

JUSTIFICATION, BRIEF AND ARGUMENT

of the

OSAGE TRIBAL COUNCIL

for

EXTENSION

of the

OSAGE MINERAL TRUST PERIOD

*I + I A*  
*Indian*  
*Osage*

OSAGE INDIAN AGENCY

Pawhuska, Oklahoma

November 18, 1963





OSAGE TRIBAL COUNCIL

PAWHUSKA, OKLAHOMA

November 18, 1963

Hon. Stewart L. Udall  
Secretary of the Interior  
Washington, D. C. 20240

Through: Commissioner, Bureau of Indian Affairs

Dear Mr. Secretary:

Since it is the firm policy of the present administration to consult with tribal groups and to work with them in determining every phase of Federal action in their behalf, the Osage Tribal Council, in behalf of the Osage Tribe of Indians, respectfully and urgently requests the Department of the Interior to endorse and recommend to the Congress of the United States that the Act of June 24, 1938 (52 Stat. 1034), the third Act of Congress extending the period of the Mineral Trust of the Osage Tribe of Indians, be amended by striking from lines 7 and 8, paragraph 2, Section 3, the words "until the 8th day of April 1983, unless otherwise provided by Act of Congress.", and inserting in lieu thereof the words "in perpetuity, until otherwise disposed of by the Osage Tribal Council with the approval of two-thirds vote of the eligible voters of the Tribe and the Secretary of the Interior, \* \* \*."

The Tribal Council has determined that it is of the greatest importance that the Osage Mineral Trust Period be extended in perpetuity in order to initiate a future long-range planning program for management of the economic and general welfare of the Tribe. Future affairs of the Osage Tribe as they relate to the oil and gas industry will become complicated and chaotic by such limitations as are now in effect if an extension in perpetuity is not granted.

The Tribal Council is aware of the fact that there may be objections to an extension of the Mineral Trust Period on the part of certain individuals who have a selfish interest or who are not sufficiently informed of the overall consequences that will occur if the Mineral Trust Period terminates. The Council understands, too, that a very substantial support by the tribal members is necessary for accomplishing an extension of the Mineral Trust Period as herein requested. It can be said with certainty that the Council has the support of the entire Osage Tribe in this request.



The Osage Tribal Council is unanimous in its opinion that the extension of the Osage Mineral Trust Period in perpetuity is in the best interest of the Osage Tribe of Indians. The Council, therefore, respectfully urges the Department of the Interior to endorse and support its request, and to recommend to the Congress that the Act of June 24, 1938, supra, be amended to reserve the minerals underlying the Osage Reservation to the Osage Tribe of Indians in perpetuity. This formal request is presented as a result of conferences held in Washington, D. C. in August 1961 and July 1963 with the Commissioner of Indian Affairs and his staff.

In support of the Council's request, the following exhibits are submitted:

Exhibit I, a draft of the proposed amendment, which draft seeks to accomplish no more than remove a non-effective time limit as heretofore placed upon the Osage Mineral Trust.

Exhibit II, a summary of the annual gross production of oil and gas and the resulting annual income from bonuses, lease rentals and royalties from oil and gas, and from other minerals. The Osage Mineral Reservation comprises 1,469,077.63 acres.

Exhibit III, prepared by the engineering staff of the Osage Agency and by the engineering consultant to the Council to show that the estimated presently developed proven oil reserves of the Osage Mineral Reservation are 500 million barrels, which reserves include both primary and presently developed secondary recovery operations. This exhibit also shows that the present proven developed reserves of the Osage Mineral Reservation will have a productive life extending far beyond April 8, 1983, and it is reasonable to expect that the gross annual production will be at least 1 million barrels in the year 2050. This estimate of future life of proven reserves does not take into account the undiscovered oil remaining on the reservation, and the presently undeveloped but proven secondary recovery reserves. The estimate of the remaining producing life of the Tribe's oil resources also does not take into account the fact that a decreased domestic market demand may further extend the life of the presently proven reserves. While Exhibit III deals entirely with oil production and income from that resource, it can be expected that revenue from Osage gas and other mineral operations also will amount to very substantial sums for a long period of years.

Exhibit IV, a brief historical account of the pertinent history of the Osage Mineral Reservation, conclusions of law, and consideration of practical matters bearing on the subject of the terms of the Mineral Trust.



It is the consensus of the Osage Tribal Council that the first requisite is to settle the matter of the term of the Mineral Trust Period by taking the justifiable step proposed herein. Subsequent action necessary to the solution of any or all problems that may be regarded as being associated with the present management of Osage tribal affairs then, and only then, can be resolved to the satisfaction of every interested party.

Respectfully submitted,

Paul Pitts  
Paul Pitts, Principal Chief

We concur:

Charles Whitehorn  
Charles Whitehorn, Assistant Principal Chief

George Baconrind  
George Baconrind, Council Member

W. O. Cooper  
W. O. Cooper, Council Member

John A. Kilbie  
John A. Kilbie, Council Member

D. E. Martin  
D. E. Martin, Council Member

Edward Red Eagle  
Edward Red Eagle, Council Member

Joe Revelette  
Joe Revelette, Council Member

George B. Smith  
George B. Smith, Council Member

Sam Whitehorn  
Sam Whitehorn, Council Member



EXHIBIT I

AN ACT

To provide for the extension of the Osage Mineral Trust Period in perpetuity.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the first paragraph of Section 3 of the Act of Congress of June 24, 1938 (52 Stat. 1034), relating to the Osage Indians of Oklahoma, be, and the same is hereby amended to read as follows:

"That all that part of the Act of June 28, 1906 (34 Stat. L. 539), entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes,' which reserves to the Osage Tribe the oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals, covered by said lands are reserved to the Osage Tribe in perpetuity, until otherwise disposed of by the Osage Tribal Council with the approval of two-thirds vote of the eligible voters of the Tribe and the Secretary of the Interior, and all royalties and bonuses arising therefrom shall belong to the Osage Tribe of Indians and shall be disbursed to members of the Osage Tribe or their heirs or assigns as now or may hereafter be provided by law, after reserving such amounts as are now or may hereafter be authorized by Congress for specific purposes."



Fiscal Year	Gross Barrels	Oil Royalty	Gas Royalty	Bonus
1901	10,536	553.25	50.00	
1902	10,552	398.26	50.00	
1903	52,217	2,932.71	25.00	
1904	90,806	9,551.24	162.50	
1905	1,868,260	128,268.42	628.70	
1906	4,514,004	227,290.32	977.02	
1907	5,547,167	298,378.40	3,202.08	
1908	4,775,269	243,610.36	3,185.58	
1909	4,816,462	245,300.00	2,713.53	
1910	5,091,424	231,093.52	2,697.95	
1911	9,418,769	514,539.46	3,151.55	
1912	9,445,669	652,734.55	3,441.92	39,436.00
1913	7,727,030	773,982.19	4,318.03	498,182.58
1914	11,091,791	1,351,271.71	7,120.37	
1915	7,252,788	538,377.52	10,841.60	
1916	9,805,477	979,685.01	123,996.77	2,064,300.00
1917	9,943,929	2,622,145.27	803,639.73	1,662,480.78
1918	10,906,376	3,805,489.28	807,717.16	4,824,942.39
1919	12,138,086	4,581,733.33	838,941.38	5,447,752.44
1920	17,077,348	8,079,778.46	872,763.32	8,611,874.72
1921	20,621,614	10,267,544.34	1,041,201.06	6,044,938.92
1922	28,941,934	8,542,989.93	692,701.87	11,613,401.60
1923	41,810,178	13,048,877.86	1,023,663.75	15,261,507.39
1924	37,577,900	10,776,366.01	1,103,189.14	11,804,103.89
1925	33,662,179	9,793,164.73	1,351,420.10	14,577,607.18
1926	25,682,848	8,845,235.12	1,504,629.60	10,603,688.84
1927	25,884,734	9,016,825.00	1,370,012.01	8,112,103.06
1928	21,741,225	5,060,418.41	1,081,131.94	5,220,778.57
1929	16,629,115	3,857,778.54	1,068,109.57	2,338,730.00
1930	13,711,611	3,310,200.24	865,473.24	658,911.61
1931	11,453,342	1,999,039.73	622,514.78	107,748.75
1932	9,897,985	1,121,349.79	377,429.50	28,313.50
1933	8,871,544	1,100,941.74	260,943.99	113,518.75
1934	11,675,640	1,693,491.55	206,030.73	1,117,782.50
1935	16,015,210	2,002,553.29	329,061.38	1,731,440.76
1936	16,563,694	2,941,987.59	390,887.77	1,208,955.00
1937	16,775,480	3,241,222.54	391,566.99	324,757.25
1938	14,709,321	3,070,602.60	369,459.28	43,976.00
1939	12,940,745	2,331,785.74	319,793.32	39,576.88
1940	11,708,550	1,985,384.51	278,036.50	65,038.50
1941	11,806,357	2,027,613.29	279,899.73	71,225.00
1942	11,974,730	2,380,537.85	343,716.90	121,850.00
1943	11,187,136	2,240,720.64	333,680.82	193,977.50
1944	10,639,423	2,143,345.26	345,747.22	276,675.00
1945	10,221,361	2,358,733.01	341,391.56	130,400.00
1946	9,551,517	2,348,358.75	301,085.50	99,025.00
1947	8,659,802	2,448,620.89	315,335.04	98,883.19
1948	7,862,467	2,977,817.16	395,895.99	400,679.33
1949	7,178,711	3,142,466.60	337,493.89	164,450.00
1950	7,121,111	3,065,272.51	246,993.44	270,667.50
1951	7,193,016	3,090,863.44	231,033.68	601,867.00
1952	8,136,223	3,451,158.91	200,149.78	739,637.50
1953	9,850,811	4,147,706.18	186,165.98	1,273,437.50
1954	11,234,923	5,169,349.14	111,883.85	1,298,125.00
1955	14,415,910	6,400,477.82	167,929.72	2,421,200.00
1956	21,572,417	9,201,810.36	94,686.95	9,719,620.00
1957	25,006,215	11,356,418.56	107,274.50	1,901,170.00
1958	25,113,734	11,783,385.53	118,243.66	838,150.00
1959	25,731,244	11,736,503.87	102,250.39	646,495.00
1960	27,305,255	12,025,620.77	79,845.98	185,502.00
1961	27,522,989.38	11,871,952.94	66,953.20	202,025.00
1962	25,169,415.80	10,366,301.86	70,300.77	216,572.00
1963	24,232,744.68	9,837,581.91	80,155.70	148,250.00
Totals	877,146,292.86	264,867,489.77	22,995,044.96	136,185,731.38



Interest on Deferred Bonus	Rentals	Totals	Filing and Surrender Fees	Royalty- Minerals Other than Oil & Gas	Grand Total
		603.25			
		448.26			
		2,957.71			
		9,713.74			
		128,897.12			
		228,267.34			
		301,580.48			
		246,795.94			
		248,013.53			
		233,991.47			
		517,691.01			
		695,612.47			
		1,276,482.80			
	1,158.27	1,359,550.35			
	12,591.06	561,810.18			
	30,338.00	3,198,319.78			
	108,325.49	5,196,591.27			
	94,901.21	9,533,050.04			
	130,950.31	10,999,377.46			
87,726.72	114,094.37	17,766,237.59			
281,898.92	119,324.84	17,754,908.88			
401,117.57	117,773.45	21,367,984.42			
1,062,369.33	106,082.07	30,502,500.40			
835,322.08	151,561.00	24,670,542.12			
969,893.50	163,923.50	26,856,009.01			
938,850.38	131,183.43	22,023,587.37			
340,667.71	140,659.19	18,980,266.97			
116,821.84	86,427.96	11,565,578.72			
87,962.17	88,679.27	7,441,259.55			
15,672.25	109,810.67	4,960,068.01			
2,839.67	95,026.67	2,827,169.60	2,040.51		2,829,210.11
278.06	63,554.04	1,590,924.89	2,106.00		1,593,030.89
286.85	38,902.80	1,514,594.13	1,275.00		1,515,869.13
2,785.32	36,056.17	3,056,146.27	2,304.50		3,058,450.77
12,293.01	36,644.63	4,111,993.07	2,350.50		4,114,343.57
33,248.85	36,888.85	4,611,968.06	2,051.00		4,614,019.06
.00	37,455.38	3,995,002.16	2,219.00		3,997,221.16
.00	43,305.17	3,527,343.05	1,792.00		3,529,135.05
705.85	40,869.41	2,732,731.20	1,653.00		2,734,384.20
.00	37,568.14	2,366,027.65	1,540.00		2,367,567.65
.00	31,652.59	2,410,390.61	1,976.00		2,412,366.61
.00	30,652.12	2,876,729.87	2,954.00	* 4,159.80	2,883,840.67
.00	40,640.90	2,809,019.86	2,486.00	1,182.02	2,812,687.88
.00	38,077.75	2,803,845.23	2,542.00	1,200.40	2,807,587.63
.00	46,530.50	2,877,055.07	1,826.00	3,181.60	2,882,062.67
.00	45,352.25	2,793,821.50	1,813.00	253.20	2,795,887.70
.00	48,576.57	2,911,415.69	1,753.00	2,532.87	2,915,701.56
.00	34,689.69	3,809,082.17	6,506.00	1,073.00	3,816,661.17
.00	52,345.01	3,696,755.50	3,793.00	6,372.01	3,706,920.51
.00	87,433.32	3,670,366.77	3,820.00	17,226.58	3,691,413.35
.00	96,269.64	4,020,033.76	8,864.00	25,814.84	4,054,712.60
.00	180,698.47	4,571,644.66	7,472.20	27,857.84	4,606,974.70
.00	213,881.97	5,821,191.63	10,116.00	32,489.58	5,863,797.21
.00	324,621.47	6,903,979.46	11,562.00	24,148.42	6,939,689.88
.00	353,774.92	9,343,382.46	10,914.00	40,318.96	9,394,615.42
.00	421,784.57	19,437,901.88	4,999.00	36,088.77	19,478,989.65
.00	594,282.02	13,959,145.08	15,054.00	39,187.41	14,013,386.49
.00	626,681.48	13,366,460.67	12,336.00	36,415.03	13,415,211.70
.00	613,558.73	13,098,807.99	11,745.00	30,630.21	13,141,183.20
.00	529,791.09	12,820,759.83	8,388.00	31,586.93	12,860,734.76
.00	344,435.15	12,485,366.29	7,100.00	37,429.26	12,529,895.55
.00	233,167.00	10,816,341.63	7,602.00	79,263.82	10,903,207.45
.00	173,843.33	10,239,830.94	8,869.00	40,138.00	10,288,837.94
1,940,740.08	7,326,768.88	436,565,925.87	173,821.71	518,550.55	437,258,298.13

\*Income from minerals other than oil and gas not broken down by  
years prior to 1942.



### EXHIBIT III

#### THE OIL RESERVES OF THE OSAGE MINERAL TRUST

General. The Osage Tribe's mineral reservation comprises four general classes of oil reserves. They are:

1. Proven developed and partially developed pools that are operated as primary recovery pools;
2. Proven developed and partially developed pools that are operated as secondary recovery projects, by gas injection in a few instances or by waterflood in the large majority of such projects;
3. Presently undeveloped but proven secondary recovery reserves; and
4. Undiscovered commercial deposits of oil and/or gas.

The annual gross oil production history of the Osage Reservation tabulated in Exhibit II has been placed on a semi-log graph marked Fig. I, and shown by the solid line curve drawn through circles. Waterflood operations for purpose of secondary recovery have been extensive on the reservation only since 1949. The solid line curve drawn through squares on Fig. I shows the annual production of waterflood oil from the presently developed waterflood projects. Waterflood accounted for 70 percent of the annual production in 1962 because of the extent of those operations and also because secondary projects are not greatly affected by proration under Oklahoma regulation.

Waterflood prospects. The primary recovery from pools on the reservation is due to gas drive, mainly solution gas, and to natural water drive. The Layton Sandstone, the Mississippi Limestone and in a few exceptional instances other reservoirs, such as the Skinner Sandstone, have poor to fair natural water drive and for that reason there are some pools that do not have secondary recovery prospects.

The map attached marked Fig. II is a pool map of the reservation showing those pools or parts of pools now operated as secondary projects. Most of those projects are waterflood. The map also shows those pools which are waterflood prospects but are not yet developed for that type of operation. Those pools which are not waterflood prospects because of low secondary reserves or because of natural water drive have been omitted from Fig. II.

Proven Developed Reserves. The purpose in estimating the proven developed oil reserves of the Osage Reservation is to show that life of presently developed reserves will extend substantially beyond April 8, 1983. This can be done by a detailed appraisal of each producing lease or it can be done by a reasonable extrapolation of the annual gross production curve on Fig. I.



The heavy line projecting the annual gross production curve on Fig. I is drawn on the basis of 5 percent annual decline in production. This is a reasonably predicted decline rate considering the character and type of reservoirs involved. It is also the same annual rate of decline for the period 1937 through 1949 before waterflood development caused a substantial increase.

The extrapolation of the annual production curve of Fig. I shows that from January 1, 1963 the future recovery will be 280 million barrels as of January 1, 1983, and 387 million barrels as of January 1, 2016. The presently developed reserve of the reservation remaining to be produced after January 1, 1983 is therefore 107 million barrels to the point of 1 million gross barrels per year. The economic life will be longer than January 1, 2016 because 1 million barrels per year is far above the reasonably expected economic limit.

Life of the Mineral Reserve. The estimates of future oil recovery and life of remaining proven reserves stated in the preceding paragraphs provide a minimum figure for each factor. The presently undeveloped but proven secondary recovery reserves will add substantially both to future recovery and life of the remaining reserve. The economic life of the mineral reserve also will be increased by increased value of petroleum oil in the next century. The cumulated production to January 1, 1963 was 865,264,214 barrels. It is not unreasonable to predict that the future primary and secondary recovery from known pools on the reservation will be an additional 75 percent of that cumulated production which leaves more than 647 million barrels to be recovered from January 1, 1963, whereas the extrapolation of Fig. I to the year 2016 involves only 385 million additional barrels. This verifies the conservative quality of the estimate that the present proven reserves of the reservation will have economic life extending beyond the year 2016.

Osage oil production history reflects the importance of continual improvement of oil production methods. Such improvements, together with other factors resulted in "boom" years in Osage oil and gas operations. The injection of gas and air was being practiced when Osage oil production rose to 16,775,480 barrels in fiscal year 1937. The "boom" of the 1950's which resulted in production of 27,522,989 barrels of oil in fiscal year 1961 was affected by improved methods of acidizing, hydraulic fracturing and waterflooding. It is reasonable to conclude that scientific research will continue to find more efficient oil recovery methods which will bring about the production of much of the oil left in the reservoirs by present methods, which is conservatively estimated to be at least 900 million barrels.

Some of the improved techniques developed in the past 60 years are listed below.

1. Shooting with nitroglycerin.
2. Acidizing.
3. Perforating.
4. Electric logging.
5. Gas and air injection.
6. Waterflooding.
  - (a) Now using additives to injection water to increase efficiency.
  - (b) Scientific determination of proper injection pressures and other variables.
7. Hydraulic fracturing.
8. Miscible-Phase displacement.
9. Thermal stimulation. (A pilot test is now being started in Osage County).

The staff of the Petroleum Experiment Station, Bureau of Mines, Department of the Interior, Bartlesville, Oklahoma, presented at the December 2, 1957 meeting of the interstate Oil Compact Commission, a paper entitled, The Effects of Improved Oil-Recovery Technology in Oklahoma. The following are excerpts from that paper:

"The first commercial oil well was completed in the Indian Territory only 60 years ago. \* \* \* \*. Scarcely 40 years ago petroleum engineering became a recognized profession. Starting with the work of the pioneers at that time, research slowly began to bring better understanding of the performance of petroleum reservoirs and to guide the way to more efficient extraction of oil. Techniques that have been applied have doubled the efficiency of petroleum production from some reservoirs during that 40-year span. \* \* \* \* \*."

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"Despite the significance of waterflooding as a stimulative production method, research and production organizations are making constant efforts to increase the efficiency of existing methods and to devise new and more efficient production methods."



"The reported 'barrel of oil in the ground for every barrel recovered' remains a tremendous economic and scientific challenge. In an effort to meet that challenge, some imaginative and potentially significant new methods of stimulating production have been proposed, developed, and applied in field tests during the past several years. Several of these processes are still in the embryo stage and are being watched with great interest."

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" \* \* \* . Although thermal stimulation cannot yet be considered a significant economic production method, either in Oklahoma or other States, it is the subject of considerable fundamental and applied research and promises to be a potentially important technologic development. (Underscoring supplied.)

" \* \* \* \* \*

"Although combustion methods promise complete removal of hydrocarbons from parts of the reservoir, the energy requirements may amount to as much as 20 percent of the oil originally in place. An 80-percent recovery, however, would be little short of phenomenal, judged by past yardsticks, and the carbon residue that serves as fuel is the least valuable part of the oil. Therefore, this method is highly promising. As in other methods, strict economic limits must be observed. However, an ever-increasing demand for petroleum points to relatively higher prices for petroleum products, and a process that is uneconomical today may prove economical tomorrow."

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"Studies of surface forces and scaling experiments have been instrumental in paving the way for one of the newest and most promising recovery methods--miscible-phase displacement or solvent extraction. \* \* \*

" \* \* \* . There is no doubt that in the future miscible-phase techniques will assume an important role in Oklahoma oil production."

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"The continuing high rank of Oklahoma among the oil-producing States, both in quantity of oil produced and in volume of proved reserves, does not depend alone upon an



aggressive program of geological and geophysical search and extensive exploratory drilling. In 1956, 814 'wildcat' wells were drilled in Oklahoma, resulting in 103 new fields. Nevertheless, it is well to remember that 17 percent of the State's total oil production in that year resulted from the ability of the petroleum industry, assisted by technical research, to reactivate or keep alive many of the old fields that had reached the 'stripper' stage.

"There is little question that Oklahoma will continue to hold its place in new discoveries and total proved reserves. Although much is known of the petroleum geology of Oklahoma, unexplored areas and depths remain. New knowledge and methods will lead the way to still greater reserves and produced oil. \* \* \*.

" \* \* \*. New production techniques being tested may rival the accomplishments of the past. \* \* \*."

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The part of the above paper dealing specifically with Osage County states in part, as follows:

"The largest county in the State and the home of the Osage Indian Nation is another outstanding example of the effects of improved oil-recovery techniques on the general economy. Hydraulic fracturing and waterflooding have proved highly effective in Osage County and, in 1956, resulted in the recovery of more than 19 million barrels of oil that could not have been produced by previously used methods. This is approximately 85 percent of the total oil production of Osage County for that year.

" \* \* \* \* \* .

" \* \* \* \* \* .

" \* \* \* \* \* .

"The sharp increase in the rate of oil production by waterflooding since 1951, and particularly the increased interest shown in the past few years, indicate that waterflooding is not only one of the most important current sources of revenue in Osage County but that it will be important to the economy of the county for many years to come." (Underscoring supplied.)



Ex. III

Taking into account the increased recoverable reserves from known producing reservoirs and the discovery of additional reservoirs by further exploration using improved techniques, it is reasonable to conclude that the gross oil reserve of the Osage Reservation as of January 1, 1963 is at least 900 million barrels with an economic life extending beyond the year 2075, of which at least 500 million barrels will be recovered after April 1983.

Other factors can be considered in particular reference to rate of production, but the reasonable conclusions presented in this Exhibit establish clearly that the proven developed reserves with prospective additions will carry the economic life of the Tribe's mineral reserve far into the future and past April 8, 1983.

One million barrels per year at no more than 1/8 royalty and at current average well-head price of \$2.85, after 5 percent production tax, will yield the Tribe about \$356,000 per year income. The 107 million barrels of currently developed production to be recovered after April 1983, referred to page 2 of this Exhibit, will yield the Tribe a gross oil and gas mineral income of about \$38,200,000. Add to that figure the reasonable expected additional developed reserves, additional discoveries, and lease bonuses and rentals, and the value of the mineral resources after April 1983 will be in excess of \$225 million. This represents a very substantial worth of the Tribe's mineral estate.



1000

100

Producing Rate (Millions of Barrels)

10

8

7

6

5

4

3

2

1

1905

1910

1915

1920

1925

1930

1935

1940

1945

1950

1955

1960

1965

1970

1975

1980

1985

1990

1995

2000

2005

2010

2015

2020

2025

2030

2035

2040

2045

2050

2055

2060

2065

2070

2075

2080

2085

2090

2095

2100

2105

2110

2115

2120

2125

2130

2135

2140

2145

2150

2155

2160

2165

2170

2175

2180

2185

2190

2195

2200

2205

2210

2215

2220

2225

2230

2235

2240

2245

2250

2255

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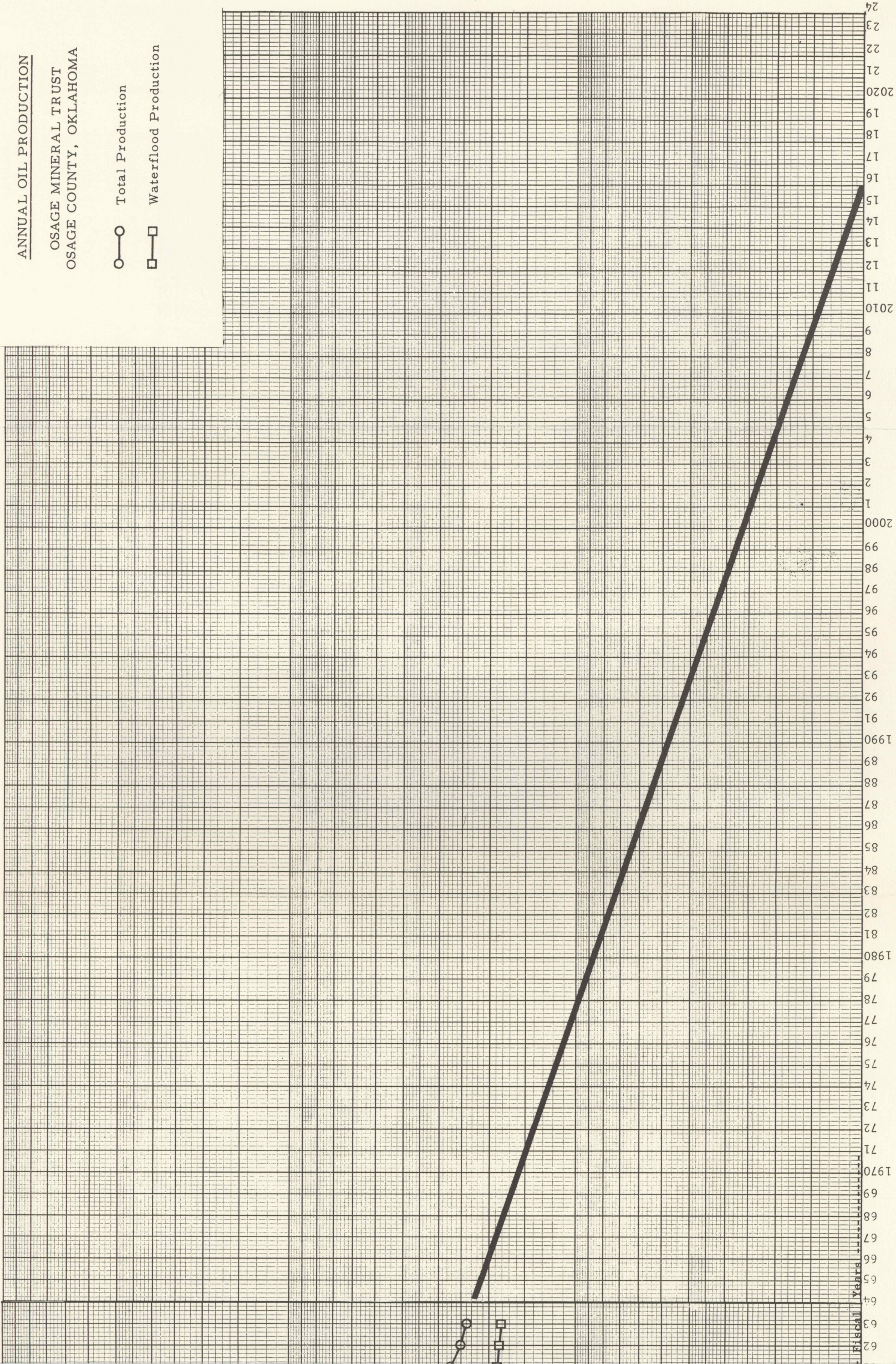
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FIGURE I

ANNUAL OIL PRODUCTION  
OSAGE MINERAL TRUST  
OSAGE COUNTY, OKLAHOMA

○ Total Production  
□ Waterflood Production





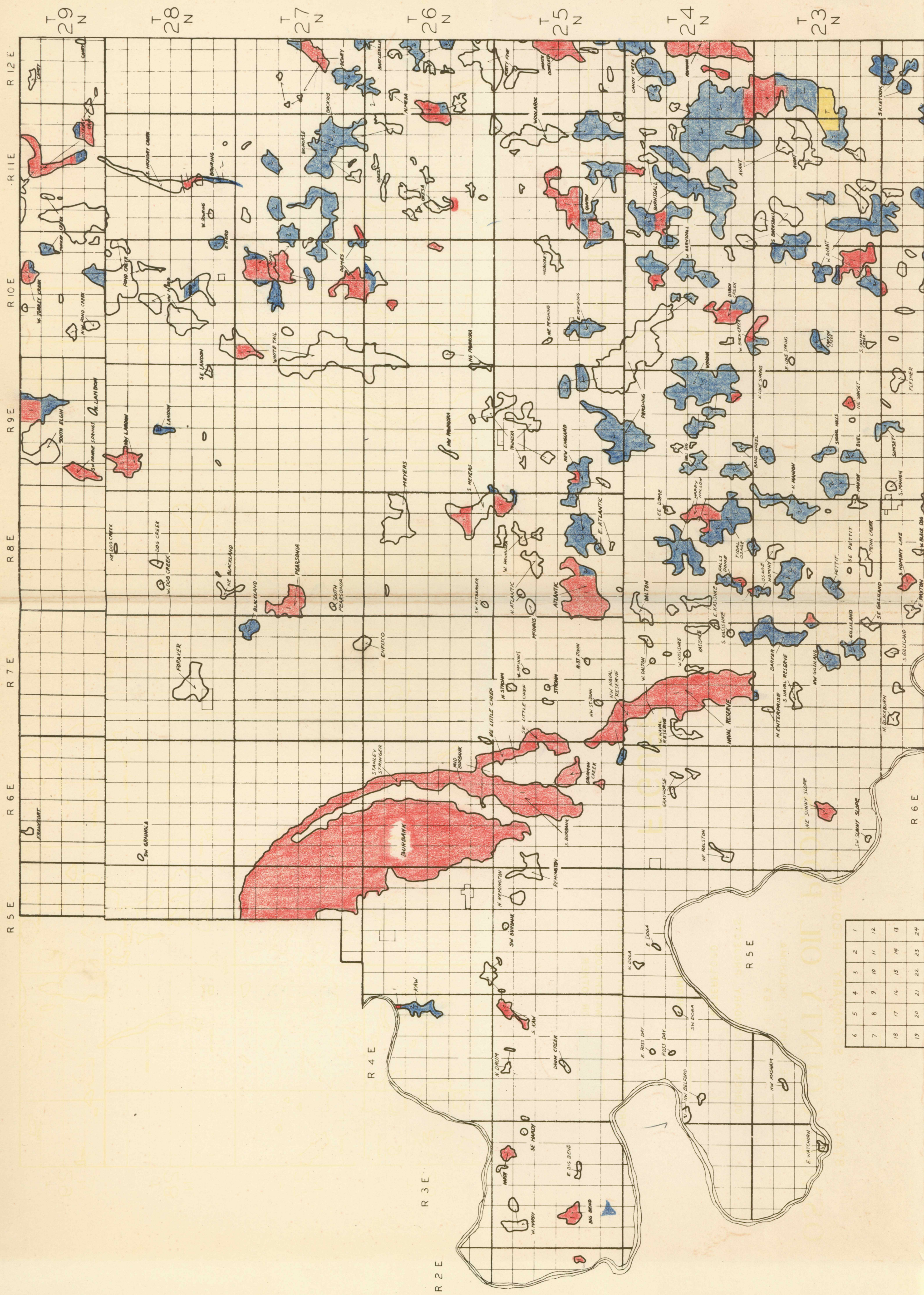








EXHIBIT IV

TRIBAL HISTORY, CONCLUSIONS OF LAW, AND PRACTICAL CONSIDERATIONS SUPPORTING  
THE REQUEST FOR EXTENSION OF THE MINERAL TRUST

Property Acquisition. The Osage Indians purchased their reservation from the Cherokee Tribe of Indians and were given a deed in trust on June 14, 1883, which recites in part as follows:

"WHEREAS, by virtue of a provision in the act of Congress of March third, eighteen hundred and seventy-three, there has been transferred from the proceeds of sale of Osage lands in Kansas, and placed to the credit of said Cherokee Nation, the sum of one million, ninety-nine thousand, one hundred and thirty-seven and forty-one hundredths dollars, (\$1,099,137.41) in payment for said tract of land; and \* \* \* ;"

and further recites that the Cherokee Nation, by its representatives

" \* \* \* does by these presents bargain, sell, remise, release, relinquish and confirm unto the said party of the second part, forever, in trust nevertheless for the use and benefit of the said Osage Indians, all those certain tracts of land \* \* \* ;"

As a result of this property acquisition, the Osage Tribe is in a different position from the large majority of Indian tribes in that it bought and paid for the lands comprising the Osage Reservation while other Indian reservations owe existence to Executive Order. The Osage Tribe of Indians is self-supporting and has never been a recipient of Government grants or financial aid except for small gratuities to the welfare and health programs maintained specifically for the benefit of indigent and needy Indians residing in Osage County and for restricted tribal members participating in the Soil Conservation Program.

Osage Allotment Act. There has never been anything done to set aside, cancel or annul the title of the Osage Indians in and to the land acquired by the Tribe except what was done in the Act of Congress of June 28, 1906 (34 Stat. 539), referred to as the Osage Allotment Act. The Act of 1906 did not give the Osage Tribe anything. It merely provided a means for distributing the tribal properties among the members of the Tribe so that each member would receive a fair and proportionate part of the same.

The part of the Allotment Act which is pertinent to the question of the Mineral Trust Period is Section 3 thereof, as follows:



"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 lands 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: \* \* \* ."

and further provides in paragraph 7 of Section 2:

" \* \* \*, 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."

Thus, the time limit of twenty-five years after April 8, 1906, was not fixed since Congress reserved the right to extend that period.

Trust Period Extensions. The Osage tribal leaders were mainly responsible for retention of the Tribe's mineral property in trust for benefit of all members of the Tribe. It was an application of the basic philosophy of the Tribe. Even though the Allotment Act of 1906 separated the surface lands and divided them among members of the Tribe, Congress respected the desires of the Tribe to continue community ownership of the reserved mineral properties for as long as it was practically necessary.

The only burden the Allotment Act of 1906 has placed on the Tribe is that the mineral reserves have extended over time periods longer than were ever contemplated. As a result, Congress has appropriately extended the Mineral Trust Period on three occasions.

The Mineral Trust Period was extended the first time by the Act of March 3, 1921 (41 Stat. 1249), for an additional 15 years. This extension was granted by Congress after hearings were held before the Hon. H. P. Snyder, Chairman of the Subcommittee on Indian Affairs, U. S. House of Representatives, in the City of Pawhuska, Oklahoma, May 11, 1920. In making that first extension to April 7, 1946, Congress recognized the intent of the Mineral Trust Reservation in the Allotment Act and confirmed that the minerals were the property of the members of the Tribe.

The second extension of the Mineral Trust Period was by Act of March 2, 1929 (45 Stat. 1478), wherein the period was extended to April 8, 1959, and the



qualification was directly added "unless otherwise provided by Act of Congress." The addition of this phrase to the "trust time" provision as it appeared in other sections of the Act only emphasized that Congress recognized its responsibility to maintain the trust for a necessary length of time.

The third extension of the Mineral Trust Period was provided by Act of June 24, 1938 (52 Stat. 1034), terminating the trust on "the 8th day of April 1983, unless otherwise provided by Act of Congress."

The Osage Tribal Council now requests a fourth extension but asks this time for extension without temporary calendar time limit, leaving the limit to be measured by depletion of the mineral reserve itself. If the Mineral Trust Period is made perpetual, a step will be taken that will enable the Tribe to take other steps to the advantage of all parties.

Question of Vested Title. The prudence of extending the Mineral Trust Period involves more than the question of ownership of the minerals if the present mineral trust expires under present provisions of the 1906 Allotment Act. There are other practical circumstances to be dealt with but in an effort to separate each of the possible questions that might be raised, the matter of vested title will be considered separately. That question rises only if the Mineral Trust terminates. If the trust continues in perpetuity there is no question. Many persons having possession of tracts of surface land are agitated by the possibility of acquiring mineral rights by virtue of possession of surface rights even though the mineral rights were separated from the surface rights by the Allotment Act and therefore could not be legally conveyed by any one subsequent to the Allotment Act.

The Circuit Court of Appeals of the Tenth District (59 Fed 2d 653) determined that the surface owners had no claim to the mineral rights if statutes extending the trust period were enacted by Congress. The suit was brought by surface owners who challenged the Act of March 3, 1921, supra, which extended the Mineral Trust from April 8, 1931, to April 7, 1946.

The only other related question that could be raised is the vestment of title in the event the Mineral Trust Period were permitted to expire under the provisions of the Allotment Act, as amended. This question cannot yet be legally determined. But, it is a matter of certainty that there will be a multitude of lawsuits if the Trust Period is permitted to terminate. Such litigation will have a most serious and adverse affect on the value of the mineral interests and on the income which may be expected to accrue therefrom. All moneys accruing from the mineral resources would, of necessity, be held in suspense during such litigation and be unavailable to members of the Osage Tribe. It was the intent of the Tribe, reflected by the Allotment Act, that the mineral estate should be and should remain the property of the Osage Tribe of Indians. It was not intended to be a gift at any time to any person who might subsequently acquire rights to the allocated surface.



There is no basis for challenging the statement that the Allotment Act separated the surface from the mineral estate. Acquisition of any part of the divided surface estate did not give a right at any time to acquisition of minerals in-place except by the original allottee and his heirs.

It is a common and ordinary practice which has been and is almost universal in the United States to sever minerals from the surface. The Osage Mineral Reservation as a community estate separated from the surface of the land has created no particular problem to the Osage Tribe as owners of the mineral and it will not present a problem as long as the present trust or its equivalent system of management is maintained. Nor, has the economic development of Osage County, Oklahoma, been hampered in any respect by the existence of the mineral reservation. The only problems that have risen are the efforts to terminate the trust with the hope and expectation that persons other than members of the Tribe would benefit thereby.

The problems that arise in respect to ownership of minerals are no longer problems of law respecting ownership. The problems are entirely practical because the mineral rights of the Tribe would be destroyed if the community ownership and management of the mineral estate were removed.

Question of Term of Lease. The question of whether or not a lease in full force and effect will continue and extend beyond the expiration date of the Mineral Trust Period created by the Allotment Act is one that is always raised. Opinions differ in respect to that question.

The Department of the Interior Solicitor's Opinion N-36381, dated November 9, 1956, reviewed the question and concluded that an oil, gas, or other mineral lease existent prior to termination of the Mineral Trust Period would continue so long thereafter as minerals were produced in paying quantities.

Leases for oil and gas were granted in 1912 and 1913 for a 10-year term and as long thereafter as oil and gas were found in paying quantities, with the provision: "That the term of the lease shall not extend beyond April 8, 1931," which was the original date set for the termination of the mineral period by the Act of 1906. (Underscoring supplied.)

After 1921 leases for oil and gas carried only reference to Congressional acts governing the lease, made no reference to term of trust period because the Act of 1921 passed by Congress in the first extension of the Mineral Trust Period carried the provision:



"That all valid existing oil and gas leases on the 7th day of April, 1931, are hereby renewed upon the same terms and extended, subject to all other conditions and provisions thereof, until the 8th day of April, 1946, and as long thereafter as oil or gas is found in paying quantities, \* \* \*." (Underscoring supplied.)

Whether the Osage Tribal Council can grant leases that will extend beyond the term of the Trust Period is still an open question. While it would be to the best interest of the Tribe and in the interest of conservation of oil and gas in-place for the leases to run for their economic life, it is reasonable to expect a considerable amount of litigation to occur if production on any lease extends beyond the Trust Period. Any lessee of a producing property would be inclined to recover whatever could be recovered prior to the trust expiration in view of the existing uncertainty of his position at an expiration date. This would cause wasteful practices and also reduce income to the Tribe. It is doubtful that the contract of lease granted by the Council could pass over to other lessors without necessary amendment. This also would lead to other questions and additional litigation. The Tribal Council is of the opinion that the question here involved must remain an uncertainty and regarded as a source of considerable destructive effect if the trust status of the mineral reserves is not extended.

The Tribal Council holds the opinion above expressed mainly because the question of lease term is moot. The dominant consideration is protection of the vested right of ownership of each allotted member of the Osage Tribe and his heirs. If ownership is protected by trust in perpetuity the lease term question is not significant. Whatever opinion may be expressed now about the extension of leases beyond the trust expiration date does not contribute to judgment on the main problem except to indicate a possible source of damaging disputes to any successor lessor interest in minerals if the present trust ownership terminates.

Practical Considerations. Historical fact and conclusions of law above discussed are, in the opinion of the Council, not nearly as important as the practical considerations supporting its request to extend the Mineral Trust in perpetuity.

A most important factor for consideration is that the Osage Tribe has never been dependent upon the Federal Government. All costs of administration of the Osage mineral estate and other affairs of the Tribe always have been paid by the Tribe. Income from its community mineral reservation has made this possible and this mineral reserve is sufficient for the Tribe to derive a livelihood from its minerals for many years in the future. It is for this reason that the Osage Tribe is willing to consider a good and



efficient long-range planning program for trust management whenever the necessary step is accomplished to protect and preserve the mineral estate that provides its independence. This can be done. However, the mechanics may require appropriate acts of Congress in the formulation of a trust management and other matters but all the consequential problems can be solved with a minimum of effort if it is accomplished under an established permanent Mineral Trust Period. The Osage Tribal Council is of the unanimous opinion that a trust in perpetuity is necessary and essential to the Tribe if a long-range plan for trust management is to be effected.

The second important practical consideration rests on the fact that the value of the mineral estate would be materially decreased if the Mineral Trust expired and the minerals passed into ownership of several thousand's of individuals representing the 2,229 original allottees and their heirs. No one would undertake the burden of seeking a lease on a quarter section of land divided among thousands of owners widely scattered over the United States and some foreign countries. Further, the lessees of producing leases would face a burden of distributing the income to lessors that would at least cause premature abandonment of properties and consequent waste. Unit operation necessary to waterflooding would be an impossibility.

It is obvious to the Council that even though the mineral property rights were preserved at the trust expiration that the consequent extreme multiplicity of ownership of mineral interests would end exploratory efforts, would prevent development of secondary recovery operations, and would substantially reduce the value of the developed mineral properties. The Council puts as much weight on this practical circumstance as it does on any other to justify its request for a Mineral Trust in perpetuity. The mineral estate cannot now be divided among the entitled owners except by maintaining the mineral estate in a trust under proper management, whether that trust be under Government supervision as now provided or under tribal supervision -- if that is the ultimate conclusion.

Conclusion. Based upon the considerations stated herein, it is the unanimous conclusion of the Osage Tribal Council that the rights of the Osage Tribe of Indians can be protected as Congress intended those rights to be protected only if the Mineral Trust Period is extended in perpetuity. Waste of a valuable National resource and loss to the Tribe will occur if the Mineral Trust is permitted to expire. Congress may continue to protect the Tribe by extension of the Trust Period from time to time in the future as it has done in the past -- that would provide perpetuity. On the other hand, perpetuity could be established by Congress as the Osage Tribal Council is requesting. If that is done an important advantage will be gained. It will place the Council and the Osage Tribe in a position to further improve the management of Osage tribal affairs and to recover all minerals legally belonging to the Osage Tribe. It is the opinion of the Council that there is no other practical alternative.