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The Osage Minerals Council seeks federal legislation facilitating return of Osage Headrights

OSAGE RESERVATION – Today, the Osage Minerals Council (OMC) unanimously voted to seek federal legislation to permit non-Osages who own a “headright” interest in the Osage Mineral Estate to gift or sell those headright interests back to the OMC, the Osage Nation, or Osage individuals. It is believed that approximately 26 percent of all headright interests in the Osage Mineral Estate are held by non-Osages, however, current federal law creates barriers for those who may want to return, gift or sell their interest back to an Osage, the OMC or the Osage Nation from actually doing so. As a result, no non-Osage has utilized the tiered system created by federal law to transfer a headright interest under this rule in over two decades.

OMC Chairman Everett Waller said,

“When the United States broke promises to our Osage people and allowed non-Osages to receive the proceeds from minerals from our Reservation, it caused decades of suffering. Today, we begin the process to work for justice and equity for our Osage people.”

From 1906 to 1978, the Secretary of the Interior permitted non-Indians to inherit the right to receive Osage minerals income, otherwise known as headrights. In 1978, Congress acted to prohibit an Osage from transferring a headright through inheritance to a non-Osage. Then, in 1984, Congress again acted to create a tiered system by which non-Osages may devise their headrights outside of probate—a system that effectively prohibited non-Osages from gifting their Osage headrights back to Osages. The 1984 Act not only provided that a non-Osage headright holder may not sell, assign, or transfer their Osage headright without approval of the Secretary of the Interior, it then stated any sale or transfer of the headright must comply with a tiered purchaser preference. The 1984 Act created a first right of purchase for certain heirs of the first Osage Indian to have acquired such headright under an allotment pursuant to the 1906 Osage Allotment Act, so long as the heirs are living and Osage Indians; the second right of purchase belongs to “any other Osage Indian for the benefit of any Osage Indian in his or her individual capacity”; and the third right of purchase belongs to “the Osage Tribal Council on behalf of the Osage Tribe of Indians.”

The OMC—being of one mind that all barriers to non-Osages interested in selling, gifting or transferring their headright interest in the Osage Mineral Estate back to an Osage, the OMC or Osage Nation should be removed—asked Councilwoman Marsha Harlan to lead on preparation for a solution to this problem.

The proposed solution that was presented to the OMC would require Congress enact legislation that would expressly permit a non-Osage who owns an Osage headright to transfer the headright back to the OMC, the Osage Nation, or Osage individuals via gift or sale. While Osages endured tragedy for the sake of headrights being transferred outside of the hands of Osages, Congress did not stop the bleeding until 26 percent of the headrights



were owned by non-Osages. The proposal adopted by the OMC today gives Congress a pathway to remedy at least part of the problem by removing restrictions against non-Osages who own headrights who want to return them to Osage ownership.

Councilwoman Harlan said,

“I appreciate the trust of every one of my fellow Councilpersons. After much research, thought, prayer, and remembrance, we move forward today to bring home orphaned headrights.”

In 1906, the U.S. Congress enacted the Osage Allotment Act that established a unique trust system that forced the Osage Reservation surface lands to be allotted to individual Osages, reserved the ownership of the subsurface Osage Mineral Estate to the Osage Nation, and directed the Secretary of the Interior to create a list, or roll, of all Osage persons living at the time who would receive the proceeds from oil, gas, and other minerals production from the Osage Mineral Estate.

In 1948, Congress referred to the right to receive such proceeds as a “headright” share or interest, or as a property right. Today, approximately 26 percent of all headrights are owned by non-Osage individuals, churches, universities, and other non-Osage institutions, who can freely bequeath such interests to any person or entity the non-Osage chooses. *See Matter of Est. of Little Bear*, 1995 OK 134, 909 P.2d 42, 59. Some non-Osage institutions have expressed an interest in gifting their Osage headright ownership back to the Osage Minerals Council, but federal law prohibits such gifts, requiring non-Osages to sell in accordance with a tiered purchasing system.

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