UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

December 31, 2019

Ms. Robin Phillips, Superintendent
Osage Agency
P. O. Box 1539
Pawhuska, Oklahoma 74056

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), and the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has completed its review of the Bureau of Indian Affairs (BIA) Draft Environmental Impact Statement (EIS) for the Management of Osage Nation Oil and Gas Resources (CEQ No. 20190274). This programmatic EIS analyzes the potential impacts of future oil and gas development on the surface estate and subsurface mineral estate in Osage County, Oklahoma. Based on our review of the Draft EIS, the EPA offers the following comments for your consideration.

EPA recommends the Final EIS incorporate information regarding the process for obtaining Clean Water Act (CWA) 401 certification. The purpose of these certification reviews is to determine whether a proposed discharge to surface waters under a federal permit (e.g., CWA Section 402 or Section 404) will comply with water quality standards. The Oklahoma Department of Environmental Quality (ODEQ) administers the CWA Section 401 water quality certification program in Oklahoma for projects on state lands. However, on tribal land when a tribe has not received treatment in the same manner as a state for the CWA Section 401 program, EPA retains responsibility for CWA 401 certification reviews. For the 2017 nationwide permits (NWP) under CWA Section 404; EPA Region 6 did not certify the use of the 2017 NWP's for use in the Tulsa District. Rather, in accordance with Corps regulations at 33 CFR 330.4(c), anyone wanting to perform an activity subject to the NWPs (or under an individual CWA 404 permit) on tribal land is required to obtain an activity specific water quality certification, or waiver, from EPA before proceeding under the NWP. We also note that a project requiring coverage under ODEQ's construction general permit, may also require coverage under EPA's construction general permit for the portion on tribal land.

EPA appreciates the opportunity to review the Draft EIS. Please send our office one copy of the Final EIS when it is filed with the Office of Federal Activities. If you have any questions or concerns; contact Keith Hayden of my staff at hayden.keith@epa.gov or 214-665-2133.

Sincerely,

for Robert Hach

Arturo J. Blanco
Director
Office of Communities, Tribes and
Environmental Assessment