

**Osage Negotiated Rulemaking Committee**  
**Meeting 8 – April 2, 2013**  
**Osage Cultural Center, Pawhuska, Oklahoma**  
**Meeting Summary**

**Consensus Agreements**

The Osage Negotiated Rulemaking Committee reached consensus on the following items during the meeting:

1. The Committee agreed to approve the meeting summary from the March Osage Reg-Neg meeting.
2. The Committee reached final consensus pursuant to its operating procedures on approving the draft proposed regulations and recommending their adoption to the Secretary of the Interior

**Welcome and Opening of the Meeting**

The meeting opened with a prayer. Patrick Field, facilitator, reviewed the agenda for the meeting and invited members of the public interested in making a public comment to sign up to do so. A full list of Committee members, staff, and members of the public who were in attendance can be found in Appendix A.

Committee members reviewed a draft version of the meeting summary from the Committee's March meeting and approved the Meeting Summary. The final, approved version of this document can be found on the BIA's website for this Negotiated Rulemaking at <http://www.bia.gov/osageregneg/>.

The facilitator explained that, during this meeting, the Committee would review proposed changes to the regulations made since the previous meeting, would take public comment, and would enter discussions regarding endorsing the draft regulations and sending them to the Secretary of the Interior for further review, public comment, and promulgation. He also reviewed the various materials distributed to Committee members, which are enumerated in Attachment C to the meeting summary.

The facilitator, Mr. Field, also reviewed the procedure and ground rules for making public comments. Mr. Field noted that individuals who preregistered to make comments would comment first, followed by those who registered to make a comment on the day of the

meeting, in the order that registrations were recorded. Each commenter would have an equal amount of time to comment, distributed according to the number of people who want to comment during the public comment session. Comments should be directed at the Committee as a whole, not at specific members of the Committee. Finally, Mr. Field requested that commenters keep their comments germane to the specific purview and work of the Committee and, specifically, to the section of the regulations that the Committee was reviewing. Mr. Field reiterated these guidelines for public comment throughout the meeting, before each public comment period.

### **Opening Statements**

Mr. Mike Black, Director of the Bureau of Indian Affairs (BIA), made an opening statement at the meeting:

Welcome to everyone this morning. I thank everyone for being here; many of you have been here since we began this process back in August. I want to comment on the public comments that have been made throughout this process. There have been some significant changes made to the regulations as a result of your comments. I also want to comment on the guiding purpose of this process and note where we are now. The public input that we have received has been critical to where we are now. What we are creating is a proposed regulation that we will send to the Department of the Interior, which will then hold another public comment period. In addition to the Reg-Neg process that you see here, there is a lot going on outside of this process. There is a lot happening operationally. A lot has been happening with Applications for Permits to Drill (APDs) and the Osage Agency has reduced the processing time for these from 75-100 days down to 45 days. The Agency has also sent a lot of inspectors out to BLM Certification Training and we are working to ensure that our employees have access to the systems and tools that they need to effectively and efficiently do their jobs. The BIA is working with the Environmental Protection Agency (EPA) on hydrogen sulfide and all of our field employees are now trained in H<sub>2</sub>S and are able to deal with this hazard effectively. I will be meeting with an EPA representative tomorrow to discuss how the BIA can work more closely with them. With regards to BIA's internal processes, the Bureau was previously lacking in terms of how we were processing mail, processing complaints, etc. We have tightened that up. In addition, the Osage Agency is also implementing 24-hour call center that will be able to respond to any complaints at any time of day or night regarding concerns that people have, including environmental issues, hydrogen sulfide, etc. In addition, I want to make sure that the Osage Agency continues to monitor and follow up on complaints. BIA is developing a Resource Plan to document what our needs are at the Osage Agency and we will be giving that to the Department of the Interior. The Resource Plan will include staffing needs. The BIA is focusing on tightening up our operations with regards to resources, follow-up, and in various other areas. For example, the Agency is making sure that orders and other processes are documented

instead of issuing verbal orders, as used to be the case. If people call the Agency, we will be able to make sure that we can document how the issue has been addressed. A lot of issues are being addressed operationally outside of the Reg-Neg process, and some of that progress is an outgrowth of the public comments received here during Reg-Neg meetings. Finally, I also want to reiterate that this Reg-Neg is not the end of the process; rather, the Committee will be submitting its proposed rules to the Department of the Interior and then there will be public comment period to solicit further public input.

Mr. Eddie Streater, Designated Federal Official, noted a procedural point in his comments: I want to address the resolution passed by the Osage Minerals Council during the past few days to extend the Reg-Neg process. This Reg-Neg Committee was established pursuant to a legal settlement between the Osage Nation and the US Government. The Osage representatives to this Reg-Neg Committee are representing themselves as individuals and not as members of, or representatives from, the Osage Minerals Council. As such, the resolution passed by the Osage Minerals Council is not an official articulation of the position of the Osage representatives to the Reg-Neg Committee but rather has been accepted by the Committee as a public comment. The timeframe that the Committee has been operating on is to seek a consensus opinion at the end of today's meeting [the April 2 meeting] and that is the schedule on which the Committee is moving forward today. During the last meeting, the Committee had reached tentative consensus on all but a few items and it will be seeking full consensus at the end of today's meeting. The Committee may not reach consensus, but it will be taking a vote to seek consensus.

### **Committee Discussion on Outstanding Issues**

Committee members discussed proposed changes to the regulations made since the previous meeting.

#### *Global Change:*

In response to questions from Committee members regarding the difference between lease cancellation and lease termination in the draft, a staff member to the federal representatives to the Committee explained that there was not an intended difference in most cases and for uniformity purposes suggested that all references to "lease cancellation" in the draft regulations be changed to "lease termination" unless the reference is to voluntary lease cancellation by the lessee.

The Committee reached tentative consensus approving this change.

#### **§226.1B**

A staff member to the federal representatives to the Committee noted that members of the public had commented about the ability of the Osage Agency to adopt onshore orders or notice to lessees arbitrarily and without consultation with the Osage Minerals Council (OMC). In response, it was suggested that the provision be amended to specify that any such adoption must be in accordance with the Administrative Procedures Act (APA). In addition, it was also proposed that language be added such that the Bureau of Indian Affairs should consult with the OMC before it acts to adopt onshore orders or notice to lessees.

Committee members discussed how the Agency's consultation with the OMC would work and Committee members and staff clarified that, in the future, at any time that the Agency is considering adopting onshore orders or notice to lessees, the Superintendent would consult with the OMC in a government-to-government consultation to discuss whether it makes sense to adopt those changes. A staff member to the federal representatives to the Committee noted that, in addition to the government-to-government consultation, adoption of onshore orders would be considered a change in the regulations and would go through a formal Department of the Interior rulemaking process, and would therefore be subject to public comment. In contrast, the adoption of notices to lessees is considered to be a clarification of existing regulations, not a change in regulations, and as a result, a formal Department of the Interior rulemaking process would not be needed in the latter case. Committee members also discussed whether onshore orders and notices to lessees should be adopted by the Osage Agency for implementation in Osage County and Committee members and staff emphasized that the adoption of these provisions would serve to bring industry standards and best practices into effect in Osage County, not to give the Bureau of Land Management regulatory authority in Osage County.

The Committee reached tentative consensus approving the proposed changes to §226.1B.

#### **§226.2**

A staff member to the federal representatives to the Committee noted that, in the previous Reg-Neg meeting, the Committee discussed public concerns about requiring successful bidders to present payment on the day of the lease sale. The public comment pointed out that bidders may not live in Pawhuska and would not be able to obtain the necessary form of payment on the day of sale because sometime lease sales end late in the day. In response, the staff member proposed the one business day requirement be changed to five business days. She explained that the proposed change would give successful bidders 5 business days to make payment in the form of a cashier's check, money order, or electronic funds transfer. The staff member explained that the federal caucus was not recommending acceptance of personal or business

checks due to the length of time that it can take for money to be transferred from the OST lockbox.

The Committee reached tentative consensus approving the proposed changes to §226.2.

#### §226.6

A staff member to the federal representatives to the Committee noted that a number of members of the public raised concerns about the increase in bonding fees. The staff member stated that standard currently in place is insufficient, particularly because bonding is currently by quarter section, whereas well plugging must be done per well. She continued by saying that, in response to concerns about the amount of the new proposed bond, the Committee is proposing changing the amount of bonding from \$10,000 back to \$5,000, but leaving in the changed requirement that bonding is done on a per well basis and not by quarter section. In addition, the cap on the number of wells requiring bonding per lessee would be increased from 20 wells to 25 wells.

Committee members discussed whether a nationwide bond would apply in Osage County and Committee members explained that any bond which meets the intent of the regulations, including nationwide bonds of over \$125,000, would meet bonding requirements in Osage County.

Committee members also discussed whether the regulations would allow for producers to create an entity or mechanism to provide for collective bonding. A Committee member said that he would like to see direct reference to this sort of mechanism included in the proposed regulations to ensure that the producers would be able to create a mechanism of this sort. A staff member to the federal representatives to the Committee explained that nothing in the draft regulations would prohibit some sort of collective bonding fund if either the producers want to create this or if the OMC wants to develop such a fund with producers. However, the regulations need to specify a specific required bonding amount (currently proposed at \$5000 per well) because the BIA holds a trust responsibility to ensure that wells will be adequately plugged. In addition, a collective bonding fund would need to meet requirements for personal or surety bonds and would need to provide a letter of guaranty such that the Secretary of the Interior could call on that fund to access funds needed for well plugging. A federal official added that the design of the collective bonding mechanism would likely need to be reviewed by the Department of the Interior to ensure that it could fulfill the bonding requirements of the enacted regulations.

Committee members also discussed whether the proposed changes to the draft language would increase the amount of money available in the revolving fund for emergency well plugging that is administered by the OMC. Committee members explained that the proposed changes to the bonding requirements would not affect the emergency plugging fund and also said that the amount available to that fund should be increased commensurate with the increase in the individual bonding requirements.

An Osage representative to the Committee and an Osage alternate to the Committee stated that the Committee should wait to propose regulations to the Secretary of the Interior until after the bonding issue could be explored more fully, including in consultation with producers. An Osage representative to the Committee recommended that the Committee wait until after it receive a proposal for collective bonding from the producers that can be vetted by the Department of the Interior to formally propose regulations to the Secretary of the Interior. A staff member to the federal representatives explained again that the proposed regulations themselves did not prevent creation of creative bonding entities, but that it was not necessary to have everything worked out with respect to creative bonding entities to move the regulations forward because all bonds must still meet the basic requirements proposed in the regulations.

The Committee did not reach tentative consensus approving the proposed changes to §226.6.

#### *§226.9*

A staff member to the federal representatives to the Committee noted that members of the public had raised concerns around rental rates. In response, the Bureau of Indian Affairs went back and had its economist apply a general inflation index to the current rental rates of \$1 and \$2 and determined that, adjusting for inflation, these figures would be \$3 and \$6 in contemporary dollars. As such, it was proposed that the previously-proposed \$10 and \$20 rental rates be lowered to \$3 and \$6.

The Committee reached tentative consensus approving the proposed changes to §226.9.

#### *§226.11(a)*

In response to public comments regarding clarifications, a staff member to the federal representatives to the Committee proposed adding references to NYMEX daily price “at Cushing, Oklahoma.” She explained that the proposed language clarified that the average NYMEX daily price would be applied as it is in Cushing, Oklahoma.

Osage representatives to the Committee and an Osage alternate to the Committee advocated for the Committee delaying adoption of NYMEX indexing until the Committee has time to conduct further study of the impact of adopting NYMEX on the producers and other concerned parties. A staff member to the federal representatives to the Committee and a federal representative to the Committee explained that, while there many indices exist that could be used to determine royalty payments, any such benchmark would need to meet certain minimum requirements. The staff member inquired as to whether the objecting Osage Committee members would suggest another benchmark be adopted. An Osage representative to the Committee and an Osage alternate to the Committee did not have another benchmark to suggest and stated that the issue required further study before a decision should be made.

The Committee did not reach tentative consensus approving the proposed changes to §226.11(a).

#### *§226.11(c)*

In response to public comments received, a staff member to the federal representatives to the Committee suggested that language be added to this sub clause that would allow a lessee to provide information to the Superintendent regarding minerals that were wasted or unavoidably lost. This provision would ensure that the Superintendent has all relevant information from the lessee before making a decision. In addition, it was noted that the Superintendent's decision is subject to appeal under 25 C.F.R. part 2.

The Committee reached tentative consensus approving the proposed changes to §226.11(c).

#### *§226.18*

A staff member to the federal representatives to the Committee noted that members of the public, particularly surface owners, had made numerous comments requesting that notification be provided more fully before operations begin while other public comments, particularly from producers, emphasized that producers need to conduct archeological and biological surveys before they decide whether to drill and that the in-person meeting requirements should not apply to those activities. To accommodate these interests, a new sub clause (a) is suggested to be added by which the lessee would be required to provide one general notification to the surface owner via certified mail, before conducting archeological or biological surveys and well staking. The remainder of §226.18 would remain the same, save for a change to sub clause (e) by which the Superintendent would be required to authorize the lessee to proceed with operations in writing if the surface owner cannot be contacted by the lessee or has not accepted a meeting request.

The Committee reached tentative consensus approving the proposed changes to §226.18.

#### *§226.19*

A staff member to the federal representatives to the Committee suggested that the clause be amended to bring the regulations in line with current seismic practices and to update the compensatory sums for seismic activity. The staff member noted that the change was being proposed as a result of producer's and surface owners both suggesting changes to how seismic activities are described and the compensatory sums for seismic activities.

The Committee reached tentative consensus approving the proposed changes to §226.19.

#### *§226.38*

In response to public comment from producers and recommendations proposed from the Osage caucus, a staff member to the federal representatives to the Committee suggested that language be added to this clause that would:

- Bring sub clause (b) in line with sub clause (c) such that a lease can be terminated for repeated failures to comply with the provisions of the sub paragraph,
- Require that the Osage Agency consult with the Osage Minerals Council before terminating a lease,
- Clarify how a lessee should inform the BIA when a tank of oil is ready for removal by a purchaser.

In response to a suggestion from an Osage representative to the Committee, the Committee clarified that lessees should inform the Superintendent, as a representative of the BIA, when a tank of oil is ready for removal by a purchaser.

In response to a suggestion from a federal representative to the Committee, the Committee removed the word "mandatory" from §226.38(c).

The Committee reached tentative consensus approving the proposed changes to §226.38.

#### *§226.39*

A staff member to the federal representatives to the Committee suggested that language be added to this clause that would:

- Require the Superintendent to provide instructions in writing,
- Allow for lease termination, in consultation with the Osage Minerals Council, for repeated failures to comply with the provisions of the sub paragraph.

She explained that the changes would make sub paragraph 226.39 consistent with 226.38 and also consistent with the general intent that the all decisions and instructions by the Superintendent are to be in writing.

The Committee reached tentative consensus approving the proposed changes to §226.39.

#### *§226.42*

For consistency, a staff member to the federal representatives to the Committee suggested that language be added to this clause that would:

- Require the Superintendent to provide instructions in writing,
- Allow for lease termination, in consultation with the Osage Minerals Council, for repeated failures to comply with the provisions of the sub paragraph.
- Reduce the amount of the proposed fine from \$1500 per day to \$1000 per day.

She also explained the reduced fine amount was being suggested in response to public comment that the fine amounts were too high. In response to a suggestion from an Osage representative to the Committee, the Committee clarified the acceptable forms of payment for fines.

The Committee reached tentative consensus approving the proposed changes to §226.42.

#### *§226.43*

In response to public comment, the Bureau of Indian Affairs went back and had its economist apply a general inflation index to the current fine and penalty amounts. A staff member to the federal representatives explained that the federal caucus recommended that the clause be amended such that fines be lowered from the amounts that the Committee was previously considering to amounts in a closer range to the amounts provided by the economist, while at the same time simplifying the amounts. In the revised schedule of fines, amounts would be adjusted as follows (all figures are “per day”) from the currently in-effect regulations:

- \$50 to \$150 (was previously proposed to increase to \$500)
- \$100 to \$250 (was previously proposed to increase to \$500)
- \$200 to \$400 (was previously proposed to increase to \$500)
- \$500 to \$1000 (was previously proposed to increase to \$1000)

Committee members and staff discussed what happens with the fines that are collected, with an Osage representative to the Committee advocating for the money be directed to improve the operations of the Osage Agency. Federal representatives to the Committee explained that, while they would like to see this happen also, the federal Anti-Deficiency Act directs that all fines and penalties be sent to the US Treasury. The one exception to this provision is if a tribe

has a cooperative agreement with ONRR to enforce the regulations. In that case, 50% of the fine monies are shared with the tribe, although the same amount is deducted from the money given to the tribe by the federal government, with the net effect zeroing out. In addition, assessments for late payment are not classified as fines or penalties, and those monies can go to the tribe. An Osage representative to the Committee suggested that the Osage are unique in a number of ways and perhaps Congress could change the rules such that the Osage would be able to receive money collected from fines and penalties.

### **Public Comment**

The facilitator, Mr. Field, reiterated the meeting guidelines around making public comment.

The following spoken public comments were received during the meeting:

- William Linn, Osage shareholder, oil finder, land owner, said: I'm not really qualified to be here speaking in public. [He made some comments in Osage]. The Minerals Council has asked me to say a few words and said that I could say whatever I wanted to say. I'm not here to talk Osage, I'm here to state my opinion about the proposed rules. I sent an email to the Committee with my proposed amendments. I'm opposed to all of the rule changes that I see in this. I ask that the elders on the OMC – these are related to the people who have gone before us and they're intelligent and will make the right decisions. These rules were negotiated by our elders. These are our elders now. The things that I've learned from them, someone else has said. The BIA, in my opinion, has done an adequate job. CFR 226 is adequate to protect me and my family. I see a lot of complaining. That's what sells newspapers. There's a not-so-reputable oil company drilling on my land, and I negotiate with them and they pay up. The rules, as they are today, are adequate. These current rules are working fine for me, as an oil finder too. As an Osage, I ask you to pay attention to some of these Osage, who are our elders. I want to say one more thing, with no disrespect, but the digital reporting to the MMS does not work. The most important thing that we have, that the BIA is taking away from us, is the BIA is taking our original documents away from us. They're being stored up in Kansas.
- John Hurd, Chair of Oil and Gas Committee of the Osage County Cattleman's Association, said: We've learned as OCCA members that there's a lot to this. We proposed various revisions to the regulations and learned that most of our changes don't apply to these regulations. There is one issue that was brought up, though, that is still applicable today. But, on Onshore Order #6, on H<sub>2</sub>S: levels can reach 6000 ppm and people can die at 50 ppm. I understand that producers have to flare this. The current rules on H<sub>2</sub>S aren't established and I believe that Onshore Orders will protect residents of Osage County.

- Jeff Henry, President of the Osage County Cattleman’s Association, said: With regards to environmental regulations, OCCA was led to believe that our environmental and natural resources concerns would be addressed within this forum. We were encouraged to attend these forums and submit our proposed revisions to the regulations. We spent a lot of time coming up with these. The suggested changes were fully rejected and were considered overly burdensome. Vanessa said that they did not belong in the CFRs. If they don’t belong in the CFRs, then where do they belong? Is the mere adoption by the Superintendent of Onshore Orders purely enough?
- Rob Lyon, President of the Osage Producers Association, said: Ronald Reagan, who I greatly admire, said that "The nine most terrifying words in the English language are: 'I'm from the government and I'm here to help.'" That’s sort of what I feel is going on here. I feel like there’s too much too fast, and too many things that will provide regulations for things that are currently working. On section 226.1B: I think that “consultation” by the OMC should be changed to “approval” by the OMC. Secondly, I’d like to address a comment by Vanessa on the recommendation for a separate bonding fund: there’s no language to provide an opening to create that fund. My interpretation is that we could potentially be double-bonded. We’re sort of caught between a rock and a hard place. I’d like to see if you could revise the language to make it clear that that would be acceptable. One last thing: someone said that we aren’t implementing BLM regulations. The site security plan comes straight out of BLM regulations. In the evolution of Osage County, in shallower areas, you have a lot of smaller operators. In Eastern Osage County, you have a lot of smaller operators. These regulations would be very onerous to these operators. When you’re trying to make a living, the last thing that you want to do is go to another workshop to learn how to comply with another regulation.
- Cynthia Boone, Osage Minerals Council, said: We the OMC have no legal counsel at the current time since we terminated Akin Gump. We should have legal counsel. Would you want to proceed without legal counsel? We continue to receive comments from the producers. I am thankful to all of the oil companies. You took the word approval and changed it to consultation. Everywhere you use the word “consultation” you need to change this back to “approval” by the OMC. You’ve opened the door for ONRR to come in. Some of the OMC members are still confused about where penalties would go. The comments that I’ve heard from members today is that we need more time. I don’t want the Osage to lose its uniqueness.
- Melvin Reed said: I testified earlier about me and my family’s concern about the environment. I want everyone to keep working on this. We have to work together because it’s a huge problem. On my ranch, we’ve had a Greater Prairie Chicken viewing area, and we’ve had to cancel that this year because we don’t know what happened to

them. Suspect that H<sub>2</sub>S gas had something to do with it. I can't prove that, but that's what I think. Please, do something about our environment.

- Jim Medico, Sunoco Logistics, said: A couple of months ago I did a presentation to a few members regarding the NYMEX Cushing issue and I thought that it might be worthwhile to speak to the whole Committee. The directive that NYMEX Cushing be used is inappropriate. NYMEX Cushing to me seems inappropriate. That price should be applied to a barrel of oil that is ready in Cushing, for delivery. That price is inappropriate for use in various locations in Osage County. The sale of oil in Osage County should be done at NYMEX minus something because it still has to incur transportation and other costs. If 20% of the oil is priced too high, then the rest will have to be priced too low.
- Bob Jackman, said: The reason that we're here is because of the mismanagement of the BIA. They had to pay \$380M for that mismanagement. This Reg-Neg was supposed to address that mismanagement and I believe that this process is therefore a failure. Last Friday, Office of Inspector General of BIA issued a report saying that their social services were inadequate. If they were inadequate on that front, how can we expect better results here? That's the definition of insanity, of doing the same thing over and expecting different results. 4 years ago, I pointed out to the OMC that they're losing money on gas as gas producers weren't accurately reporting. Due to my whistle blowing, the Osage shareholders received \$1M extra. Later, an independent expert came in and said that Osage shareholders are losing 15% of their royalties on gas. Nothing was done on that. I'm simply asking that BIA not focus on the CFRs, but rather on operations. There are five partners here: BIA, Osage, producers, ranchers, and also oil and gas purchasers.
- Linda Heskett, shareholder, said: I'm kind of in agreement with Mr. Jackman. I don't know how you're going to implement these laws if you didn't implement them before. You're putting this generically here: we're Osage. We have our uniqueness, we bought and paid for our land. I don't know how long you've [indicating the federal representatives to the Committee] been working on this, but it's surely longer than these gentleman [indicating the Osage representatives to the Committee] have had to review them. You're setting us all in the same boat and that's not who we are. I want to thank Mr. Red Eagle, Mr. Boone, Mr. Core, and Mr. Bear because we voted these people in to protect the shareholders. The settlement was supposed to be in a money court. I don't know who asked for these revisions to the CFRs.
- Julie Wilson, Osage shareholder, said: It seems to me that you're diminishing the power of the Osage people. Why did you change the "Minerals Council" to "minerals estate"? You're taking away the power of the Osage.
- Eddie Red Eagle, Jr., Restricted Osage, head right holder, live on restricted land, said: The 1906 Act is being overlooked in the power of it's significance. We aren't like other

tribes. We don't have a treaty with the nation. We bought this land from the Cherokees. What we bought in the mineral estate is ours. The beauty of this estate is the quality of the raw materials that these good people here produce for us. These particular crude is in line of the feedstock that refiners use to upgrade their other crude. That's the value of Osage crude. The gentleman said that there are five players in this, but there's also a sixth: the economy of the Osage nation. If the 13K barrels aren't produced, then the economy of the Osage Nation will shatter. Today, we have experience with the NYMEX over 25 years: back in the 1980s, we saw what happened. Our 13K barrels a day is a small percentage of the total volume of oil produced, but it's very important to the larger economy and the Osage economy. Our crude in this area is unique. It's low sulfur, low parafins, high gravity. I'm asking for intense, detailed study about what adopting this benchmark (NYMEX) would have done over the past 20 years.

- Jamie Sicking, Halcon Resources, said: This morning when we started, they told us that the reason for the formation of this Committee is to benefit the mineral estate. Which of these changes will help produce the minerals? Which of these will want somebody come to Osage County and produce? I think that you'd be hard pressed to find one that induces people to come here to produce. This process has turned from a negotiation to an imposition by the federal government such that general government regulations are imposed on the regulations. I'd like to see what has happened here that maintains the uniqueness of the Osage Nation. I also want to say that "consultation" with the OMC does not mean much of anything. You've also consulted with the producers but none of us are happy with the way that this has gone down. You guys [indicating the Osage representatives to the Committee] need to maintain some approval.
- Tara Righetti, BGI Resources and Century Exploration Resources, said: The Committee has said that the new regulations wouldn't mean an abrogation of existing contracts. In our written comments, we have raised our concerns on this regard. On 226.9 and 226.11, we ask that the Committee revisit these clauses to make sure that the new regulations don't abrogate the existing contracts. Additionally, I want to reiterate what others have said about consultation in 226.1B. The OMC is responsible for managing the mineral estate in the best interest of the shareholder. As an operator, we have always felt that our interests were aligned with interests of OMC. NTLs could stop production all together and bring royalties to 0. As a result, we ask that any Onshore Orders and NTLs be approved by the OMC.
- George Davenport said: I have had the honor of producing gallons a day for the Osage for the past 23 years. Through my work producing oil with and for you, I have felt honored to work with the Osage. This is my first day attending one of these meetings. What has struck me today is that, while I have been working with and for the Osage, it seems to me that the Osage are handing their uniqueness over to federal regulations.

Osage County is unique. It's unique by the way that the land was bought and unique in the number of small wells that are operating here. The idea of doing all of this extra stuff just doesn't fit. My appeal is to claim what is yours and don't hand it away.

- Nona Roach, Agape and Associates, said: I've attended all 8 of these meetings. On NYMEX, I've talked with all of the purchasers in Osage County. What I've heard from them is that NYMEX is in 1000 barrel increments. If you have 1001 barrels, then you have to sell 2000 barrels. The oil in the northern part of Osage County is unique. But in the Southern part of the county, it has higher sulfur content, and so you'll get a lower price on it. I'm also told that the Osage are getting the highest price in Oklahoma. If you want to sell at NYMEX, then you can do what it says in the regulations: you can take the oil and sell it. I hope that you get NYMEX for it. Also, what Tara said about NTLs is accurate: they can change the NTLs later and totally change the regulations. As a landowner, you have only made 2 substantive changes. You aren't protecting our lands. Last thing: I don't know how you can change the rules in the middle of the game. I've come in here with a lease, and I know what it says, and now you're saying that we have to work with new rules. You're saying that these people will have to spend their money somewhere else.
- Chris Clemenshire, Osage Producers Association, said: I strongly recommend that "consulting" be changed to something else. I don't think that anyone else here understands what "site security plans" entails. Seems to me that you're bringing in BLM regulations. I've also said that our suggestions are being heard, but then those were changed again today. The rental thing was changed. We thought it was \$2 and \$4, and now it's \$3 and \$6. When you talk about elders, I know that it's real big in the tribe to talk about elders. I've sat in church for many years with Dudley Whitehorn and, when he speaks, people always listen. When you vote today, I hope that you think about whether this is listening to your elders. If I hadn't listened to my elders, I would have lost my company.
- Dudley Whitehorn, Osage Minerals Council, landowner, head right holder, said: When we started this, I didn't figure that we'd get to where we are. When people got up and spoke, not anybody has said anything good to say. No one is supporting us. The producers are worrying about what's going to happen to the oil patch, and I'm worried about what will happen too. Does this Committee have more authority than the Council resolution? Can you supersede the Council resolution? I have grave concerns about when we let our government get way out of control. Right now we don't have a direction and we're like a ship that's out of control. The BIA screwed up before and I think that they can screw up again. I feel bad about where we're headed. The landowners are concerned about the land but they're also concerned about the oil

fields. They're worried about all of the fines. If you're going to vote today, I suggest that you vote no.

- Mary Johnson, CEP Midcontinent, said: I almost feel guilty about asking this question, but it has to do with bonding. It still has language saying that a bond will be filed with each lease submitted for approval. At that point, you don't know if you're going to drill on the lease. If the bonding is on a well basis, then the bonding should be when you get a permit to drill the well.
- Shane Matson, Geologist with Spyglass Energy Group. I have drilled 40 horizontal wells targeting the Mississippian Lime. Encana and Devon being here is largely the result of the efforts of Spyglass and other companies. This process has been flawed from the beginning. This document should be leaving here with teeth to protect the mineral estate. The Osage have been force-fed industry standard practices by the BLM. My question is: what mineral estates do you manage that produce as many barrels of oil with as many barrels of water as are produced here in Osage County?

Members of the public also submitted the following written comments on comment cards during the meeting:

- Comment received from [Anonymous]: I'm four score and zero years old. Some of my lease were secured at sale almost thirty years ago. If these regs or new rules going to negate those entered into at time of my assignment of the rules of that time. Be careful not to destroy the symbiotic relationship between the might Osage Nation and the oil and gas producers! There may be some of the new rules that have some redeeming aspects, but it's hard to pick them out. I've tried to be diplomatic with my comments; at least I hope so. Definition of a diplomat is "Telling someone to go to hell in such a way they are looking forward to the trip!"
- Comment received from Chuck Unruh, Royalty Owner, Producer, Land Owner: NYMEX pricing or indexing is a poor business decision. The standard lowers the value of the working interest in the many Osage marginal properties. Royalty payments become nothing from something when the wells plug for excessive regulation. Perhaps... "the third party agreed upon price between producers and purchasers."
- Comment received from Chris Clemenshire, Osage Producers Association: 226.1B: The word consult needs dropped from this section. This takes way all rights from the Osage Minerals Council. Need to keep BLM from this Osage County Rules. You will lose your power Osage Mineral Committee.
- Comment received from Rob Lyon, Osage Producers Association: The revision to 226.1B should read "approval" of the Osage Minerals Council, not "consultation." Otherwise the BIA will have unlimited authority to enforce the regulations. There will be no checks

and balances. The current regs don't give any one input. Why not become more prominent in the process?

- Comment received from Jamie Sicking, Halcon Resources: The language in 226.1(b)(a) destroys this whole process. No matter what the Committee decides the Superintendent can change any and all of these regs on her own whim without check by anyone. It's ridiculous. If she's not gonna use that power – it shouldn't be granted to her.

Committee members and staff members to the Committee responded to the spoken public comments:

An Osage representative to the Committee explained that, in response to concerns around hydrogen sulfide, the draft proposed regulations include adoption of an onshore order addressing hydrogen sulfide. This is one of the two onshore orders that the Committee incorporated into the draft proposed regulations. The Committee member added that, as far as the OMC knows, producers in Osage County are already following the provisions of the onshore order on their own but that the Committee incorporated it into the draft regulations in order to provide a baseline throughout the County.

In response the comment raising a concern about the timing under which bonding would be required, Committee members, staff, and members of the public discussed possible remedies to the concern. After discussion, the Committee amended §226.6(b) as follows: "A surety bond or personal bond equal to the Bonding Amount shall be filed at the time an Application for Permit to Drill is approved and/or the lessee acquires liability for existing wells on a lease."

An Osage representative to the Committee noted that several commenters brought up the question of consultation and that people seem to be thinking that the Osage Minerals Council is giving something away. He proceeded to explain that the current regulations say that the Superintendent can act unilaterally without consultation with the OMC. The Committee has actually added language to a number of provisions that introduces consultation with the OMC.

An Osage representative to the Committee made the following comment: Thank you for all of the comments made by producers, purchasers, land owners, share holders. I've been thinking about this Reg-Neg and I've been thinking about this over the past few days and I'm the one that introduced the resolution to put this on hold. Not to be disrespectful to the BIA, and the way that I heard comments from Bill about tradition and elders, and it's Easter time and it's always a time when you wish that elders were present to ask questions and get answers from them. My dad said that we live in two worlds: there's the native world and the non-native

world. This is an example of the non-native world; it feels like a train ride that just won't stop. I don't want to be disrespectful of the BIA, but I don't feel that they've been respectful of us. When I was a child, I was told how we do things. We are the OMC and we were elected to manage things here on the Osage. There's procedure that we go through. That procedure is that you go talk to people. We go to those people's houses and we visit them and go talk to them and we get their input. I'm disappointed that there aren't more shareholders here. I feel that I failed my position in not getting out and talking to the elders that are out there. The elders aren't going to come forward because the way that they were raised is that we are supposed to go to them and ask for their input. I would like to have that chance to go and talk to them and get their input. It's what I should have done already and I would like to correct that.

### **Final Committee Deliberations on Draft Proposed Regulations**

The facilitator, Mr. Field, reviewed the decision-making process of the Reg-Neg Committee, as specified in the Committee's Operating Procedures. A full articulation of the Committee's decision-making process can be found in Section V of the document posted as "Ground Rules/Operating Procedures" on the website for the Reg-Neg process:

<http://www.bia.gov/osageregneg/>. Mr. Field noted the following key points about the Committee's decision-making process:

- The Committee will strive to operate by consensus.
- Consensus is defined as unanimous approval by Committee members. If a member is not present, then a designated alternate fills in for the absent member. Committee members may choose to abstain, which does not count against consensus.
- If the Committee does not have unanimity, then the federal and tribal caucuses will each seek to reach a majority position on each side. Once each caucus has a majority position, if there is agreement between the caucuses, consensus will be achieved.
- The Committee can also highlight issues on which it has failed to reach consensus in its report to the Secretary of the Interior.

Mr. Field also noted, that, if the Committee reaches consensus on approving the draft proposed regulations, the regulations will undergo further review by the Department of the Interior, including a formal public comment process. A staff member to the federal representatives to the Committee added that, as part of the review process, the draft proposed regulations would be further reviewed for clarity and proper formatting by the Department of the Interior before being published in the federal register for public review and comment.

The Committee reached final consensus by a majority vote of the federal caucus and the Osage caucus to approve the draft proposed regulations and recommended their transmittal to the Secretary of the Interior for review and consideration.

After the Committee reached final consensus, Mr. Field, the facilitator, explained that the proposed regulations would be reviewed and cleaned in coming days by Committee staff who would then send the proposed regulations to Committee members to ensure that the document accurately reflects that which the Committee has agreed upon. After this final review by Committee members, the Designated Federal Officer will submit the proposed regulations to the Director of the Bureau of Indian Affairs for review by the Department of the Interior.

### **Final Comments by Committee Members, Staff, and Federal Officials**

Participants in the negotiated rulemaking process made the following comments:

#### *Joseph B (Sonny) Abbott, Osage Reg-Neg Committee:*

First of all, I didn't like being put in this position, because I realize that all parties involved will not be in agreement with the outcome. As you all know, this process is the results of our Osage Trust Settlement Law Suit against the Federal Government for mismanagement of our mineral estate. These changes are supposedly giving us better *accountability* of our minerals estate. To me, accountability is the most important factor we need at this time and we are very much lacking in this area. I can't speak for the rest of the Council, but the way I see this process going forward is that it may help the shareholders. They are the people who elected me to help them, and that is my first and foremost obligation. I have heard many times that this is a \$4 billion mineral estate. That doesn't mean much to a shareholder who lives close to the poverty level. The head rights have been fractionated down to the level that many of our Osage shareholders receive a small quarterly payment. To some people \$200 or \$300 may not seem like much, but if we can put better accountability in place and provide an extra \$200 or \$300 to these shareholders, it would be beneficial to them. I can't pick and choose which changes I want, I have to go with the whole package. There are some that I'm not positive about. When this process moves forward, I will enter a comment to the proper final authorities as to the changes I am concerned with and that my comment be taken into consideration. I will also strongly suggest that all viable comments made by producers and surface owner be looked at with deep concerns as to how they are affected by this process. I'm truly sincere with my statements as to the concerns of everyone involved. Thank you, Sonny Abbott, Osage Minerals Councilman.

#### *Andrew Yates, Osage Reg-Neg Committee:*

My name is Andrew Yates and I am an Osage, elected to the second Osage Minerals Council. My duties and responsibilities are to represent the Osage shareholders in the protection and

development of their mineral estate as provided in the 1906 allotment act. On October 14, 2011, we signed the Osage trust settlement in Washington DC for \$380 million. Along with this monetary award was a section for negotiated rule making which provided for improved management of our minerals estate with better valuation, accounting, and measurements from the BIA. At the time I realized that this could potentially be more of an advantage than the monetary award. Where we had settled for pennies on the dollar for years of underpayment and mismanagement of our revenues, this could actually pay off more in the long run with improved accountability from the BIA. I was placed on this negotiated rulemaking committee by my fellow council members along with Sonny Abbott, Galen Crum, Melvin Core, and Curtis Bear. Dudley Whitehorn and Myron Red Eagle were included as alternates. We all cast our votes for five members of the Minerals Council, with the top five being placed on the Committee along with two alternates. There have been questions on who was on the Committee and why. Hopefully this will help explain. Because there were some left off the Committee and I want everyone to know why they were left off. I also want it noted that not all of the Council was on the settlement team we sent to Washington DC to negotiate for the settlement. I would like to address the surface owners. I have always been very much in favor of improved and full observation of all federal regulations in regards to protecting the environment, including but not limited to all health and safety issues which include the H<sub>2</sub>S problems we are encountering with the horizontal wells. With that said, I can assure you that as a Minerals Council member, I plan on realizing the full potential with these issues along with also really realizing our full potential in drilling and producing all of the Osage minerals estate. Wherever that may be. To all the oil producers I would like to encourage the continued dialogue we have recently opened up and try and develop an ongoing improvement on all levels of regulation compliance and development of our minerals. After all we are all in this arena together as both producer and royalty owner. We have identified some areas of concern with the bonding issues, surface owner access, and the terminated/orphaned well situation. Hopefully we can move forward with some common ground and good faith in all of these areas. I would like to thank all of the federal side of the Negotiated Rulemaking Committee for their tireless work on these proposed rules. It hasn't always been easy for either side, especially with the volume of material we were required to assimilate and try and digest. I would like to single out Mitch Mouton, from the Office of Natural Resources Revenue, for his lesson on the value of a nonrenewable resource or commodity. In closing I would like to thank our legal counsel, Mr. Merrill Godfrey. Thank you and God bless.

*Curtis Bear, Osage Reg-Neg Committee:*

I want everyone to know that I voted "no."

*Melvin Core, Osage Reg-Neg Committee:*

NYMEX produced nothing this year. The fallout has already affected us.

*Darryl LaCounte, Osage Reg-Neg Committee:*

I would like to thank everybody on the Committee for all of the work that you've done. I've genuinely appreciated working with you. Want to remind everyone that this is a proposal and will be further reviewed going forward. I didn't ask for the Reg-Neg, but I came to do my job to try to make sure that the Osage got as much as they could from their mineral estate. I heard about Uniqueness 8 times in comments today. I think that 25 CFR 226 makes you very unique and exclusions from FOGRMA makes you very unique. There were various issues in the lawsuit that we had to address in this process and I think that we have addressed each of those in the way that we could.

*Stephen Manydeeds, Osage Reg-Neg Committee:*

I want to thank the OMC for letting me come onto your reservation. I really do truly appreciate it. I've been a part of the 225, which is the other Reg-Neg. I want to say that you all are by far the most engaged. I really respect that. There are some things in there that I want to see changed, and there are things that I'm sure that you want to see changed. I thank you very much, and really appreciate the respect that's been shown.

*Paul Tyler, Osage Reg-Neg Committee:*

I want to echo what Stephen just said about respect. I really appreciate it. I think that the \$380 million settlement shows the need to change some things. I've been part of other reg-negs and I've never seen a Director as engaged as Mike has been and I have never seen a Committee that has been as engaged as this. I applaud each of you and it has been an honor and pleasure to work with each and every one of you.

*James Stockbridge, Osage Reg-Neg Committee:*

This has been the greatest honor in my federal career, to engage in a negotiation with all of you. Not any of us got everything that we wanted, but it's been an honor to negotiate. I also thank all of the commenters, particularly the head right holders, the producers, and the surface owners, for sharing your perspectives and productive comments with us.

*Myron Red Eagle, Alternate to the Osage Reg-Neg Committee:*

Just as some of the other Councilmembers said, some people wanted to be on Committee and some didn't. I did, but I wasn't chosen. I always talk about history when I get to talk. When all of this started; the Osage Museum has a lot of pictures of history. When I look at the pictures back there, one of them has the Agency at the top of the hill. There weren't any trees at that time. In the distance there were Army tents, like Civil War tents you would see on the History Channel.

There were soldiers in blue uniforms. And behind, them, by 75 yards, there was Osage sitting on the ground. Maybe in 1871 or 1872, is when the Osage came here. That's how all of this got started. My grandfather and great, and great, great grandfather, and others, [Mr. Red Eagle lists some names], were all there, and their ancestors were all there. On that side of the US, they all spoke English. That's what they spoke. On this other side, they didn't speak English, they used sign language. Because every tribal representative in the US didn't understand each other. So they had to have interpreters. These people were mediators because they understood what Osage said and they understood what the other people said. That's what this process is. There are more than 4 or 5 entities involved here, there are 6 or 7. We should include the local towns people. There's not a person in Oklahoma who isn't involved with a Native American. We're a people who were here when everybody else got here. 30,000 years is a long time, and some say 50,000 years. So we're talking about a very, very critical, important time. We were elected. The people over there they work for the US Government. It's just like that photograph, with us speaking English and them speaking English. These are critical issues we have to work through, whether it's NYMEX, etc. It needs to be talked about some more and it needs to be appealed. Now, we're at that point. Some people went to Washington DC, but I didn't want to go. The Osage bought this land. The Cherokees didn't want it. That's where we're at today. I'm an elected official and that's where we are today. I have to talk to people and people are going to confront me and they're going to ask me questions. I'm at a humble place in my life. I'm 63 years old and I'll be 64 next year when the election happens. This is a critical time and it's an appeals process and this needs to be looked into more deeply.

*Patrick Field, Facilitator for the Osage Reg-Neg Committee:*

I want to thank Rhonda, Cammi, Letha, and Tushar for taking care of logistics behind the scenes. To the members of the public: it's been 8 meetings, 16 public comment periods. It's been a long process and I know that it can be frustrating that you can't make the decisions. But I appreciate that you have made constructive comments and you have made these regulations better through your constructive comments. I want to thank the Committee for all of your hard work, and I know that it's hard to say yes or to say no at the end of the day. No decision is perfect, and I respect each person's decision.

*Galen Crum, Osage Reg-Neg Committee:*

As Chairman of the Osage Minerals Council and as Co-Chair of this Committee, I want to thank the members of this Committee. I want to thank Stockbridge for putting in such hard work and doing extensive research and we turned each and every issue upside down. I also want to thank Tyler and Stephen for this expertise and hard work. I want to thank Mike Black for attending almost all of these and also for participating in the consultation meetings. I also want to thank Bob Impson for always being responsive to me. I have full confidence that the operations at the

Agency will improve with people like Bob involved. I also want to thank producers and surface owners for their participation and their concrete suggestions. I want to continue working with you and the door is open for every Council member.

*Mike Black, Director of the Bureau of Indian Affairs:*

I would like to thank and commend every Committee member and the support staff. Also would like to thank Vanessa for the incredible amount of work that she's put into this process. I also want to thank all of the members of the public for taking the time out of their schedules to participate and provide input. I do believe that this will be a good product at the end of the day. No set of regulations will be perfect, but I think that we can fix what's taken 150 years to go wrong. I have been committed to seeing this process through and I am committed to staying on while we improve the operations of the Agency. These are proposed regulations and they will now be submitted to me and to the Secretary of the Interior and to public comment. I want to thank members of the public. I've sat in your place and know that it can be frustrating to not participate in decision-making. But your participation is much appreciated and greatly valued and has enriched this process and the regulations. Thank you all.

### **Adjournment**

The meeting closed with a prayer and was adjourned at 3:49 pm on April 2, 2013.

### **Attachments**

- A. Attendance
- B. Materials Distributed to the Committee

## Attachment A: Attendance

### COMMITTEE MEMBERS

Last Name	First Name	Organization	Principle or Alternate
Abbott	Sonny	Osage Minerals Council	P
Crum	Galen	Osage Minerals Council	P
Yates	Andrew	Osage Minerals Council	P
Bear	Curtis	Osage Minerals Council	P
Core	Melvin	Osage Minerals Council	P
Red Eagle	Myron	Osage Minerals Council	A
Whitehorn	Dudley	Osage Minerals Council	A
Manydeeds	Stephen	Department of Interior, Assistant Secretary-Indian Affairs, Chief, Division of Energy and Mineral Development	P
LaCounte	Darryl	Department of Interior, Bureau of Indian Affairs, Deputy Regional Director-Trust Services, Rocky Mountain Regional Office	P
Stockbridge	James	Bureau of Land Management, Trust Liaison and ONRR Liaison	P
Tyler	Paul	Office of Natural Resources Revenue, Program Manager, State and Indian Coordination	P

### AGENCY AND OTHER STAFF

Last Name	First Name	Title	Organization
Mouton	Mitch	Minerals Revenue Specialist	Office of Natural Resource Revenue
Black	Mike	Director	Bureau of Indian Affairs
Ray-Hodge	Vanessa	Attorney for DOI	Department of Interior, Office of the Solicitor
Impson	Robert	Deputy Regional Director, Trust Services	Bureau of Indian Affairs
Streater	Eddie	Designated Federal Officer	Bureau of Indian Affairs
Loftin	Rhonda	Acting Superintendent	Osage Agency
Canady	Cammi	Realty Assistant	Osage Agency
Field	Patrick	Facilitator	Consensus Building Institute
Kansal	Tushar	Facilitator	Consensus Building Institute

## MEMBERS OF THE PUBLIC

Last Name	First Name	Public Comment
Boone	Cynthia	Yes
Box	Aaron	No
Carter	E. W.	No
Chinn	Alan	No
Chinn	Larry	No
Clemenshire	Chris	Yes
Cooper	Nevin	No
Cox	Dewey	No
Cox	Jerry	No
Cubbage	Will	No
Davenport	George	No
Doyel	Landy	No
Duty	Shannon	No
Erwin	Stephanie	No
Graham	Marcy	No
Glenn	Betty	No
Glenn	Hoyt	No
Hammons	Christy	No
Heskett	Linda	Yes
Henry	Jeff	Yes
Hurd	John	Yes
Hurlburt	Charles	No
Jackman	Bob	Yes
Johnson	Mary L.	Yes
Keipert	Joe	No
Krehbiel-Burton	Lenzy	No
Lyon	Rob	Yes
Martin	Robert	No
Matson	Shane	Yes
McClain	Ray	Yes
McIlvain	Joe	No
Medico	James	Yes
Meyer	Jane	No
Murphy	Scott	No
O'Toole	Dan	Yes
Park	Bill	No
Peng	Peter	No
Plummer	Robert	No
Reed	Melvin	No
Righetti	Tara	Yes

Roach	Nona	Yes
Rountme	John	No
Schultheis	Aaron	No
Scorsone	Mike	No
Short	Mark	No
Sicking	Jamie	Yes
Spess	Richard	No
Spurgeon	Chuck	No
Tranum	Florence	No
Trumbly	Mary Jo	No
Unruh	Charles	No
Waller	Everett	No
Whitewing	Joyce	No
Wilson	Clay	No
Wilson	Julie	No
Winlock	Richard	No
Woods	Lanny	No
Woodward	Steve	No

## **Attachment B: Materials Distributed to the Committee**

1. Final Agenda for Meeting #8 (April 2013 meeting).
2. Draft Meeting Summary from Meeting #7 (March 2013 meeting).
3. Proposed Revisions to Portions of 25 C.F.R. Part 226 – Discussion Draft April 2013
4. Summary of Public Comments, April 1, 2013
5. Ratified Operation Procedures for the Osage Negotiated Rulemaking Committee
6. Charter of the Osage Negotiated Rulemaking Committee
7. Cover email (dated March 26, 2013) with attached transmittal letter and proposed revisions to the draft regulations from the Osage County Cattleman’s Association
8. Resolution of the Osage Minerals Council to extend the Negotiated Rulemaking process for an indefinite period of time, dated March 20, 2013