Wilson, Letha

From: David Metzger <skerdad@hotmail.com>
Sent: Saturday, October 13, 2012 9:50 PM
To: IA OSAGEREGNEG
Subject: FW: CFR, Title 25, Chapter 1, Part 226

Mr Eddie Streeter,

I ask that this CFR revision include more input from the private sector- producers, purchasers, engineers, geologists, and other qualified parties.

It would not be a fair situation to use NYMEX and Oklahoma Zone 1 as royalty pricing mechanisms for oil and gas producers, because these prices are not available to us.

Early termination of leases should only be initiated for perpetual non-production- not mechanical, modest production, or non-development reasons.

Electronic reporting should be handled internally by the BIA and gauging, meter calibrations, etc. should not increase the labor burdens of the producer.

Thank You,

David B. Metzger
Manager
Boje Oil Company, LLC
P.O. Box 127
Hominy, OK 74035

Wilson, Letha

From: Jerry P. Roop <JRoop@PerkinsEnergyCo.com>
Sent: Thursday, October 11, 2012 1:51 PM
To: IA OSAGEREGNEG
Subject: Proposed Changes to CFR, Title 25, Chapter 1, Part 226 for Osage County, Oklahoma
Attachments: Melvin E. Acott, etal vs. Muskogee Area Director Bureau of Indian Affairs.pdf

Dear Mr. Streater:

I am writing to express some of my concerns about the proposed changes to CFR, Title 25, Chapter 1, Part 226.

First of all, NYMEX and Oklahoma Zone 1 pricing mechanisms are not feasible. These prices are unattainable by producers regardless of where their production is located. Attached is a copy of a letter from the law firm of Riggs, Abney, Neal & Turpen in regards to the case of Melvin E. Acott, et al vs. Muskogee Area Director Bureau of Indian Affairs. You may want to review the fundamentals of this case while considering the proposed changes to the pricing mechanisms.

Early terminations of leases should be made for valid reasons, not based upon someone's perception. Prudent producers desire to obtain the full value from their leasehold.

We are not necessarily opposed to electronic reporting as long as it is done properly, and isn't a burden upon the operator. We currently report electronically to other government agencies. Most of these have set up systems that are user friendly, and the implementation has not cost the user any additional money. From the proposed rules it appears that the burden of reporting is borne by the producer. Many small producers do not have the staff or the expertise to develop software to report to a government agency.

It appears that the proposed changes would place additional labor requirements upon the operator. The cost of the proposed changes should be compared to the benefits to be obtained. For example, will the Osage Agency have a witness for every load of oil moved from a lease. Most operators have their pumpers present when oil is removed from a lease. If not, other adequate controls are in place to prevent the loss of oil. Producers have as much to lose from oil theft as the Osage Agency.

Finally, we would ask that you attempt to obtain more input from producers, purchasers, engineers, geologist, and other industry parties.

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E. BRYAN HENSON
N. KAY BRIDGER-RILEY
Of Counsel

February 17, 1993

RE: Melvin E. Acott, et al.
vs. Muskogee Area Director
Bureau of Indian Affairs

Dear Osage Producers Association Member:

Victory! The Interior Board of Indian Appeals has issued its decision in the above-referenced case reversing the October 21, 1991, decision of the Muskogee Area Director. A copy of the Board's decision is on file in the office of the Osage Producers Association. Please contact Joyce Whitewing if you would like the Association to forward you a photocopy.

In its decision, the Board defined the terms "bona fide selling price," "posted price" and offered price" as those terms are used in 25 CFR Part 226.

1.
<u>Bona Fide Selling Price</u>

> As applied to 25 CFR 226, a "bona fide selling price" is the price, reached as a result of an honest, or "arms-length," transaction, at which a willing oil producer will sell a given quantity and quality of crude oil to a willing buyer.
>
> The [Farmland] floor price [is] a "bona fide selling price" for those producers participating in Farmland's program. It was a price arrived at through an arms-length transaction between a willing seller and a willing buyer under which the seller agreed to provide the buyer with a given quantity and quality of crude oil at a future date.

The "bona fide selling price" can be the basis for the determination of the amount of royalty payable by or for a producer who actually received that selling price, but not for a producer who did not receive that price.

2.
Posted Price

"Posted Price" is a term of art in the oil and gas industry. The term refers to a written statement of crude oil prices constituting an offer to purchase oil at that price circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices. Although the formality of a printed price bulletin such as is published by major purchasers is not necessary for a price to be a valid posted price, the formality of a publicly circulated written notice is necessary. The requirement that the offer be in writing and publicly circulated eliminates oral offers and offers made only to specified producers. Accordingly, other than the published price bulletins of the type traditionally used by major oil companies, written offers to purchase constitute a "posted price" only if they are bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser to all crude oil producers in a field or in an area would constitute a posted price if the letter was a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it represents an agreement between a buyer and a specific producer, not a bona fide offer to purchase from all producers.

> The [Farmland] floor price [is not] a "posted price" because it was not a written offer which was publicly circulated to all producers in the area or field. Instead, . . . the price was available only to those producers who could guarantee delivery of crude oil, in 1,000-barrel lots, to a transfer point acceptable to Farmland.

3. <u>Offered Price</u>

An "offered price" may . . . be defined through general contract law. As stated in <u>Black's Law Dictionary</u>, <u>supra</u> at 975, to make <u>an offer is "to present</u> [something] for acceptance or rejection." The Restatement (Second) of Contracts, § 24 (1981) (Restatement) defines "offer" as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Section 52 of the Restatement provides that "[a]n offer can be accepted only by a person whom it invites to furnish the consideration." Section 29, comment a, of the Restatement further provides that "[t]he offeror is the master of his offer; just as the making of any offer at all can be avoided by appropriate language or other conduct, so the power of acceptance can be narrowly limited." Thus, an "offered price" is subject to the control of the offeror and personal to the offeree.

In the context of 25 CFR Part 226, an "offered price" is the price presented to a producer by a willing buyer for a given quantity and quality of crude oil. The producer can either accept or reject the "offered price." Acceptance results in the establishment of a contract for sale between the parties; rejection results in no agreement. An "offered price" differs from a "posted price" in that an "offered price" need not be made in writing and to all producers.

> A price that is not offered to a producer is not an "offered price" as to that producer within the meaning and intent of 25 CFR 226.11(a)(2).

The Board's decision concluded with the following language:

> The Board concludes that Farmland's floor price was not a "posted price," constituted a "bona fide selling price" only as to those producers who actually received that price, was not an "offered price" as to those producers to whom it was not made available, and was not an "offered price" on the date of purchase. Accordingly, the Area Director improperly concluded that the floor price could be used in the determination of royalties due from all producers on the date of purchase of oil under Farmland's forward purchase program.
>
> Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 21, 1991, decisions of the Muskogee Area Director are reversed.

We have won the battle. If the BIA appeals this decision, however, this matter will continue. It is our hope that the BIA will not file an appeal. We will advise you if they do.

We wish each one of you the best. If you have any questions concerning this matter or if we can assist you in any way, please do not hesitate to contact us.

We have certainly enjoyed representing you on this matter.

Very truly yours,

Benjamin P. Abney

Doug

Douglas A. Wilson
FOR THE FIRM

DAW/bg

Wilson, Letha

From:	Washburn, Kevin
Sent:	Wednesday, October 10, 2012 7:29 PM
To:	All_IA; All IE
Subject:	Message from Kevin K. Washburn, Assistant Secretary-Indian Affairs

(NOTE TO SUPERVISORS: Please ensure that all employees without access to email receive a paper copy of this message.)

October 10, 2012

To: Office of the Assistant Secretary-Indian Affairs Employees

Bureau of Indian Affairs Employees

Bureau of Indian Education Employees

From: Kevin K. Washburn, Assistant Secretary – Indian Affairs

Subject: Introduction

I'm writing to you today to introduce myself as your new Assistant Secretary for Indian Affairs, and to let you know how glad I am to be here. While I'm looking forward to meeting as many of you as possible during my tenure, let me provide some information about myself.

Both my wife and I are members of the Chickasaw Nation of Oklahoma, where I spent much of my childhood growing up in towns within the Nation's former reservation boundaries, including Purcell and Ada. It is through my mother that I received my Chickasaw lineage, and she is still very active as a member of our Elder's Council. As one of three children successfully raised by a single mom, I witnessed and experienced from an early age her struggles and that of other Indian people to receive needed government assistance that often made critical differences in their lives.

My upbringing helped shape my interest in and commitment to a life of public service, and led me through college, law school, the Department of Justice, the National Indian Gaming Commission, and to law school teaching, where I taught and critiqued federal Indian policy. Along the way, I have had some tough jobs. As an Assistant U.S. Attorney in New Mexico, I prosecuted child sexual assault cases and homicides from Navajo, the

Apache Tribes and some of the Pueblos. I have committed most of my adult life to understanding and seeking to reform federal Indian policy so that it serves American Indians and tribes better.

For a person with my interests, there could be no better position from which to further this kind of work than the Assistant Secretary position. I realize that serving as the Assistant Secretary will not be an easy job, in part, because of the breadth and diversity of the constituents Indian Affairs serves. I have a healthy respect for the challenges that I, and all of us, face in doing our jobs during these uncertain and changing times for all federal employees.

I believe, however, that this is a special time of opportunity for Indian Affairs, in large part, because of the many accomplishments of Congress and this Administration within the last four years, and which inspired me to accept the President's nomination. As you know, these accomplishments include the historic Cobell Settlement, the permanent reauthorization of the Indian Health Care Improvement Act, the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act and the Tribal Law and Order Act, among others. Indian Affairs will play a significant role in implementing these new laws.

I strongly believe in public service and I admire those who do this work. In a long career, I have found the federal public servants who work in Indian Country to be capable, diligent, and hard-working. While I am proud to join you as the Assistant Secretary for Indian Affairs and am glad that it took only six weeks from nomination to Senate Confirmation, I firmly believe that the President's and Secretary Salazar's urgency in getting my nomination confirmed says more about you and your work than it does about me personally. The swift confirmation was a strong vote of confidence in the important work you are doing in Indian Country.

I am proud to join an administration that understands the keen importance of our work, and I ask you for your support as we continue carrying out our mission, duties, and responsibilities to the American Indian and Alaska Native people.

Warm Regards,

Kevin K. Washburn

Assistant Secretary – Indian Affairs

Wilson, Letha

From: Scott Ducharme <SDucharme@ppcooil.com>
Sent: Monday, October 08, 2012 3:46 PM
To: IA OSAGEREGNEG
Cc: Robert Knappe
Subject: Revisions to Code of Federal Regulations

Dear Mr. Streater:

As one of your larger producers here in Osage County, Performance Energy Resources, LLC is hereby responding to several of the issues which have come up in recent discussion relating to various changes to the CFR, Title 25, Chapter 1, Part 226 regulations. Please accept this e-mail correspondence as our opinion of your proposed changes.

1. NYMEX and Oklahoma Zone 1 are not feasible royalty pricing mechanisms for oil and gas, respectively because these numbers are unattainable by we producers. If the BIA or the Osage Tribe can collectively receive these prices and allow the producers to share in that pricing, we would be happy to follow their lead, but as it currently is, we cannot achieve such prices.
2. Early terminations of leases should only be initiated for perpetual non-producing, not mechanical, modest production or non-development reasons. It is essential in a county like the Osage, that smaller wells and newly developed wells be protected for the long term value of the Osage Tribes reserves together with those of the producers in the field keeping as much production as possible in a producing status.
3. Electronic reporting is too burdensome for producers and should be handled internally by the BIA. It would be especially hard on the future reserves of small wells if the Gauging, meter calibration, etc. were to increase the current labor requirements of the producer. As you are aware, the future value of oil and gas in the ground depends largely on the "Lease Operating Expense, LOE" portion of the wells future. If the cost become to great for small wells in the Osage, the net future reserves will fall to zero on many wells which can remain profitable for many years. It is extremely important that you calculate the impacts of cost on our wells in here in the Osage prior to some new regulation which will drive current production down!

Mr. Streater, please include more input from the private sector producers in the county before you make recommendations that will change the CFR code. Should you wish to discuss any part of this communication, please feel free to call me at 918-847-2531 at your convenience.

J. Scott DuCharme
President
Performance Energy Resources, LLC

Wilson, Letha

From: Robert Lyon <roblyonjr@att.net>

Sent: Monday, October 08, 2012 9:20 AM
To: IA OSAGEREGNEG
Subject: Changes in CFR, Title 25, Chapter 1, Part 226

Dear Mr. Streater:

The proposed changes in the above referenced CFR suggest that electronic reporting requirements are being considered for Osage County. Currently, producers in Osage County submit by the 25th of each month a lease summary report that includes the following: Osage Contract (lease) #, legal description, purchaser, barrels of oil sold, royalty rate, royalty amount in $, barrels of oil produced, # of wells produced, days produced and date of last production. This is a labor intensive report and most producers submit a handwritten report. To suggest that producers should be submitting a digital copy of this report is ludicrous. Most producers do not have this capability.

Secondly, each tank of oil sold is issued a run ticket by the purchaser. These tickets are generally issued with a hand-held computer. If the goal is to obtain access to run tickets, the purchasers have these tickets on computer. Don't put the burden on producers. Most are individual proprietors that do not have the means to digitize and submit run tickets.

There has been inference that gauging requirements are to be strengthened by putting the burden on the producer to "call in" to the BIA before calling a purchaser to pick up the oil. The producer, and the pumpers working for these entities, already have enough burdens and regulations confronting them. There is a current gauging system in place. If the BIA determines that more needs to be done, hire more gaugers in the field. But don't put the burden on the producers to comply with additional regulations. The producer is already bearing an enormous burden of regulations as it is.

Robert B. Lyon Jr.

Wilson, Letha

From: Robert Lyon <roblyonjr@att.net>
Sent: Thursday, October 04, 2012 3:45 PM
To: IA OSAGEREGNEG
Subject: Changes to CFR, Title 25, Chapter 1, Part 226, Osage County

Dear Mr. Streater:

I wish to voice my concerns about the proposed changes to the above referenced CFR 226, as pertaining to Osage County. I think these changes have been proposed in great haste and should include more input from the private sector - specifically producers, purchasers, engineers, geologists and other qualified parties.

The proposed NYMEX pricing mechanism for oil won't work because none of the producers EVER receive this price. They all receive a percentage of this price. The differential goes to the purchaser - that's how the purchaser makes a profit. If you require the producer to pay a royalty based on a NYMEX price, the effective royalty rate to the producer will increase. The oil business is a cyclical business. As recently as January, 2009, oil was at $28/barrel. With an average break-even cost of $40/barrel, producers were losing money. Oil prices will come down again. They always do. Don't saddle the producer with a royalty burden that is not attainable or affordable.

In addition, I would like to address the discussion of early termination of leases. What if a producer only sells a tank of oil 2-3 times/year. That is still in paying quantities but some have suggested termination after 2 months of perceived non-production. Plus the discussion of forcing operators to drill wells to other targeted formations because an offset well has had success in another horizon or face termination is ludicrous. What about geology and economics? Please consider these points.

Robert B. Lyon Jr.

Wilson, Letha

From:	Jane Meyer <JMeyer@halconresources.com>
Sent:	Thursday, October 04, 2012 2:18 PM
To:	IA OSAGEREGNEG
Subject:	Osage Negotiated Rulemaking Meeting

Please consider this email my RSVP to attend the upcoming meetings on October 22nd and 23rd . Thank you.

HALCÓN
RESOURCES

Jane A. Meyer, CPL , CDOA
Senior Landman
Halcon Resources Corporation
5100 E. Skelly Drive, Suite 650
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Wilson, Letha

From: Tom Lackey <tom.lackey@chaparralenergy.com>
Sent: Wednesday, October 03, 2012 3:03 PM
To: IA OSAGEREGNEG
Subject: Third Public Meeting

I plan on attending the 3rd public meeting October 22 and 23rd .

Tom Lackey
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Oklahoma City, OK 73114
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