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Jim Gray
Principal Chief

# Osage Nation

**Office of the Principal Chief**

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John D. Red Eagle
Assistant Principal Chief

RECEIVED
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CLERK OF
THE CONGRESS

27 February 2009

The Honorable Speaker Archie L. Mason
Osage Nation Congressional Office
P.O. Box 1449
Pawhuska, OK 74056

Dear Speaker Mason:

In response to your letter of February 17, 2009, I agree with your assertion that the Nation's revenues belong to the Osage Nation's people. In ratifying our Constitution, our people chose to allow the Executive Branch to manage and administrate these funds through the execution and enforcement of Osage law. While I also certainly agree that our branches of government should be working together to ensure that the Nation's assets are protected and productive, I firmly refute your allegation that I have violated law. Out of respect for your Office, I would caution you and other members of Congress against supporting a rush to judgment and issuing public statements and opinions which condemn Executive Branch actions. To do so not only appears unethical, but also irresponsible, in that it is seemingly contrary to our three branch system of government. Ultimately, only our judicial branch can render a final interpretation as to the effect of Osage law on this dispute, and politicizing this debate only serves to undermine the unity of our Nation. As a practical matter, I am concerned that the longer we inhibit the LLC from beginning its work, the longer it will be before the Nation can reap dividends. That being said, I welcome the opportunity to respond to your letter and look forward to your stated commitment to improve cooperation between our branches so that we may collectively work in the best interest of our people.

My constitutional duties include a mandate to implement, administer and enforce the laws of this Nation, including the charge to execute Congress' mandate to expand the Nation's role in private enterprise through the vehicle of the Osage LLC (the "LLC"). While you characterize the January 12, 2009 Management Agreement (the "Agreement") as an attempt to divert "revenues that belong to the People of the Osage Nation," my actions were firmly grounded in a reasonable

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and rational interpretation of the laws and resolutions that have already been approved by the Osage Nation Congress. I fail to see how Congress can accurately characterize authorization of the Agreement as an attempt to divert revenues from the Osage people, as our members are the true owners of the subject property, the income, and the LLC. Congress – acting as elected representatives of the Osage people – has already authorized the LLC to retain proceeds and dividends of the fruits of its work *without the need for formal tribal government action.* This authorization was repeatedly expressed through not only legislation and resolutions, but through advice and consent of appointment of the LLC's Enterprise Board, which exercises management of the business and affairs of the LLC per § 7.2-7.3 of the LLC articles of organization.

Consequently, it is difficult to see your February 17 letter as anything but an attempt to expand Congressional authority beyond the Article VI, § 21 bar from members of Congress serving on Tribal Enterprise Boards. All three branches of this Nation act at the behest of our people; just as you exercise duties to create law that represent the wishes of our people, the Judicial Branch exercises it's duty to oversee the interpretation and implementation by this Office of the laws you create, as I exercise the duties of this Office to protect and enforce our laws. That constitutional mandate necessarily includes a duty for me as Principal Chief and head of the Executive Branch to resist any direct or indirect attempt by Congress to subvert our new democracy by attempting to cross the line from necessary oversight to interference with the execution of the Nation's business.

When considering the complete body of Osage law, I must reject your analysis of the effect of the provision of 316(A) upon this Agreement. Your statement that "income revenue produced by the property is separate from the authority to purchase property" thereby requiring an additional appropriation, is based on the incorrect assumption that any future income revenues fall within the responsibility of the Treasury at the moment they are earned and/or retained, and therefore must be separately authorized by appropriation. This premise contradicts both the Treasury Bill and the Osage LLC articles of operation. Section 3-312 of ONCA 06-02 (the "Treasury Bill") limits the Treasurer's responsibility for proper disbursement to "...funds in the control of, or belonging to, the Osage Nation and for the prompt and timely collection of debts and obligations owed to the Osage Nation, **including *appropriate* revenues from Osage Nation taxes and enterprise incomes."** What constitute "appropriate" revenues under the Treasurer's responsibility must be determined through a reading of all applicable Osage law together as a whole: these provisions include not only the Nation's Constitution, but ONCA 08-02 (the "LLC Act"), and the Osage LLC's articles of organization and operation approved by Congress per ONCR 08-09 and 08-10, in compliance with the terms of the LLC Act.

Per the LLC's organization articles, Congress formed the LLC to manage the Nation's business activities, "***separate from the affairs of Tribal Government, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Government action.***" To accomplish this goal of independent operation, Congress included provisions in the articles of organization that authorize capitalization for the entity in such a way as to fulfill this overall purpose. Placing operating resources under the responsibility of the Treasurer serves to hamstring the Osage LLC's ability to engage and compete in private enterprise.

Sections 8.3 and 15.3 of the LLC articles of organization allow the LLC to fulfill its more specific purpose under Article III to "generate profits to promote the growth and continuity of the Company and for distribution to the tribal government." Section 8.3 specifically states that "[t]he Osage Nation, as the sole member of the Company, ***shall allocate such funds as to allow the company to fulfill the long term goals of the Nation and the Company***." Congress has already authorized a capital contribution for the Enterprise Board, which includes "net profits" of the LLC. The term "net profits" is defined by Article I, § (o) of the articles of operation to include "the ***income and gains*** of the Company..." It would be irresponsible to expect the LLC Board to generate legally-binding contracts for leases on the property without being able to provide reasonable certainty that it will have enough revenues to continue to manage and execute those leases. I interpret the language you approved in the LLC articles of operation requiring management of those business activities "separate from the affairs of Tribal Government...without the need for formal Tribal Government action" as providing that necessary certainty as sharing that understanding and expectation.

Thus, with regard to management of the Tulsa Tech property, my position remains that the allocation of the funds necessary to allow the LLC to operate occurred in the form of a capital contribution by its sole member through the following means: (1) congressional authorization of purchase of the underlying asset through the ONCA 08-49; (2) congressional authorization of the LLC to retain "net profits" per § 8.3 of the LLC's articles of organization (ONCR 08-09); (3) congressional authorization of the dividend policy in § 15.3 of the LLC's articles of organization, allowing LLC to reinvest "all profits for the first five (5) years." (ONCR 08-09) and (4) the capital account referenced in § 10.1 of the articles of organization, as specified in Schedule A. These provisions have already placed future income from leases under the direct control of the Osage LLC per § 316(F) of the Treasury Bill, and thereby constitute sufficient legal authorization from Congress for me as Principal Chief to execute an agreement on behalf of the Nation to memorialize Congress' assignment of the lease income as net profits.

In summary, I stand by the analysis in the legal opinion regarding the Management Agreement. As the language of the Management Agreement assigning the property and income directly mirrors that of the legislation you approved, I cannot compromise on my execution of that language. However, in a spirit of good faith cooperation with Congress to put the best interests of our Nation and our people ahead of our political disagreements, on behalf of the Osage Nation, I have chosen to execute an amended version of the January 12, 2009 Management Agreement which more closely mirrors the sovereign immunity language in the applicable legislation. This should sufficiently address your concerns about protecting the Nation's sovereign immunity, while at the same time adequately executing all of the legislation regarding the Osage LLC. Thus, we can ensure that the Osage LLC has all of the resources necessary for the Nation to recoup its investment in the property and begin economic progress. These changes will allow the Osage LLC board to promptly execute their duties as Managers per Article VII of the LLC's articles of organization, and begin their important work of growing the LLC as soon as possible. I believe this will address our common goal of ensuring that at the end of the five-year period reinvestment period as specified by § 8.3 of the LLC articles of operation, the Nation will reap the maximum possible dividends.

As I have described above, the terms of this Agreement were purposefully written to abide by the expressed intentions of Congress for Osage LLC, as demonstrated by related legislation, and in keeping with the interpretation of Osage law by this office. The resulting arrangement continues to demonstrate the commitment of this office to consistently carryout the directive of our people to keep separate the political and business activities of the Nation. It is my sincere hope that we can work together to put aside our differences so that we can bring more economic success to our Nation and our people.

Sincerely,

Jim R. Gray
Principal Chief of the Osage Nation

AMENDMENT TO MANAGEMENT AGREEMENT

This AMENDMENT to MANAGEMENT AGREEMENT is entered into this 27th day of February, 2009, by and between Jim R. Gray, as Principal Chief on behalf of the owner OSAGE NATION, hereinafter referred to as "Nation," a federally recognized tribe of Indians, and OSAGE, LLC, a wholly owned tribal company organized in accordance with the laws of the Osage Nation, hereinafter referred to as "Manager".

WHEREAS NATION and MANAGER are parties to a Management Agreement dated January 12, 2009

NOW, THEREFORE NATION and MANAGER agree to amend the Agreement by this Amendment. The Agreement shall be amended as follows:

1. Article VII, § 7.1 shall have the following language replace the existing language:

   Disputes. In the event that any dispute arises between the Nation and Manager in regard to the interpretation or the performance of this Agreement, the Office of the Chief and Manager shall each be obligated to notify the other of such dispute(s) with a demand to meet for the purposes of discussing and negotiating the resolution of such disputes within thirty (30) days of the date of said notice. Thereafter, should the parties fail to timely and satisfactorily resolve their dispute, parties may seek resolution as provided by Osage law.

2. Article VII, § 7.3 shall have the following language replace the existing language:
   Breach of Agreement by Nation. In the event that Nation should interfere with the reasonable performance of this Agreement by Manager, Manager's rights to petition courts for relief shall be in accordance with Osage law.

3. All other terms and conditions of the original Agreement shall remain in full force and effect.

The parties agree that in the event of a conflict between this Amendment and the Management Agreement, the provisions of this Amendment shall prevail and the Publication Agreement shall be construed accordingly.

This Amendment and the Management Agreement, read together, constitute the final agreement between the Nation and Manager with respect to management of the assigned property known as the "Tulsa Airpark."

In witness thereof, the Nation and the Manager, by their duly authorized representatives have executed this amendment.

ON BEHALF OF THE OSAGE NATION

Jim R. Gray, Principal Chief

ON BEHALF OF OSAGE, LLC

Charles Maker, Chairman