

Some thoughts on suing the Chief

The Osage Nation's control over the Osage Minerals Council's C-395 bank account has been a huge point of contention ever since Chief Jim Gray refused to approve travel expenses for the 1st Minerals Council to go to Washington DC to ask the Department of Interior/Bureau of Indian Affairs to oversee the 2010 tribal elections. There was quite an up-roar at that time, and then the 2nd Minerals Council began to address the issue immediately after being elected.

According to the Osage Nation Constitution, as originally written and approved by the 31st Council and ratified by the people, the Chief does have that power. So far, that power has only been exercised that one time but, who knows what could happen in the future. That's a lot of power and responsibility to vest in one individual. And remember, it is not a requirement that a person running for Chief even be a Shareholder.

Further fueling the fires of contention, it was recently discovered that a new Treasurer for the ONG, apparently unaware of the gravity of the situation, had temporarily moved \$300,000 of Shareholder funds from one bank to another and hadn't bothered to inform the Minerals Council of what he was doing or his reason for doing it. This, and several other problems, soon led to his resignation. But, the issue of the Executive branch having absolute control over Minerals' funds is still there.

The 2nd Minerals Council, along with all 12 currently seated Congresspersons, wrestled with the question for nearly a year. As a result, Congress has passed 4 resolutions to amend the Constitution. These are the 4 amendments that will be voted on in the Special Election set for August, 2012. One of the proposed amendments will Constitutionally remove the accounts from the absolute control of the Chief.

In an effort to alleviate the problem as quickly as possible, Congress passed an act, ONCA11-78, on Sept 11, 2011, delegating full and sole control over the Mineral Estate accounts to the Osage Minerals Council. The Chief vetoed the legislation. On Oct 6, 2011, Congress overrode the veto and the bill became law.

Paraphrasing what the Chief says in his veto message, he;

1. Feels that as Chief, he has the ultimate fiscal responsibility for all funds belonging to any agency (the Minerals Council) of the Osage Nation.

This argument does have merit. It could be considered a part of a system of checks and balances, necessary in any democracy. However, there are 8 Shareholders on the Minerals Council. These 8 people elect 3 from among themselves to be signatories on all bank accounts. This seems to me to be a pretty good set of checks and balances, with no chance in the future for possible non-Shareholder interference from Executive---which is the situation we would be in if a non-Shareholder Chief were elected.

2. Believes that the Minerals Council is not prepared to take on the full responsibility of handling the accounts.

I hate to say it but, he is probably right. Depending on just how miserable a Chief might want to make it for the Council, full responsibility might mean that the ONG would no longer handle the payroll, accounting, fringe benefits, workman's comp, and retirement programs for the Council employees. Specialists in these fields would be necessary and they don't come cheap. The Shareholders would now be paying for services we are getting for nothing right now.

And those are just the small problems. To even open a bank account under the sole name of the Osage Minerals Council, the MC would need to get an EIN from the Internal Revenue Service. This is a simple thing to do, but it could have disastrous results. The Minerals Council attorney has cautioned the Council of the dire consequences possible if the MC gets a separate EIN. He has told them that such action could jeopardize the sovereignty of the entire Minerals Estate. The Chief also recognizes that risk in his veto message.

I am told that several attempts were made by the Minerals Council to meet with the Chief to discuss this issue. I'm not sure if they ever talked, but obviously, if they did, there were no positive results.

The Chief continued to refuse to release the accounts and on May 8, 2012, the Minerals Council filed a request for an injunction in the Trial Court of the Osage Nation, asking that the Court direct the Chief to honor ONCA 11-78 and remove the accounts from the direct control of the Executive branch

There just must be a better way to resolve this problem. Filing for this injunction in the court system will, in my opinion, very likely only cause more problems. It will certainly tend to stop absolutely all communication between the Chief and Minerals (if there had ever been any up to this point) until the matter is settled. This cannot be a good thing. I occasionally, but don't often, disagree with this Council's actions and this is one of those times. We don't need more dissention between Executive and Minerals. The Council could have at least waited until the results of the August Special Election were in. No emergency exists in this matter. Not one penny of Shareholder money has even been alleged (which is unusual) to have been lost since the new Constitution became effective in 2006.

Should the 4 amendments be successful, the Chief will be Constitutionally mandated to give the Council full and sole control of the accounts. If the amendments fail then, at that time, it may be necessary to take more drastic action. Here lately, it looks like some seem to think that earnest and civilized discussion could be deemed as the most "drastic action" imaginable.

It seems likely that in a court proceeding considering an injunction, the Chief would, at the very least, use the arguments he stated in his veto message. These are very strong arguments and he may have more of them by now, therefore making it quite possible that the Court might agree with him. If that happens, it would only reinforce his thinking that the Council is not prepared to effectively handle the job. Very frankly, the Council may have trouble proving otherwise at this time.

This is just one person's opinion but, surely they could find a way to leave the owner of the bank accounts listed as the Osage Nation and continue using the Nation's EIN, while listing only the Minerals Council people as signatories. After all, we are all a part of the Osage Tribe, now renamed the Osage Nation. I would certainly hope that no one would have a problem with that fact.

The bank resolutions can be crafted to require that:

1. **Only** any 2 of the 3 designated operative or primary Minerals Council signatories could expend or withdraw funds from the accounts for **any reason** except in an emergency.
2. An "emergency" could be defined as "the complete and absolute unavailability of the designated operative or primary Minerals Council signatories and beyond that, unavailability of **any** Minerals Council member to co-sign." It might be wise for the MC to approve all 8 Council persons, the Chief, Asst. Chief, and the Treasurer (and possibly the BIA Superintendent) as emergency signatories, and then designate 3 of those (MC members) to be the operative or primary signatories. Refusal of 1 or more valid operative or primary signatory(s) to sign would not constitute an emergency and it would take a resolution by the majority of the Council to deal with that specific problem.
3. In the unlikely event lightning strikes dead center in the middle of a Council meeting, or if some other mass disaster should occur, the banking resolutions could further provide that the BIA Superintendent **must** then, **but only then**, co-sign along with the Chief and/or the Treasurer.
4. Executive would now have oversight authority only, whereby the Treasurer could monitor and even audit the accounts, but the Chief or anybody else could never hinder nor impede the disbursement of funds as deemed necessary by the Minerals Council except in the case of blatant theft or fraud.

This approach would leave the accounts within the Nation's system, thereby preserving sovereignty, continuity, Executive oversight of the accounts, the availability of accounting and other services, and everybody's ego's.

Whether you agree or disagree with my humble opinions, I sincerely encourage every Shareholder to share your own thoughts with the Minerals Council about this matter. This lawsuit could probably be withdrawn, or at least put on hold. The vote on the resolution to file for the injunction was not unanimous. If enough of the Shareholders voice their opinions, maybe you can turn this into a unanimous Minerals Council vote, either "yes-sue" or "no-let's wait and see". I know we've waited a long time but, surely a couple more months won't hurt now. The voters just may solve the problem for us in August. They usually do in the long run.

Ray McClain, Osage Shareholder