

**Osage Negotiated Rulemaking Committee**  
**Meeting 1 – August 21-22, 2012**  
**Osage Mineral Council, 813 Grandview Avenue, Pawhuska, OK 74056**  
***Meeting Summary***

**Consensus Agreements**

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

1. The Committee agreed to make decisions by consensus. If the full Committee is unable to reach a consensus decision, a report will be written that contains the position and reasoning of the federal caucus and the tribal caucus.
2. The Committee affirmed the facilitation team from the Consensus Building Institute.
3. The Committee agreed that public comment periods will be held once before lunch and once after lunch for forty-five (45) minutes each.
4. The Committee agreed that subcommittees will consist of at least two members, one from the federal caucus and one from the tribal caucus. These subcommittee members can invite others to join them as necessary.
5. The Committee formed four subcommittees – modernizing royalties for oil and gas production, strengthening drilling obligations, gauging and metering, and implementing electronic reporting.

**Welcome and Opening of the Meeting**

The meeting opened with a prayer and introduction of all Committee members and staff.

Mike Black, Director of the Bureau of Indian Affairs (BIA), provided background information on the settlement reached between the U.S. Government and the Osage Nation. He stated that the BIA is committed to this process in an effort to develop recommendations that will be of the greatest benefit to the Osage headright holders and the Department's responsibilities in management of the state. He emphasized that these will be recommendations to the Secretary for consideration in revised regulations. He stated his commitment to complete this process in an expedited manner as well as through a thoughtful, thorough and conscious effort to ensure that the recommendations are in the best interest of the Osage Nation and the headright holders. A member of the Rulemaking Committee expressed appreciation for Black's presence and the interest on the part of the Bureau in creating regulations that enhance the long-term interests of the Osage Nation.

Participants reviewed the agenda for the two-day meeting and noted that Patrick Field of the Consensus Building Institute had received unanimous support as the facilitator for the negotiated rulemaking process.

Cynthia Boone, Councilmember of the Osage Minerals Council, introduced herself and the work of the Council. She acknowledged Director Black's statement that the Committee would examine other federal valuation rules but that the Committee should not be committed to other valuation approaches without a thorough examination. She urged the Committee to preserve the uniqueness of the Osage Nation and its mineral rights and history in contrast to other federal Indian oil and gas operations.

### **Introduction to FACA and Negotiated Rulemaking Act**

Tim Murphy of the Department of Interior Solicitor's Office provided an overview of the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act. Murphy explained that both laws are primarily procedural, addressing how Congress receives advice and provides for federal agencies to engage with regulated entities to create rules. The Acts have a number of requirements that dictate the composition, role, and functioning of rulemaking committees.

Murphy described the interface between FACA and the Negotiated Rulemaking Act, as they apply to the present rulemaking exercise. The Rulemaking Committee can have no more than 25 members. A call for nominations of Committee members is put out and the Secretary of the U.S. Department of the Interior appoints members. Members are appointed as individuals. The Committee will operate for a two-year period of time. The Committee will operate by consensus. The Committee may form subcommittees or work groups to advance discussion, generate options, and develop preliminary proposals, which then go to the full Committee for consideration.

Committee members asked a number of questions about the operation of the Committee under FACA and the Negotiated Rulemaking Act. In response to these questions, it was clarified that the Designated Federal Officer (DFO; Robert Impson on the Osage Committee) is generally expected to attend and be aware of subcommittee meetings (or send a designee). It was also clarified that the Osage Minerals Council is governed by Tribal rules and can form subcommittees and meet in workgroups as part of the federal FACA process.

An audience member inquired about how many Committee members there are at present and how many of these concurrently sit on the Osage Mineral Council. Field, the facilitator,

responded that the Committee has nine (9) members, of which five (5) also sit on the Osage Mineral Council. An audience member also requested a copy of Murphy's presentation. Copies were made for the audience and it was noted all presentations will be posted on the DOI FACA website (<http://www.bia.gov/osageregnet/>).

### **Review of Draft Rulemaking Committee Operating Procedures**

The Committee reviewed a draft of the proposed Operating Procedures for the Committee and discussed various aspects of the draft Operating Procedures. The following key topics were discussed.

- The length of time the Committee will operate (two years by its charter and FACA). The Secretary of the U.S. Department of the Interior has the ability to extend the life of the Committee.
- The need for new members to be nominated to replace existing members – alternates can fill vacated slots but new members must go through the appointment process just as the current members have. The Committee agreed that a description of alternates needed to be added into the procedures.
- The role of Co-Chairs in moving the rulemaking process forwards and the responsibility for the federal caucus and the tribal caucus on the Committee to each select one Co-Chair.
- The process by which the Rulemaking Committee will take public comments, including from the Osage Minerals Council members who are not members of the Committee. It was decided two public comments per day, 45 minutes each, would work best.
- The process by which members of the public are informed about meeting times and locations of Committee meetings, which would include in the Federal Register, on the Osage Mineral Council website, and in other local Osage County outlets.
- The Committee's decision-making process and rules, including the possibility of re-visiting decisions that have already been agreed upon and options that are available if the Committee is unable to reach a consensus decision. The Committee decided to operate by consensus. If the Committee is unable to reach a consensus and is unable to move the issue or issues forward, the Committee shall appoint at least one member from each caucus, or the Co-Chairs, to seek to deliberate on the issue between meetings, develop a recommendation or options for resolution, and bring such recommendations back to the Committee at the following meeting. If the Committee is unable to reach a final consensus and unable to move the issue or issues forward, the federal and tribal caucuses shall each seek to reach a single position. Thereafter, concurrence between the federal caucus and the tribal caucus on a package of recommendations after discussion at a Committee meeting will constitute final consensus of the Committee.

- The process by which subcommittees of the Rulemaking Committee will operate and how the subcommittees will report back to the larger Committee. The Committee decided that subcommittees will consist of at least two members, one from the federal caucus and one from the tribal caucus. The subcommittee co-leads can invite others to join them as necessary. The subcommittees can have technical advisors who are not part of the subcommittee membership.
- The importance of having open and constructive communication between Committee members.
- The Committee's communications and media strategy. The Committee decided that Committee members will designate a single point of contact for media inquiries and Committee members will draft communications guidelines for review and adoption by the full Rulemaking Committee by the September 27-28 meeting.

Upon completion of discussion, the facilitator agreed to develop a redline-strikeout copy of the procedures and to review this in Day Two of the meeting.

### **Five Key Priority Areas**

The Committee began exploration of five key topics to seek to understand what areas of agreement and disagreement currently exist and to formulate a plan for future action. These five areas, identified prior to the meeting by the Osage Minerals Council, included the following:

- Modernize royalty value and royalty rate for *oil* production;
- Modernize royalty value, royalty rate, and royalty calculations for *gas* production;
- Strengthen drilling obligations for oil lessees;
- Require detailed electronic reporting by all lessees;
- Strengthen oil gauging and gas meter inspection, calibration, and adjustment.

The discussion around each of these five areas is summarized below.

#### *Modernize royalty value and royalty rate for oil production*

Committee members representing Osage mineral interests proposed changing the royalty rate for oil to twenty percent (20%) and using NYMEX or above-NYMEX for royalty value.

Committee members discussed the thinking behind these proposals as well as initial responses from various Committee members. Committee members representing Osage mineral interests noted that oil is plentiful and easy to reach in Osage County and that it is of high quality, and geographically extremely close to the NYMEX area, thereby justifying using NYMEX for royalty valuation. In addition, using NYMEX would simplify royalty calculation. Some Committee

members expressed support for the idea behind the proposals while urging that the Committee wait before making a definitive decision. Some Committee members expressed concern that a 20 percent royalty rate may cause operators to plug some wells during lower price times so it might make sense to allow some flexibility based potentially on NYMEX pricing. Some noted that given the various aspects of Osage oil, that the price should be indexed at a modest value above NYMEX. The Committee discussed how that might be calculated. Committee members representing the Osage mineral interests clarified that royalty rates would not change for existing leases, only for new leases, since existing leases must honor negotiated rates. A member also raised the issue of how royalty rates might be handled if the Osage and a company entered into some kind of joint venture, rather than a more standard royalty contract.

A subcommittee co-led by Andrew Yates, representing the tribal caucus, and Paul Tyler, representing the federal caucus, was created to explore this issue further.

#### *Modernize royalty value, royalty rate, and royalty calculations for gas production*

Committee members representing Osage mineral interests noted that a similar issue exists for natural gas as exists for oil – namely how to value the gas. Keep-whole contracts would simplify valuation of natural gas royalties and would simplify monitoring of extraction activity by the Mineral Council. Some Committee members expressed support for the idea behind the proposals while urging that the Committee wait before making a definitive decision while other Committee members expressed concern about the keep-whole contracts. It was noted, for instance, that gas prices are currently very low. A member noted that while there will be times when prices are low and drilling or pumping activity is diminished, the overall trajectory of oil and gas prices trends upward.

The Committee delegated further discussion of issues relating to modernizing royalty value, royalty rate, and royalty calculations for gas production to the Yates-Tyler co-led subcommittee.

#### *Strengthen drilling obligations for oil lessees*

Committee members representing the Osage Minerals Council also proposed regulations to promote drilling and production by lease-holders such that the latter do not sit on leases and fail to produce. Committee members discussed possible mechanisms to promote production such as accelerating the timeline for the Superintendent to take action and the use of appeal bonds but noted that constraints exist on amending the broader DOI administrative appeals process. A Committee member noted that a key hurdle is monitoring of wells to document which ones are not producing. The facilitator noted that the Committee will need to further define concepts such as prudent operator, drilling operations, and complaint procedure.

A subcommittee co-led by Galen Crum, representing the tribal caucus, and James Stockbridge, representing the federal caucus, was created to explore this issue further.

*Require detailed electronic reporting by all lessees*

Committee members representing the Osage Minerals Council expressed its desire to have digital reporting of production activity by lessees that would be timely and easy to access and sort. Committee members noted that an initial investment in an electronic reporting system would facilitate reporting by leaseholders. Some Committee members cited the NIOGEMS database as a good model. Federal representatives noted that the Department of the Interior has responsibility for updating the current system and putting a robust digital reporting system in place.

A subcommittee co-led by Curtis Bear, representing the tribal caucus, and Stephen Manydeeds, representing the federal caucus, was created to explore this issue further.

*Strengthen oil gauging and gas meter inspection, calibration, and adjustment*

Committee members representing the Osage Minerals Council expressed its desire to have operators report to the Superintendent that they have a load of oil to sell such that the quantity to be sold can be verified before the purchaser is notified. Similarly, these Committee Members expressed their desire to ensure that gas meters are properly calibrated and are being operated properly. Federal members of the Committee explained that the processes laid out by the Committee members from the Osage Minerals Council are likely to be very resource intensive and that the Bureau of Land Management uses less labor-intensive practices to ensure production accountability. A Committee member suggested that a presentation be made to the Committee about how the Bureau of Land Management ensures production accountability.

The Committee delegated further discussion of issues relating to gauging and meter inspection to the Crum-Stockbridge co-led subcommittee. The Committee added Darryl LaCounte to this subcommittee.

**Additional Issues for Discussion**

Committee members discussed a number of additional issues for discussion beyond the five key issues summarized above. The Committee members noted that available BIA resources and constraints will need to be discussed further and relate also to the on-going consultation on these issues also laid out in the Settlement. Committee members noted that, while current resources are limited and calls have been made to increase staffing levels, budgetary

constraints must be kept in mind in order to make sure that the regulations that the Committee creates are realistic and implementable. Committee members also suggested that penalties need further discussion and decided to add that to the gauging and meter inspection topic. Committee members also noted that use of surface water and groundwater are important issues related to new drilling technologies. Federal officials stated that they would need to discuss whether issues relating to water are within the scope of the Rulemaking Committee.

### **Public Comments**

The Committee provided, per the Federal Register notice of this meeting, two public comment periods during the two days of meetings. A summary of these comments is listed below. Please also note attached to this summary is a public comment received in writing prior to the meeting.

Day One included the below public comments.

- Linda Heskett asked for scenarios in which subcommittees would be created and used and scenarios in which the full Rulemaking Committee will make decisions. Heskett also asked whether the Osage Minerals Council or the Osage Nation and the Federal Government are the two sovereignties in question.
- Charles Pratt asked for each Committee member and for the facilitator to identify themselves and provide their credentials. Pratt also inquired about whom on the Committee represents Mr. Kim. He also requested a copy of the final settlement agreement between the federal government and the Osage Nation. Pratt also inquired about how the interests of non-Osage headright holders would be represented. Finally, Pratt requested a copy of the minutes from the meeting.
- David Harrison inquired as to whether leasing of mineral rights on the Osage reservation is currently active and on-going. He also stated that guidelines for leasing need to be put in place because oversight is inadequate, malfeasance has occurred, and the Nation has lost valuable revenues.
- Roy St. John stated that he was unprepared to make a statement because the meeting has no purpose. He stated that the Committee is discussing the leasing of Osage Nation lands whereas the topic of discussion should be the leasing of mineral rights. St. John asserted the need for adopting a standard to resolve questions of conflict of interest and stated that oversight is inadequate and unethical side deals are being cut. He also stated that the Osage Minerals Council has made concessions to some producers and given these producers an unfair advantage. St. John stated that he hopes that the Bureau of Indian Affairs moves to address current unethical practices and that he wants a regulation put in place that will issue a lease on his behalf.

- Randolph Crawford stated that inadequate lead time was given to inform people about the meeting and that information about future meetings should be advertised in the tribal newspaper and on the Osage' public website.
- Nona Roach suggested that a system should be put in place that would make it easier for operators, purchasers, and payers to report and pay and that records should be digitized. The current process is inefficient and causes unnecessary delays. Roach asserted that a standardized gas contract should be created that could be approved quickly. Gauging is also an issue. Electronic monitoring could be compared with run tickets.
- Bob Jackman explained that sometimes operators suspect that their natural gas is being stolen and so they will hire an auditor to investigate the issue. Jackman also stated that records in Osage Country are inaccessible and must be digitized as they have been in other jurisdictions. He also questioned why gas prices are not being posted weekly. Jackman asserted that the State of Oklahoma's dispute resolution system, consisting of twenty-four (24) judges who specialize in minerals disputes, is superior to the system employed on Osage lands.
- LeAnn Ammons asserted that the Committee was selected secretly and undemocratically by men and that not all headright holders are represented. Ammons asserted that Cynthia Boone should have been selected by the Osage Minerals Council to sit on the Rulemaking Committee given her expertise and experience.
- Cynthia Boone expressed her concern that recordings of the meetings were not being made and requested copies of tapes from the meetings. Boone also registered her complaints that inadequate notice was provided in advance of the meeting.
- Jesse Revard Davis cited the intention of the legislation creating the Reservation to maintain a place for members of the Osage tribe to raise their families. As such, the Osage Minerals Council should have greater authority over decisions that are made concerning tribal resources.
- Stephanie Penn requested that intimidating gestures be added to the types of behavior that are not permitted at Committee meetings in the Operating Procedures.

Day Two included the below public comments.

- Nona Roach advocated for an eighteen-month (18) drilling-obligation period over a shorter 12-month obligation period due to the length of time that it takes to perform archeological and historic preservation due diligence. Roach also asserted that fifteen percent (15%) of natural gas is lost due to faulty gas meters.
- Roy St. John inquired as to whether there is a place on the Committee website to submit comments. St. John expressed support for the high level of technical expertise demonstrated by Committee members. Mr. St. John commented on concern about the



current constitutional arrangement between the Osage Minerals Council and the Osage Tribal Council.

- Kim Tackett suggested that Committee members look at a system called KOLAR used by the State of Kansas for electronic filing and lease requests. Tackett also stated that the Osage Agency is understaffed and underresourced at present.
- Bob Jackman stated that a “prudent operator” is one who has operated according to regulations and has avoided causing damage to the property and a “prudent superintendent” is an intelligent person who is aware of what is occurring. Jackman asserted that Bureau of Indian Affairs staff are too few and are lacking in training. He further stated that performance auditing is needed in Pawhuska. He asserted that more than new rules, the Osage need more staff to enforce existing rules.
- Charles Pratt advocated for digitizing reporting processes.
- Cynthia Boone expressed her appreciation for the discussion by the Committee and expressed her concern for the well-being of smaller, independent operators.
- Stephanie Erwin expressed her concern that not all headrights holders are represented by the Osage Minerals Council members that are seated on the Committee and that all Minerals Council members should be included.
- LeAnn Ammons and Stephanie Erwin expressed appreciation for the perspective brought by James Stockbridge.

In response to questions posed during the two public comment periods, the Committee provided the following information.

- The Rulemaking Committee will look at the list of issues to be discussed and will either address each of these as the full Committee or will create a subcommittee to do preliminary work and present recommendations to the full Committee. After recommendations are received from a subcommittee, the full Committee must discuss, make changes, reject the recommendations, or accept them. Subcommittees cannot make decisions on behalf of the Committee.
- The Department of the Interior (the U.S. Government) and the Osage Nation are the two sovereignties represented in the settlement agreement.
- Each Committee member and the facilitator stated their title and affiliations.
- A copy of the final settlement agreement between the federal government and the Osage Nation can be obtained from either the Osage Minerals Council website or a signed copy can be obtained directly from the Osage Minerals Council.
- Vanessa Ray-Hodge, Representative of the Solicitor’s Office, Department of the Interior, will represent the solicitors. The Department of Justice (DOJ), who participated in the Settlement, is not a member nor participant in this regulatory negotiation.

- Nominations were taken during the comment period for Committee members and the Department of the Interior appointed representatives from the Osage Minerals Council to represent Osage mineral interests on the Committee. Non-Osage headright owners can voice their concerns and be recognized through the public comment period. In addition, representatives of the Federal Government sit on the Committee.
- The Committee will make a greater effort to publicize the meetings in advance.
- Notes from every meeting will be reviewed for accuracy and will then be made public. The facilitator will strive to release the minutes to the Committee for review within two weeks, and the Committee members will have one week to review draft notes. After revisions have been made and the minutes approved at the next meeting, minutes will be publicly posted.
- Written comments can be submitted to the Designated Federal Official (DFO) for inclusion in the record of the Rulemaking.
- The solicitor noted that for on-going cases before an administrative appeals body or the Office of Inspector General, the federal government cannot comment to protect the integrity of the case.

### **Timeline and Logistics**

The Committee selected Co-Chairs to work with the facilitator and the Designated Federal Official to help develop plenary meeting agendas, select topics to be addressed, and design Committee meetings. The Co-Chairs selected by each caucus were Galen Crum, OMC, and Darryl LaCounte, BIA.

The Committee then developed a work plan for upcoming meetings. This work plan, which will evolve over time, is described below.

#### Future Meeting Dates and Tentative Topics

<b>Date</b>	<b>Topics</b>
September 27-28, 2012	<ol style="list-style-type: none"> <li>1. Oil &amp; Gas Royalty Rate &amp; indexing</li> <li>2. Strengthening drill obligations</li> <li>3. Electronic reporting</li> <li>4. Status report of production accountability</li> </ol>
October 22-23, 2012	<ol style="list-style-type: none"> <li>1. Production accountability</li> <li>2. Other s.c. work needed</li> <li>3. Info on groundwater/well drilling issue</li> </ol>

November 12-14, 2012	<ol style="list-style-type: none"> <li>1. Production accountability</li> <li>2. Review draft language</li> </ol>
December 13-14, 2012	TBD

### Meeting Locations

Meetings will continue to occur in Pawhuska whenever possible. Scheduling conflicts over limited meeting space in Pawhuska may require that some meetings are held in Tulsa or Bartlesville.

### Meeting Summaries

Meeting summaries will be drafted by the facilitators and distributed to the Committee within two weeks from the next business day after the meeting. The Committee will have one week to review the draft and provide feedback to the facilitators. The meeting summary will be finalized at the next Committee meeting and then posted on the Committee’s website.

### Subcommittee Procedures

Committee members discussed the role of subcommittees. Subcommittees will not have decision-making authority. Subcommittee meetings do not need to be noticed in the Federal Register and will likely occur over the phone. These meetings will be technical working sessions and all information will be shared with the public at plenary meetings. The subcommittees may bring in other members as needed upon approval of the subcommittee co-leads.

### **Closing and Adjournment**

Committee members and other officials present thanked each other for their efforts thus far and expressed optimism for future work together.

The meeting was adjourned 3:40pm.

### **Attachments**

- A. Attendance
- B. Action Items
- C. Materials Distributed to the Committee
- D. Written Public Comments Submitted



**Attachment A: Attendance, Osage Negotiated Rulemaking Committee  
Meeting 1 – August 21-22, 2012**

**COMMITTEE MEMBERS**

<b>Last Name</b>	<b>First Name</b>	<b>Caucus</b>	<b>Principle or Alternate</b>	<b>Date(s) Present</b>
Abbott	Sonny	Osage	P	8/21, 8/22
Bear	Curtis	“	P	8/21, 8/22
Crum	Galen	“	P	8/21, 8/22
Yates	Andrew	“	P	8/21, 8/22
Red Eagle	Myron	“	A	8/21, 8/22
Whitehorn	Dudley	“	A	8/21, 8/22
LaCounte	Darryl	Federal	P	8/21, 8/22
Manydeeds	Stephen	“	P	8/21, 8/22
Stockbridge	James	“	P	8/21, 8/22
Tyler	Paul	“	P	8/21, 8/22

**AGENCY AND OTHER STAFF**

<b>Last Name</b>	<b>First Name</b>	<b>Title</b>	<b>Organization</b>	<b>Date(s) Present</b>
Black	Mike	Director	Bureau of Indian Affairs	8/21, 8/22
Godfrey	Merrill	Legal Representative	Osage Nation	8/21, 8/22
Impson	Robert	Designated Federal Officer	Bureau of Indian Affairs	8/21, 8/22
Mouton	Mitch	Minerals Revenue Specialist	Office of Natural Resource Revenue	8/21, 8/22
Ray-Hodge	Vanessa	Legal Representative	Bureau of Indian Affairs	8/21, 8/22
Streater	Eddie	Alternate Designated Federal Officer	Bureau of Indian Affairs	8/21, 8/22
Tryon	Steve	Field Manager	Bureau of Land Management	8/21, 8/22
Field	Patrick	Facilitator	Consensus Building Institute	8/21, 8/22
Fisher	Robert	Facilitator	DOI Collaborative Action	8/21, 8/22

## MEMBERS OF THE PUBLIC

Last Name	First Name	Public Comment	Date(s) Present
Ammons	LeAnn	Y	8/21, 8/22
Atterberry	Debra	N	8/21, 8/22
Boone	Cynthia	Y	8/21, 8/22
Brown	Gary	N	8/21, 8/22
Crawford	Randolph	Y	8/21
Davis	Jesse Revard	Y	8/21
Erwin	Stephanie	Y	8/21, 8/22
Geurin	Jinx	N	8/21, 8/22
Harrison	David	Y	8/21
Heath	Jim	N	8/21, 8/22
Heskett	Linda	Y	8/21, 8/22
Hessert	Charles	N	8/21
Jackman	Bob	Y	8/21, 8/22
Johnson	Mary	N	8/21, 8/22
McClain	Ray	Y	8/21, 8/22
Metcalf	Kelly	N	8/21
Penn	Stephanie	Y	8/22
Phelps	Floyd	N	8/21, 8/22
Pratt	Charles	Y	8/21, 8/22
Roach	Nona	Y	8/21, 8/22
Robinson	Angela	N	8/21
St. John	Roy	Y	8/21, 8/22
Tackett	Kim	Y	8/21, 8/22
Taylor	Jim	N	8/22
Whitaker	Dudley	N	8/21
Wilson (King)	Julie	N	8/21, 8/22

**Attachment B: Draft Summary of Action Items**  
**Osage Negotiated Rulemaking Committee**  
**Meeting 1 – August 21-22, 2012**

<b>Task</b>	<b>From</b>	<b>Deadline</b>
Approve revised groundrules	CBI	Sept 27
Arrange next meeting location	DFO/Sol.	Early Sept.
Prepare a meeting summary	CBI	Early Sept.
Organize Rate/Royalty Subcommittee	Yates/Tyler	Early Sept.
Organize Drilling Obligations , Gauging and Metering Subcommittee	Crum/Stockbridge	Early Sept.
Organize Electronic Report Subcommittee	Bear/Manydeeds	Early Sept.
Role of water in Committee Discussions	DOI	Early Sept.
Publicize meetings in advance via Federal Register and Osage Minerals website and other means	DOI	Mid Sept.
Organize next detailed meeting agenda	Co-Chairs	Mid-Sept.

**Attachment C: *Materials Distributed***  
**Osage Negotiated Rulemaking Committee**  
**Meeting 1 – August 21-22, 2012**

1. Revised Agenda
2. Final Charter
3. Draft Ground rules
4. Osage mark-up of the current regulations
5. Background slideshow on FACA and Regulatory Negotiation



**Attachment D: *Written Public Comments Received***  
**Osage Negotiated Rulemaking Committee**  
**Meeting 1 – August 21-22, 2012**

August 16, 2012

Mr. Robert Impson                      Robert.impson@bia.gov  
Designated Federal Officer  
Bureau of Indian Affairs

Re:    Establishment of Osage Negotiated Rulemaking Committee

Mr. Impson:

I submit this letter as a request that the following comments read during the public comments portion of the upcoming meetings and be placed in the public record regarding the establishment and commencement of the Osage Negotiated Rulemaking Committee.

On July 26, 2012, Ken Salazar, Secretary, Department of the Interior issued a Certified Statement establishing the Osage Negotiated Rulemaking Committee, which was published in the Federal Register on July 31, 2012. In this publication, Mr. Salazar states the Osage Minerals Council is the governing body of the Osage Mineral Estate.

I state for the record that in accordance with the 1906 Act as Amended, the legal governing body of the Osage Minerals Estate is not the current Osage Minerals Council as recognized by the BIA, but rather, the Osage Tribal Council, including a Chief and Assistant Chief as required by the Osage 1906 Act.

It is a serious violation of my personal property rights that the BIA is beginning a process to negotiate the rules and regulations related to the management and administration of the Osage Minerals Estate with members of a Committee comprised of persons who do not legally represent the members of the Osage Tribe as defined in the Osage 1906 Act. It is my understanding that prior to the establishment of this Committee, the BIA itself questioned the composition of the members of the "Minerals Council" inasmuch as a Principal Chief was not included in the anticipated Negotiated Rule Making Committee.

It is a matter of public record that at present, there is an official Appeal pending before the Interior Board of Indian Appeals, Docket No. 12-101 (Charles O. Tillman, et al vs. Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs), which specifically requests that the BIA conduct an election for the legal independent governing body of the Osage Minerals Estate as established by the 1906 Act as Amended. Please note for the record, Ken Salazar, Secretary, Department of the Interior, and Michael Black, Director of Indian Affairs are fully aware of this pending Appeal before the IBIA.

In addition, your office, and the BIA has been notified by me and many other shareholders with vested personal property interests in the Osage Minerals Estate that they do not believe that their interests are adequately or fairly represented by the limited number of selected members of the Negotiated Rule Making Committee as recently formed.

Your office has also been made aware of the fact that shareholders believe the BIA has violated its fiduciary responsibility to the Osage Shareholders in its interpretation of mooted federal regulations as a result of the enactment of the Osage Nation Constitution.

In his published Establishment of the Osage Negotiated Rulemaking Committee, Mr. Salazar referred to shareholders concerns voiced during the Notice of Intent period as "not relevant to the nomination and appointment of members to the Committee." This same publication further states "In any event, the Osage Nation operates pursuant to a duly enacted Constitution dated March 11, 1996."

For the record, please note, the Osage Nation Constitution was enacted in March of 2006, not 1996, and the BIA's failure to uphold its fiduciary responsibilities to the Osage Shareholders in preparing ballots and reviewing eligible voters lists in the subsequent elections had a direct impact on the election of a full Tribal Council under the 1906 Act and Federal Regulations versus the Minerals Council as recognized by the BIA, whom you state (in error) is the present governing body of the Mineral Estate.

The issue presently on Appeal before the Interior Board of Indian Appeals (Docket No. 12-101) has a direct impact on this Negotiated Rule Making Committee, the members of the Committee, and thus, the potential outcome of any rules to be negotiated between the BIA and the legal members of the Osage Tribe, who are the only persons entitled to funds derived from the minerals interests.

As has been the case in the past with regard to the issues presented in Docket No. 12-101, the BIA continues to violate the law, and simply moves forward without a thorough review of the precise laws and regulations which make the Osage Tribe unique.

According to the settlement agreement entered into between the United States of American and the Osage Tribe, Section 9 of the Agreement specifically stated that this negotiated rule making would be conducted between the BIA and the Osage Tribe, not the legislative government of the Osage Nation. For the record, I voted against the acceptance of this settlement due primarily to the fact that I did not give permission to the Minerals Council to accept the terms of the settlement and I did not agree with the terms of the settlement. That issue aside, the Settlement Agreement stated that the BIA would work with the Osage Tribe in these negotiations.

I state for the record that I believe that the current members of the Osage Minerals Council are government officials of the Osage Nation, and are not the legal governing body of the Osage Minerals Estate as proscribed by the 1906 Act.

In its publication on the Federal Register, July 26, 2012, Ken Salazar states that at the upcoming meetings scheduled for August 21 and 22, the Negotiated Rule Making Committee will be reviewing the existing regulations and topics to be included in the negotiated rulemaking related to 25 C.F.R. part 226.

I specifically request that all of the members of this negotiated rule making committee review the existing regulations at 25 CFR Part 226.

1. **25 CFR Part 226.1 at Definitions, paragraph (b) states:**

(b) **Osage Tribal Council** means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

2. **25 CFR Part 226.2 at Leasing Procedure, Rental and Royalty**

(b) The Superintendent, with the consent of the **Osage Tribal Council**, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the **Osage Tribal Council** and approval of the Superintendent.

Even a cursory review shows that the current regulations speak to the Osage Tribal Council as the legally recognized governing body of the Osage Minerals Estate.

I respectfully request that the members of this Committee fully review the Code of Federal Regulations at 25 CFR Part 90,

**25 CFR PART 90—ELECTION OF OFFICERS OF THE OSAGE TRIBE**

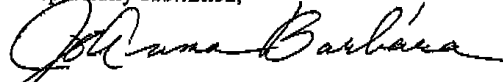
as well as all pleadings presented in IBIA Docket Case No. 12-101, relating to the legal elections process for members of the Osage Tribe and the governing body of the Osage Minerals Estate.

As a legal member of the Osage Tribe of Indians, with vested property rights in the Osage Minerals Estate, I formally request that the members of this Negotiated Rule Making Committee review these issues for the purposes of determining the validity of

this Committee and the legal consequences that will flow from its actions in moving forward in negotiations prior to a decision from the IBIA in Docket Case No 12-101.

I request that this letter and your response in full become a part of the public record on this issue.

Respectfully submitted,



Joanna Barbara, Osage Annuitant

August 17, 2012