Francis Craig

From: mosby.halterman@bia.gov on behalf of EIS, Osage County Oil and Gas <osagecountyoilandgaseis@bia.gov>
Sent: Friday, February 14, 2020 7:29 AM
To: Katie Patterson; Francis Craig
Subject: Fwd: [EXTERNAL] Osage Minerals Council Request for Extension on DEIS
Attachments: Osage Minerals Council Request for Extension 1 7 2020.pdf

Mosby Halterman
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---------- Forwarded message ---------
From: **Wilson Pipestem** <wkpipestem@ietan.com>
Date: Tue, Jan 7, 2020 at 7:43 PM
Subject: [EXTERNAL] Osage Minerals Council Request for Extension on DEIS
To: elizabeth.appel@bia.gov <elizabeth.appel@bia.gov>, osagecountyoilandgaseis@bia.gov <osagecountyoilandgaseis@bia.gov>, mosby.halterman@bia.gov <mosby.halterman@bia.gov>, Young, Jessie <jessie.young@bia.gov>, justin.herrin@bia.gov <justin.herrin@bia.gov>
Cc: Abi Fain (afain@pipestemlaw.com) <afain@pipestemlaw.com>

Please see the attached letter.

Wilson Pipestem

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January 7, 2020

VIA EMAIL
The Honorable Tara Sweeney
Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Re: Request for Second Extension of Comment Period on Draft Environmental Impact Statement for Osage County Oil and Gas, Osage County, Oklahoma [Docket ID: AAK6006201 210A2100DD AOR3030.999900]

Dear Assistant Secretary Sweeney:

The Osage Minerals Council, an independent agency within the Osage Nation government that is constitutionally empowered to administer and develop the Osage Mineral Estate, respectfully requests that the Bureau of Indian Affairs (BIA), the U.S. Geological Survey (USGS), and the Environmental Protection Agency (EPA) extend the public comment period on the Draft Environmental Impact Statement for Osage County Oil and Gas, Osage County, Oklahoma (DEIS) by a minimum of forty-five (45) days beyond the currently scheduled public comment deadline of January 22, 2020.

On November 22, 2019, the BIA published notice in the Federal Register of the DEIS, which the BIA noted was prepared in cooperation with the "BIA, as the lead Federal agency, and the Osage Nation, Osage Minerals Council, U.S. Geological Survey (USGS), and Environmental Protection Agency (EPA)." The Notice provided for a 45-day public comment period, which would have closed on January 6, 2020. On December 27, 2020, however, the BIA published another notice in the Federal Register, extending the DEIS public comment period by sixteen (16) days, now making the deadline for comments January 22, 2020.

The agencies' 566-page DEIS[1] evaluates and solicits comments on a variety of complex technological, scientific and commercial issues relating to oil and gas development in Osage County, which constitutes the whole of the Osage Mineral Estate, and implicates a number of federal laws specific to the development of the Osage Mineral Estate, including, but not limited to, the Osage Allotment Act of 1906[2] and its subsequent amendments. Accordingly,

[1] Because the 2019 DEIS is 566 pages, it appears that the drafting of the 2019 DEIS began prior to August 31, 2017, when Secretary Bernhardt issued Order No. 3355, which limits the length of an EIS to 150 pages, or for unusually complex projects, 300 pages. Because the 2019 DEIS far exceeds the page limit for unusually complex cases, additional time should be provided for submitting an adequate comment.
[2] Act of June 28, 1906.

development of thoughtful comments in the time provided is clearly unachievable and is therefore inconsistent with providing adequate or lawful public participation.

It is particularly concerning to the Osage Minerals Council that the notice of the DEIS states that the DEIS was prepared in cooperation with the Osage Minerals Council, but includes provisions that are in stark conflict with the views of the Osage Mineral Council, and in conflict with federal law governing the Osage Mineral Estate. For instance, the DEIS proposes an Alternative 4 that would prohibit "permits for new ground-disturbing activities"[3] in areas that include, among others, the Tallgrass Prairie Preserve, State Parks, State wildlife management areas (WMAs) and BLM wild horse and burrow pasture facilities.[4]

Alternative 4 seems to contemplate multi-use purposes for the land in question, however, the Osage Allotment Act of 1906, along with subsequent amendments, make clear that the BIA is required to develop the mineral estate, aimed at "the highest percentage of ultimate recovery"[5] and that the surface estate is subservient to the Osage Mineral Estate. Alternative 4 goes far beyond the scope of the BIA's authority when it comes to regulating the Osage Mineral Estate and raises a number of questions about other provisions within the DEIS.

For these reasons, the Osage Minerals Council respectfully requests that the BIA, USGS, EPA, and any other pertinent agency extend the public comment period for at least an additional 45 days, or until no earlier than February 10, 2020. Thank you for considering this request.

Sincerely,

Wilson Pipestem

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[3] 2019 DEIS at ES-5.

[4] 2019 DEIS, Table 2-1.

[5] Act of March 2, 1929 (45 Stat. 1478) and Act of June 24, 1938 (52 Stat. 1034) ("The Secretary of the Interior and the Osage tribal council are hereby authorized and directed to offer for lease for oil, gas, and other mining purposes any unleased portion of said land in such quantities and at such times as may be deemed for the best interest of the Osage Tribe of Indians: *Provided*, That not less than twenty-five thousand acres shall be offered for lease for oil and gas mining purposes during any one year: *Provided further*, That as to all lands hereafter leased, the regulations governing same and the leases issued thereon shall contain appropriate provisions for the conservation of the natural gas for its economic use, to the end that the highest percentage of ultimate recovery, of both oil and gas may be secured: *Provided*, *however*, That nothing herein contained shall be construed as affecting any valid existing lease for oil or gas or other minerals, but all such leases shall continue as long as gas, oil, or other minerals are found in paying quantities.").

Cc:

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