

OCT 27 2021

1071 Grandview Lane
Pawhuska, OK 74056



BY *[Signature]*
T: 918-287-5514
F: 918-287-5468

October 27, 2021

**OFFICIAL OPINION
ONAG-2021-03¹**

QUESTIONS SUBMITTED BY: The Honorable Geoffrey M. Standing Bear, Principal Chief of the Osage Nation.

This Office has received your request for an Official Attorney General Opinion regarding “Osage Nation Energy (Environmental) [sic] Services, LLC and Osage Nation Ranch, LLC.” To wit, you ask:

I. QUESTIONS and SHORT ANSWERS

- 1. What is the present status of ownership, control, and authorities of these three entities?**

Osage Nation Energy Services, LLC and Osage Nation Ranch, LLC are both subsidiary limited liability companies of the parent company, Osage, LLC. Osage Nation Environmental Solutions, LLC is a purported trade name (commonly known as a “dba”) for Osage Nation Energy Services, LLC.

- 2. What is the present status of the existence or non-existence of the Boards of Osage Nation Energy (Environmental) [sic] Services, LLC and Osage Nation Ranch, LLC?**

Osage Nation Energy Services, LLC and Osage Nation Ranch, LLC boards are non-existent as both boards were dissolved as a matter of law upon Osage, LLC filing new articles of organization with the Secretary of the Nation naming a manager and not a board of directors, to run the affairs of both subsidiary limited liability companies.

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

II. DISCUSSION

1. Status of Ownership, Control, and Authorities

Question 1 asks what is the status of ownership, control, and authorities of Osage Nation Energy Services, LLC, Osage Nation Environmental Solutions, LLC, and Osage Nation Ranch, LLC. To answer your question regarding the present status of the three entities, we must examine the history behind their formation, and the formation of Osage, LLC, as it directly relates to your question.

A. Osage, LLC

The Osage Nation Limited Liability Companies Act (“LLC Act”) at 4 ONC § 2-911 (2021) states, “There are hereby authorized to be created by duly adopted Joint Action Resolution of the Legislature, approved by the Principal Chief, limited liability companies wholly owned by the Nation, which shall be instrumentalities of the Osage Nation.” To that end, on April 14, 2008, Congress and the Principal Chief enacted ONCR 08-10, approving the Articles of Organization of Osage, LLC and forming Osage, LLC as a wholly owned limited liability company under the LLC Act with the Nation as its only Member. Osage, LLC filed the Articles of Organization with the Secretary of the Nation on April 14, 2008, and began its existence. Despite some difficulties, including an attempt by Congress to wind-down its operations transfer all its assets,² Osage, LLC remains, to this date, a wholly owned limited liability company in good standing with the Nation as it’s only Member.

B. Osage Nation Energy Services, LLC and Osage Nation Environmental Solutions, LLC

On September 21, 2012, the Congress and Principal Chief passed ONCR 12-20, a joint resolution authorizing the formation of Osage Nation Energy Services, LLC as a limited liability

² See generally, ONCR 15-23 and ONCR 16-09.

company wholly owned by the Nation. The same resolution authorized and adopted Osage Nation Energy Services, LLC's Articles of Organization and Articles of Operation, which Osage Nation Energy Services, LLC subsequently filed with the Secretary of the Nation, formally bringing Osage Nation Energy Services, LLC into existence as a wholly owned limited liability company with the Nation as its only member. On January 17, 2018, the Secretary of the Nation registered the trade name "Osage Nation Environmental Solutions, LLC" to "Osage Nation Energy Services, LLC". This purportedly means "Osage Nation Energy Services, LLC" is doing business as "Osage Nation Environmental Solutions, LLC". Accordingly, Osage Nation Energy Services, LLC and Osage Nation Environmental Solutions, LLC are but one entity, and will be referred to as "ONES, LLC" hereafter.

Thereafter, on April 30, 2020, Congress and the Principal Chief passed joint resolution 20-06, designating ONES, LLC as a subsidiary LLC of Osage, LLC, pursuant to section 4 ONC § 2-912 of the LLC Act. 4 ONC § 2-912(B) (2021) states:

The Nation, as the sole member of a wholly owned limited liability company, may designate, by resolution, an LLC as a subsidiary LLC to another existing limited liability company wholly owned by the Nation, which shall be instrumentalities of the Osage Nation. *The new parent LLC shall pass by resolution new articles of organization for the newly designated subsidiary LLC and file them with the Secretary of the Nation in accordance with Section 2-921 of this Title [emphasis added].*

4 ONC § 2-921(B) (2021) states:

The existence of an Osage Nation subsidiary LLC owned by a parent LLC that is wholly owned by the Nation begins when the articles of organization have been approved by a resolution of the Directors of the parent LLC, and the articles have been filed with the Secretary of the Osage Nation.

Although Congress and the Principal Chief passed a joint resolution naming ONES, LLC as a subsidiary of Osage, LLC pursuant to § 912(B) on April 30, 2020, ONES, LLC was not immediately restructured as a subsidiary of Osage, LLC. The LLC Act requires the parent

company, Osage, LLC, to approve the subsidiary's articles of organization by board resolution and file the articles with the Secretary of the Nation.

Osage, LLC did not complete this legally required step until October 7, 2021. Osage, LLC passed Osage, LLC resolution OLLC 2021-11 on October 1, 2021, formally accepting the designation of ONES as a wholly owned subsidiary of Osage, LLC and approving ONES, LLC's amended articles of organization and operation. The Secretary of the Nation filed the amended articles of organization and operation on October 7, 2021, and ONES, LLC was legally restructured as the subsidiary of Osage, LLC on that date.

Therefore, Osage, LLC, as the parent company and sole Member, retains ownership and control of ONES, LLC and ONES, LLC's authority lies within the amended articles filed and recorded with the Secretary of the Nation on October 7, 2021.

C. Osage Nation Ranch, LLC

Similar to ONES, but through a longer and more tortured path, Osage Nation Ranch, LLC ("ONR, LLC") was restructured as a subsidiary limited liability company with Osage, LLC as its parent company and sole Member. On April 30, 2015, Congress and the Principal Chief passed resolution number ONCR 15-08, authorizing the formation of Tallgrass Economic Development, LLC ("TED LLC") under the LLC Act. Correspondingly, the Congress and Principal Chief passed ONCR 15-09, adopting TED LLC's Articles of Operation, which TED LLC filed with the Secretary of the Nation and officially formed TED LLC as a wholly owned LLC with the Nation as its sole Member.

The LLC Act at 4 ONC § 2-912(A) allows the Board of Directors of a limited liability company wholly owned by the Nation to create subsidiary LLCs, by board resolution, to be wholly owned by the parent LLC, which are also instrumentalities of the Nation. Pursuant to this LLC Act section, TED LLC formed Bluestem Ranch, LLC ("Bluestem") on April 14, 2016, as a wholly

owned subsidiary of TED LLC, with TED LLC being Bluestem's only Member. Then, on September 24, 2018, the Congress and Principal Chief enacted joint resolution ONCR 18-23, thereby transferring the Member of Bluestem from TED LLC to the Nation, making Bluestem a wholly owned LLC of the Nation not a subsidiary of TED LLC. Finally, on April 15, 2019, the Congress and Principal Chief enacted joint resolution ONCR 19-05, voting the Member's interest to change the LLC's name from "Bluestem Ranch, LLC" to "Osage Nation Ranch, LLC". Bluestem amended its Articles of Organization with the Secretary of the Nation on July 10, 2019, and officially became "Osage Nation Ranch, LLC", a wholly owned LLC of the Nation with the Nation as its only Member.

On September 23, 2021, Congress and the Principal Chief enacted joint resolution ONCR 21-15, designating the ONR, LLC as a subsidiary LLC of Osage, LLC, pursuant to section 4 ONC § 2-912 of the LLC Act. Osage, LLC passed OLLC 2021-12 on October 1, 2021, formally accepting the designation of the ONR, LLC as a wholly owned subsidiary of Osage, LLC and approving the ONR, LLC's amended articles of organization and operation. The Secretary of the Nation recorded the amended articles of organization and operation on October 7, 2021, and, on that date, the ONR, LLC was legally restructured as the subsidiary of Osage, LLC.

Therefore, Osage, LLC, as the parent company and the sole Member, retains ownership and control of the ONR, LLC and the ONR, LLC is authorized to act in accordance with and pursuant to its amended articles recorded by the Secretary of the Nation on October 7, 2021.

2. Status of the Boards of ONES, LLC and the ONR, LLC

Next, you inquire as to the status of the boards of ONES, LLC and the ONR, LLC, specifically, whether they are in existence or not. At present, both the ONES, LLC board and the ONR, LLC board are non-existent as their newly filed articles of organization provide for a

manager and not a board of directors.³

As discussed above, Congress and the Principal Chief passed resolutions restructuring ONES, LLC and the ONR, LLC as subsidiaries of Osage, LLC pursuant to the LLC Act at 4 ONC § 2-912(B). This section requires the parent company to approve by resolution new articles of organization for the restructured subsidiary LLC and file the approved articles with the Secretary of the Nation in accordance with 4 ONC § 2-921. On October 1, 2021, Osage, LLC accepted ONES, LLC and the ONR, LLC as subsidiary LLCs; and, by resolution, passed amended articles of organization naming managers to operate both LLCs and ending the board management structure. On October 7, 2021, the Secretary of the Nation recorded the amended articles of organization for both ONES, LLC and the ONR, LLC. Pursuant to 4 ONC § 2-921, ONES, LLC and the ONR, LLC were legally restructured as subsidiaries of Osage, LLC upon the Secretary's recording of the new articles of organization; and, thus, ONES, LLC and the ONR, LLC boards were dissolved pursuant to the governing documents.⁴

Of note, on October 1, 2021, after Congress and the Principal Chief passed resolutions restructuring ONES, LLC and the ONR, LLC as subsidiaries to Osage, LLC, Congress confirmed appointments to the boards for new terms. However, the terms of the confirmed board members expired upon Osage, LLC, as the parent company, filing the new articles with the Secretary of the Nation. As noted above, the articles of organization provided for an alternative form of governing body for the LLCs (managers in lieu of boards).

Further, as noted herein, Congress and the Principal Chief passed the joint resolution restructuring ONES, LLC as a subsidiary under Osage, LLC on April 30, 2020. However, Osage, LLC did not approve the new ONES, LLC articles of organization until October 1, 2021. The

³ See *Amended Articles of Organization of Osage Nation Energy Services, LLC, Section 3.1*, filed October 7, 2021; and *Second Amended Articles of Organization of Osage Nation Ranch, LLC, Section 3.1*, filed October 7, 2021.

⁴ As opposed to a removal for cause under Art. XII, Sec. 1 of the Constitution.

Secretary recorded the new articles on October 7, 2021, some seventeen months later. By law, ONES, LLC had not been restructured as a subsidiary of Osage, LLC until the new articles were filed, and ONES, LLC continued to operate as a wholly owned LLC with its own board of directors. Therefore, the board members of the LLCs continued to serve, even after a joint resolution is passed restructured the LLC as a subsidiary of an existing LLC, until the subsidiary was legally restructured in accordance with the provisions and conditions listed in 4 ONC §§ 2-912 and 2-921.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General:

Upon the filing of new articles of organization with the Secretary of the Nation on October 7, 2021, both Osage Nation Energy Services, LLC and Osage Nation Ranch, LLC were legally restructured as subsidiary limited liability companies of the parent company, Osage, LLC. Osage, LLC, as the parent company and sole member of both Osage Nation Energy Services, LLC and the Osage Nation Ranch, LLC, retains control and ownership of both Osage Nation Energy Services, LLC and the Osage Nation Ranch, LLC. Also, upon filing of new articles of organization passed by Osage, LLC, the boards of both Osage Nation Energy Services, LLC and the Osage Nation Ranch, LLC were dissolved by operation of governing documents and replaced with a manager organization structure.

Respectfully submitted,


Clint Patterson, Attorney General