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OSAGE MINERALS COUNCIL PREVAILS IN SUPREME COURT IN CASE WHICH DETERMINES THAT ENEL WIND FARM MUST OBTAIN A MINERALS LEASE.

Pawhuska, Oklahoma – January 7, 2019.

The Osage Minerals Council (“OMC”) secured a significant victory in the United States Supreme Court today, when the Supreme Court held that it would not review the Tenth Circuit’s prior decision that Osage Wind, LLC and Enel Green Power North America, Inc. (“Defendants”) violated federal Indian mining regulations. Defendants had built the windfarm on top of the OMC’s mineral estate, but had failed to obtain a lease from the OMC. The Tenth Circuit determined that Defendants actions violated federal regulations which are designed to protect the OMC’s property rights. The Defendants disregarded the OMC’s authority over the Osage Reservation when they proceeded with their windfarm project without first obtaining a federally approved lease from the OMC.

The United States had initially brought the case as the OMC’s trustee, but after it lost before the District Court, it informed OMC on the day that appeals were due that it was not going to appeal from its loss. The OMC, represented by Fredericks Peebles & Morgan LLP, had to quickly jump into appeal of the District Court’s decision, and in the appeal the OMC had to first overcome multiple complex procedural issues regarding its right to appeal in a case in which the United States had not appealed. The Tenth Circuit Court of Appeals agreed with the OMC on those procedural issues. In addition, the Tenth Circuit held that the defendants’ building of a wind farm over Osage minerals constituted the mining of minerals and therefore required a minerals lease from the OMC pursuant to the 1906 Osage allotment act.

Defendants then asked the United States Supreme Court to hear the case. The American Farm Bureau, which traditionally support real property rights, stepped in to assert that defendants should be able to take Indian property rights without having to compensate the Indian owner. The OMC argued that the Supreme Court should leave the Tenth Circuit decision in place.

The Supreme Court asked the United States Solicitor General to review the matter and provide his own opinion on whether the Supreme Court should hear the case. After listening to both sides in the case, the Solicitor General, in a December 2018 filing, agreed with the OMC’s position that the Supreme Court should deny certiorari. In its decision today, the Supreme Court agreed with the OMC and the Solicitor General.

The Supreme Court decision leaves in place the Tenth Circuit’s decision that Defendants must have a lease from the OMC, just as Defendants had to have a lease to build a windfarm on other lands. OMC Chairman Everett Waller issued a brief statement regarding today’s decision: “Enel’s decision to build a windfarm on our land without our approval caused substantial damage

to the OMC. We are pleased that the United States has left in place the Tenth Circuit decision that the OMC, like other property owners, has the right to obtain compensation for use of its land. It is a substantial victory for tribes, and more generally for mineral property rights owners.”

The OMC is very pleased with this decision and its implications for future projects within the Osage reservation.

About the Osage Minerals Council - The Osage Minerals Council consists of eight Osage Minerals Council members that serve as the elected governing body for the mineral affairs of the Osage Minerals Estate. The Osage Nation Reservation consists of approximately 1,475,000 acres and is otherwise known as Osage County, Oklahoma. The Osage tribe owns all mineral rights located within Osage County and has an income from all oil and gas found in Osage County. The Osage Nation Constitution vests the Osage Minerals Council with the powers to administer and develop the Osage Minerals Estate in accordance with the Act of June 28, 1906, 34 Stat. 539, as amended, such powers which prior to ratification of the Osage Nation Constitution were vested in the “Osage Tribal Council.”

About Fredericks Peebles & Morgan LLP - Fredericks Peebles & Morgan LLP is dedicated to the representation of American Indian tribes and Native American organizations throughout the United States. Legal services include a wide spectrum of services related to Indian concerns in the areas of business transactions, litigation and governmental affairs.