



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

OCT 06 2011

IN REPLY REFER TO:

From

for Mike Black

Director, Bureau of Indian Affairs

Subject:

Determination of Need for Negotiated Rulemaking on Leasing of Osage Lands for Oil and Gas Mining

In accordance with 5 U.S.C. § 563, I have determined that there is a need for regulatory negotiation with respect to the management of the Osage Mineral Estate currently addressed under 25 C.F.R. Part 226. After 11 years of litigation, the United States reached a settlement with the Osage Nation, Oklahoma (formerly known as the Osage Tribe) (“Osage Tribe”) for alleged mismanagement of its oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial “to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and the Other Osage Accounts” Settlement Agreement, Para. 1.i. During the course of negotiations it became apparent that a review of the existing standards and obligations in the governing regulations is necessary in order to better assist the Bureau of Indian Affairs in sharing and providing information regarding the Osage Mineral Estate to the Osage Minerals Council. Based on these circumstances and in an effort to avoid future litigation, if possible, I therefore conclude that there is a need for negotiated rulemaking. *See* 5 U.S.C. § 563(a)(1).

The regulations governing the Osage Mineral Estate (25 U.S.C. Part 226) currently apply only to the Osage Mineral Estate and the Osage Agency and do not have broader applicability. Thus, there are limited interest holders readily identifiable. *See* 5 U.S.C. § 563(a)(2). The governing tribal body that oversees the Osage Mineral Estate is the Osage Minerals Council, which is duly elected by Osage oil and gas Headright holders. Thus, due to the limited applicability of the current regulations and the limited interest holders at stake, “there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests.” *Id.* § 563(a)(3)(A).

Moreover, given the settlement of the litigation and the express desire by the Osage Tribe and the Interior Department to proceed in good faith in addressing and improving administration and management of the Osage Mineral Estate as soon as practicable to avoid future litigation, I find that “there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.” *Id.* § 563(a)(3)(A) & (a)(4). Indeed, the Osage Tribe and the Interior Department have already identified some of the areas that need to be addressed as part of the negotiated rulemaking, including, but not limited to:

1. Identifying the appropriate information needed from all operators, purchasers and payers who are associated with the Osage mineral estate and developing and implementing standardized reporting to manage diligently production and accounting;
2. Identifying the source, manner, and format of transmission whereby the information required by Subsection 9(a) will be provided to the Osage Minerals Council;

3. Identifying appropriate revisions to the methods for calculating royalties and rentals for oil and gas, including but not limited to royalty rates, royalty value (pricing), and rental rates;
4. Identifying the best feasible practices for developing and conducting onsite inspection programs;
5. Identifying the feasibility of implementing technological enhancements for generating run tickets and other production data for reporting that information to the Osage Tribe and the United States;
6. Identifying the best feasible practices for gauging oil and gas production and the resources needed to implement the strategy selected;
7. Identifying and implementing the best feasible practices for tank battery gauging;
8. Determining and documenting the formal communication needed to manage diligently the Osage mineral estate between the Osage Nation, the Osage Minerals Council and the United States.

See § 563(a)(5). The existing agreement on these matters indicates that a negotiated rulemaking procedure will not unduly delay the proposed rulemaking or a final rule. Furthermore, the Bureau of Indian Affairs has the necessary resources it needs throughout the negotiated rulemaking process and I will ensure that the agency uses, to the maximum extent possible, the consensus of the committee with respect to development of a proposed rule for notice and comment. *Id.* § 563(a)(6), (7).

Based on the foregoing, the Osage Agency and the Office of the Solicitor are to proceed with a negotiated rulemaking related to the Osage Mineral Estate currently governed by 25 C.F.R. Part 226.