

OSAGE MINERALS COUNCIL
DECISION OF THE U.S. COURT OF FEDERAL CLAIMS
IN *OSAGE NATION V. UNITED STATES*

February 16, 2007

The Osage Minerals Council is pleased to bring good news to our Osage shareholders concerning the Osage Nation's lawsuit against the United States for mismanagement of Osage trust funds.

Yesterday, the U.S. Court of Federal Claims issued its third major opinion in the case *Osage Nation v. United States*. The opinion resolves disagreements between the United States and the Osage Nation about how to calculate the dollar amount of money damages the United States must pay for the breaches of trust the court described in its September 21, 2006 opinion. The September 21, 2006 and February 15, 2007 opinions discuss three kinds of breach of trust committed by the United States in its management of Osage oil resources: failure to collect the full, proper royalty amount ("undercollection"); failure to deposit collected funds quickly ("deposit lag"); and failure to earn a prudent return on funds held by the Treasury. The opinions analyze a small sample of four oil leases in five months between 1976 and 1989.

The Court's decision agrees with nearly all of the Osage Nation's arguments about calculating damages. A significant aspect of the new decision is the Court's agreement with the Osage Nation that it is entitled to interest on all amounts owed, from the date of the damage through the date a judgment is actually paid. The Court not only agreed that interest should be awarded, but adopted the Osage Nation's proposal to use 7-year Treasury bills to calculate the rate of interest. (The United States had proposed either awarding no interest, awarding only 90 days of interest, or awarding interest at 90-day Treasury-bill rates.)

On a related issue—whether the Osage Nation is entitled to late fees that the United States could have collected for missing royalties—the Court disagreed with the Osage Nation's arguments, reasoning that "[a] judgment by this court awarding late fees [against the United States] could not vindicate the purpose of the [late-fees] regulation" to deter underpayment of royalties by lessees and purchasers.

With respect to the undercollection of royalties, the Court rejected all the United States' challenges to the use of data from the Department of Interior's Minerals Management Service to substitute for missing data that the Osage Agency failed to collect. In a related vein, the Court refused to allow the United States to offer new evidence to support changes in its position on a number of technical issues raised at trial regarding the calculation of royalties.

On the deposit-lag issue, the Court agreed with the essential elements of the Osage Nation's calculations. It agreed that the Osage Nation is entitled to an extra 1.4 days of interest on any checks that the United States mailed from Pawhuska to Muskogee, because those checks should have been deposited in the trust fund within 24 hours of receipt. It also agreed that the Osage Nation should receive compensation for the days of deposit lag documented in the Arthur Andersen report issued in the 1990s. The only issue left open here—and the only issue left open in the opinion as a whole—is the extent to which royalties in 1979 and 1986 were paid by check.

On the issue of prudent investment returns, the Court rejected the United States' attempts to back away from positions it took at trial regarding the proper interest rates to

use for estimating investment returns. It also refused to credit the United States with amounts it claimed to have paid the Osage Nation in interest but which did not appear in ledgers prepared for the Arthur Andersen report.

In sum, the decision held for the Osage Nation on every issue except late fees. The Court has ordered that on or before March 15, 2007, the parties must either agree on final damages calculations (including resolving the open issue regarding check payments) or submit briefs stating their respective positions.

For our Osage shareholders, and in fact all Indian tribes and Indian people who seek redress for mismanagement of their trust funds, this decision is very good news.

The Osage Minerals Council wants to commend the good work of our Osage Trust Team, five individuals who serve us in this important effort. From the Minerals Council, Councilwoman Katherine Red Corn, Councilwoman Cynthia Boone, and Councilman Bob Martin have spent significant time on this case, along with Principal Chief Jim Gray and Speaker Archie Mason. They have worked together for the good of the Osage Nation, and in particular, the Osage shareholder. Let's support them as they continue their good work.