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## VIA U.S. & ELECTRONIC MAIL

Attn: Mike Cantrell  
Dewey Bartlett  
Oklahoma Energy Producers Alliance  
P.O. Box 2389  
Ada, OK 74821  
[oepea@okenergyproducers.org](mailto:oepea@okenergyproducers.org)

Re: *Seminole Nation Proposed Gross Production Tax*

Dear Mike:

You asked me to render an opinion regarding the proposed December 7, 2020 Mineral Severance Tax of the Seminole Nation and based on your request, I have reviewed certain materials and would render an opinion as follows.

I earlier rendered an opinion on this proposed tax by the Seminole Nation on September 24, 2018.

Please note, this opinion is rendered for the members of the Oklahoma Energy Producers Alliance and is my opinion to not pay the proposed Severance Tax. Further, as you are fully aware, there is much uncertainty regarding the treatment of Sovereign Nation Tribal laws regarding Commerce including but not limited to the oil and gas area. New uncertainty has arisen based on the McGirt Supreme Court case. However, this case has little or no bearing on the proposed Seminole Nation severance tax as the McGirt case ruling was strictly limited to major crime only.

First, in the act itself, it limits the application of the Mineral Severance Tax to land held in trust for the Seminole Nation of Oklahoma as well as to its allotted or restricted oil and gas leases. In addition, this Mineral Severance Tax limitation is derived from the Seminole Constitution, which limits its jurisdictional authority under Article XV therein.

Second, the Seminole Nation Mineral Tax was implemented in 2014 and through the implementation of this Tax and other rules, it appears that the Seminole Nation is not only implementing a new Mineral Severance Tax or Fee, but is also trying to distinguish the Seminole Tribe from the authority of the Bureau of Indian Affairs which is already managing its affairs and the affairs of its citizens who remain in restricted status.

It is my opinion that all Seminole restricted oil and gas leases which were approved by the Bureau of Indian Affairs that did not include a provision for the paying of tribal severance taxes would not be subject to this tax or fee. As a point of emphasis, the Bureau of Indian Affairs acted as a trustee for the Seminole Nation and its members when it approved oil and gas leases containing the terms and conditions of the lessees' rights to produce oil and gas on the subject property. In addition, and most importantly, the Bureau of Indian Affairs as trustee for Seminole Nation considered and determined the rate of royalty when leasing Seminoles, and was also in charge of overseeing the operations of such oil and gas leases. In reality, the Seminole Nation is trying to substantially increase the royalty rate on these leases by disguising it as an added fee or tax. In addition, my earlier letter of November 2018, was also sent to Mary Mashunkashey at the Seminole nation and no action was taken by the tribe to collect this tax.

Third, the best defense and, in my opinion, maybe a complete defense to any effort by the Seminole Nation to collect a gross production tax or fee or to assume control of the operation of unrestricted oil and gas leases in Seminole County is that Oklahoma's Statutes of Limitations apply. Pursuant to the Act of April 12, 1926, 44 Stat. 239, this federal statute made the Oklahoma Statutes of Limitations were made applicable to all restricted Indians of the Civilized Tribes. Since the Seminole Nation is one the Five Civilized Tribes, all lands that have been previously conveyed and that are no longer held in trust for the members of the Seminole Nation are free of any type of restriction by the Seminole Nation includes the ability to tax or take control of the operation of unrestricted oil and gas leases. Therefore, based on the aforesaid, the Statute of Limitations of the state of Oklahoma applies to all restricted Indians of the Five Civilized Tribes. Therefore, in my opinion, the Seminole Nation has no ability to tax or, for that matter, to assume any operational control of any unrestricted Oil and Gas Leases.

Fourth, since almost all of the Seminole Leases subject to the tax would be marginally producing oil and gas leases being only productive of a few barrels of oil per day, the implementation of this proposed tax or regulatory fee would result in confiscation of the oil and gas lease itself as these leases would not be economically productive if forced to pay Oklahoma gross production tax as well as severance tax to the Seminole Nation. In addition, the Seminole Mineral Severance Tax of 8% is based on the gross market value of the products sold (NYMEX) which would be based on a far higher price than the posted price for oil actually received by oil producers in the Seminole area.

One could further argue that the implementation of this tax, would in effect, be a taking based on the oil and gas leases becoming uneconomic. The ultimate effect would not only fall on the Seminole Nation itself and its members who are receiving royalty, but upon the State of Oklahoma resulting in the loss of jobs and the loss of gross production tax that is currently being paid to the state.

With respect to the Mineral Severance Tax imposed by the Seminole Nation, I would recommend that this tax or fee not be paid. If the Seminole Nation takes action to attempt to collect

*Mr. Mike Cantrell*  
*December 22, 2020*

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this tax then a declaratory action should be filed in the Federal District Court in the Eastern District of Oklahoma, who would have jurisdiction of this dispute as well as a request to the Court for injunctive relief preventing the collection of this tax pending the determination of the legality of the Seminole Mineral Severance Tax or Fee.

In addition, it may be necessary to join the Bureau of Indian Affairs in the legal action to determine the division of responsibility concerning the future operations of these oil and gas leases and whose rules govern these operations.

Finally, I am again sending a copy of my opinion letter to Mary Mashunkashey Executive Director of the Seminole Nation Business and Corporate Regulatory Commission to notify her of the contents of this letter because I want to be open about this opinion and the basis for our refusal to pay these improperly assessed severance taxes or fees.

This opinion will not apply to federally restricted oil and gas leases which contain a provision the for the payment of this Seminole Nation severance tax.

Should you have additional questions or comments, please contact me and I would be happy to discuss the same.

Sincerely,



Lee I. Levinson

Encls.

cc: Mary Mashunkashey  
Attorney General Mike Hunter  
Governor Kevin Stitt  
Oklahoma Corporation Commission