at Mount Rainier will not notably increase, ensuring that the Park will not have to assume additional, costly responsibilities.

Mr. Speaker, H.R. 265 has broad, bi-partisan support and is a critical priority not only for ensuring safe travel to the Carbon River area of Mount Rainier Park, but for providing a permanent solution to an expensive, ongoing maintenance problem for our Park personnel.

I would like to thank Chairman RADANOVICH on the National Parks Subcommittee, as well as Chairman POMBO and Ranking Member RAHALL on the full Resources Committee for their help and support in bringing this legislation to the floor for consideration. I would also like to thank the majority and minority staff on the Resources Committee for their work.

Mr. Speaker, I urge my colleagues to support this legislation to help ensure safe travel in one of our Nation's most visited and well-loved National Parks.

Mr. RODRIGUEZ. Mr. Speaker, I have no additional speakers, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no additional speakers, and I yield back the balance of my time and urge a favorable vote on this measure.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the bill, H.R. 265, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

The Clerk read as follows:

H.R. 2912

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.

(a) FINDINGS.—The Congress finds as follows:

(1) The Osage Tribe is a federally recognized tribe based in Pawhuska, Oklahoma.

(2) The Osage Allotment Act of June 28, 1906 (34 Stat. 539), states that the "legal membership" of the Osage Tribe includes the persons on the January 1, 1906 roll and their children, and that each "member" on that roll is entitled to a headright share in the distribution of funds from the Osage mineral estate and an allotment of the surface lands of the Osage Reservation.

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

(4) Adult Osage Indians without a headright interest cannot vote in Osage government elections and are not eligible to seek elective office in the Osage Tribe as a matter of Federal law.

(5) A principal goal of Federal Indian policy is to promote tribal self-sufficiency and strong tribal government.

(b) REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.—

(1) MEMBERSHIP.—Congress hereby clarifies that the term "legal membership" in section 1 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), 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 Osage mineral estate shares are not diminished thereby.

(2) GOVERNMENT.—Notwithstanding section 9 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), 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.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentleman from Texas (Mr. RODRIGUEZ) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2912, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2912 is sponsored by the gentleman from Oklahoma (Mr. LUCAS). This legislation would put the Osage Tribe on the same footing as every other sovereign, federally recognized tribe in the United States in terms of defining its own membership criteria and its form of government.

The Committee on Resources ordered H.R. 2912 reported by unanimous consent, and the report was filed on May 19, 2004.

The Osage Tribe is the only federally recognized tribe for which a specific act of Congress, which was passed nearly 100 years ago, mandates terms of membership in the tribe, as well as its form of government.

Under the Osage Allotment Act of 1906, as interpreted by subsequent Federal court decisions, the only legal members of the Osage Tribe are the lineal descendents of those Osage persons living before July 1, 1907, who also possess what is called a "headright share." A headright share, Mr. Speaker, is a share in the royalties from mineral development in the Osage reservation.

This has had the unfortunate result of excluding people who have a high degree of Osage blood from membership in the tribe. Even though the Osage tribal leaders want to allow such disenfranchised people to become members, the 1906 act precludes them from altering their tribe's membership criteria.

The reasons for how the 1906 act came about are complicated, and though Congress may have had its reasons for mandating membership rules for the Osage people, such reasons are no longer relevant today. Preventing the tribe from determining its membership and form of government is the exact opposite of promoting self-determination.

The Committee on Resources held a hearing within the Osage reservation on March 15, 2004. We received testimony from several witnesses with a high degree of Osage blood who are part of the Osage community in Oklahoma and whom many of the tribal members want to welcome into the tribe.

But because of the 1906 act, they are not eligible to be members of the tribe because they do not own a headright share in the Osage mineral estate. They are denied the basic benefit, as well as responsibilities, of tribal membership. Some are not eligible for certain services and benefits, such as Native American scholarships. They are prohibited by law from participating in certain rituals and ceremonial events, even though they may or might, in theory, have a higher degree of Osage blood than official members of the tribe.

It is past time to consider letting the Osage Tribe decide how to govern itself as it sees fit, providing that no one loses any property or other vested legal rights in the process. H.R. 2912 includes language to ensure that no one's interest in headright shares is touched. Headrights are private property, and there is no intent to affect them under this bill.

This bill received support from all the witnesses testifying at the hearing, including the representatives of the Osage Shareholders Association, which is comprised of individuals who have a vested interest in the mineral estate of the Osage reservation.

Again, Congress is overdue in addressing this unusual problem, and I urge passage of H.R. 2912.

Mr. Speaker, I reserve the balance of my time.

Mr. RODRIGUEZ. Mr. Speaker, I yield myself as much time as I might consume.

(Mr. RODRIGUEZ asked and was given permission to revise and extend his remarks.)

Mr. RODRIGUEZ. Mr. Speaker, the honorable gentleman from Nevada (Mr. GIBBONS) has done a beautiful job of adequately explaining the legislation.

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I would simply like to add, for almost a century now the Osage Tribe of Oklahoma has lived with a cloud over their ability to determine tribal membership roles. This is a basic right afforded all Indian tribes, and I am pleased we are here to clarify the matter for the tribe.

I would also like to commend the gentleman from Oklahoma (Mr. CARSON) for his work on behalf of the legislation during its consideration by the Committee on Resources.

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Oklahoma (Mr. LUCAS), who is the author of this bill.

Mr. LUCAS of Oklahoma. Mr. Speaker, I am here today to bring my strong support to H.R. 2912 to reaffirm the inherent sovereign rights of the Osage Tribe to determine their membership and form of government. Because of a law created in 1906 by this Congress, the Osage Tribe has not been afforded the same rights as every other federally recognized tribe. According to that law, membership in the tribe would be extended only to those who owned a share of the Osage mineral estate and their descendents. Today, there are literally thousands of Osage Indians denied the benefits of membership simply because they do not hold a share of that estate.

H.R. 2912, which I introduced in July of 2003, was designed to clarify the 98-year-old law. It is intended to put the Osage Tribe on equal footing with all other federally recognized tribes by allowing them to determine their own membership criteria and system of government, while protecting the headrights of the shareholders.

I believe most importantly it will give many Osages, many young Osages, the opportunity to take part in Indian programs that have been previously denied to them.

At a field hearing in March of this year, members of the Committee on Resources and I heard testimony from members of the Osage Tribe, as well as others involved with Indian affairs. It was clear from the warm reception that the bill received that the Osage people are prepared for the right to decide for themselves who is and who is not a tribal member.

Mr. Speaker, I am quite confident in 1906 that this body was acting in the spirit of benevolent support to protect the Osages from what was, at that time, I should say, fantastic mineral wealth within their tribal reservation. Times have changed. The oil fields are not quite what they once were. It is important, I believe, now that we allow the Osages the same rights as every other federally recognized tribe; that we allow the Osages to go forward with their tribe.

Therefore, Mr. Speaker, I urge my colleagues to vote in favor of H.R. 2912, bringing the Osage Tribe one step closer to finally receiving that right.

Mr. RODRIGUEZ. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the bill, H.R. 2912.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

NATIONAL GREAT BLACK AMERICANS COMMEMORATION ACT OF 2004

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1233) to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center, as amended.

The Clerk read as follows:

S. 1233

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Great Black Americans Commemoration Act of 2004".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Black Americans have served honorably in Congress, in senior executive branch positions, in the law, the judiciary, and other fields, yet their record of service is not well known by the public, is not included in school history lessons, and is not adequately presented in the Nation's museums.

(2) The Great Blacks in Wax Museum, Inc. in Baltimore, Maryland, a nonprofit organization, is the Nation's first wax museum presenting the history of great Black Americans, including those who have served in Congress, in senior executive branch positions, in the law, the judiciary, and other fields, as well as others who have made significant contributions to benefit the Nation.

(3) The Great Blacks in Wax Museum, Inc. plans to expand its existing facilities to establish the National Great Blacks in Wax Museum and Justice Learning Center, which is intended to serve as a national museum and center for presentation of wax figures and related interactive educational exhibits portraying the history of great Black Americans.

(4) The wax medium has long been recognized as a unique and artistic means to record human history through preservation of the faces and personages of people of prominence, and historically, wax exhibits were used to commemorate noted figures in ancient Egypt, Babylon, Greece, and Rome, in medieval Europe, and in the art of the Italian renaissance.

(5) The Great Blacks in Wax Museum, Inc. was founded in 1983 by Drs. Elmer and Joanne Martin, 2 Baltimore educators who used their personal savings to purchase wax figures, which they displayed in schools, churches, shopping malls, and festivals in the mid-Atlantic region.

(6) The goal of the Martins was to test public reaction to the idea of a Black history wax museum and so positive was the response over time that the museum has been heralded by the public and the media as a national treasure.

(7) The museum has been the subject of feature stories by CNN, the Wall Street Journal, the Baltimore Sun, the Washington Post, the New York Times, the Chicago Sun Times, the Dallas Morning News, the Los Angeles Times, USA Today, the Afro American Newspaper, Crisis, Essence Magazine, and others.

(8) More than 300,000 people from across the Nation visit the museum annually.

(9) The new museum will carry on the time honored artistic tradition of the wax medium; in particular, it will recognize the significant value of this medium to commemorate and appreciate great Black Americans whose faces and personages are not widely recognized.

(10) The museum will employ the most skilled artisans in the wax medium, use state-of-the-art interactive exhibition technologies, and consult with museum professionals throughout the Nation, and its exhibits will feature the following:

(A) Blacks who have served in the Senate and House of Representatives of the United States, including those who represented constituencies in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia during the 19th century.

(B) Blacks who have served in the judiciary, in the Department of Justice, as prominent attorneys, in law enforcement, and in the struggle for equal rights under the law.

(C) Black veterans of various military engagements, including the Buffalo Soldiers and Tuskegee Airmen, and the role of Blacks in the settlement of the western United States.

(D) Blacks who have served in senior executive branch positions, including members of Presidents' Cabinets, Assistant Secretaries and Deputy Secretaries of Federal agencies, and Presidential advisers.

(E) Other Blacks whose accomplishments and contributions to human history during the last millennium and to the Nation through more than 400 years are exemplary, including Black educators, authors, scientists, inventors, athletes, clergy, and civil rights leaders.

(11) The museum plans to develop collaborative programs with other museums, serve as a clearinghouse for training, technical assistance, and other resources involving use of the wax medium, and sponsor traveling exhibits to provide enriching museum experiences for communities throughout the Nation.

(12) The museum has been recognized by the State of Maryland and the city of Baltimore as a preeminent facility for presenting and interpreting Black history, using the wax medium in its highest artistic form.

(13) The museum is located in the heart of an area designated as an empowerment zone, and is considered to be a catalyst for economic and cultural improvements in this economically disadvantaged area.

SEC. 3. ASSISTANCE FOR NATIONAL GREAT BLACKS IN WAX MUSEUM AND JUSTICE LEARNING CENTER.

(a) ASSISTANCE FOR MUSEUM.—Subject to subsection (b), the Attorney General, acting through the Office of Justice Programs of the Department of Justice, shall, from amounts made available under subsection (c), make a grant to the Great Blacks in Wax Museum, Inc. in Baltimore, Maryland, to be used only for carrying out programs relating to civil rights and juvenile justice through the National Great Blacks in Wax Museum and Justice Learning Center.

(b) GRANT REQUIREMENTS.—To receive a grant under subsection (a), the Great Blacks

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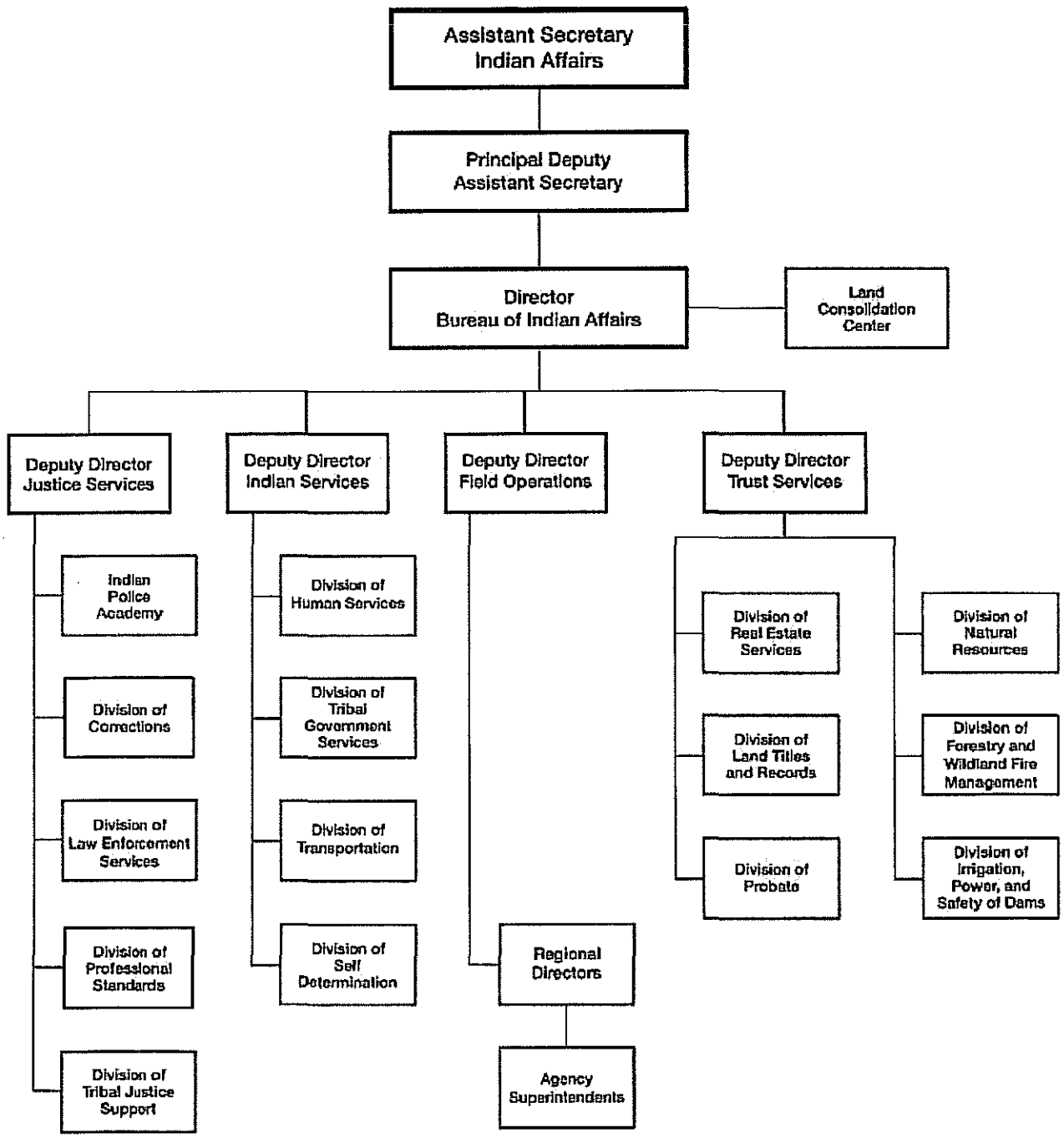

NOTE: Other Bureau Offices that report to Offices in the Office of the Assistant Secretary - Indian Affairs are described in 130 DM 9 and 130 DM 10.

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ATTACHMENT 7