

Osage Negotiated Rulemaking Committee
Meeting 2 – September 27-28, 2012
Doubletree Hotel, 6110 S. Yale Avenue, Tulsa OK 74136
Meeting Summary

Consensus Agreements

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

1. The Committee agreed to approve the Operating Protocols for the Committee.
2. The Committee agreed to approve the meeting summary from the first Osage Reg-Neg meeting.

Welcome and Opening of the Meeting

The meeting opened with a prayer and introduction of all Committee members and staff who were present. In addition, Melissa Currey, Superintendent of the Osage Agency, and Steve Tryon, Field Manager in the Oklahoma Field Office of the Bureau of Land Management, introduced themselves. A full attendance list of Committee members, staff, and members of the public who were in attendance can be found in Appendix A.

Patrick Field, facilitator, reviewed the agenda for the two-day meeting and invited members of the public interested in making a public comment to sign up to do so. Committee members reviewed the Operating Protocols for the Committee and a draft of the Meeting Summary from the August Committee meeting. Final, approved versions of both of these documents can be found on the BIA's website for this Negotiated Rulemaking at <http://www.bia.gov/osageregneg/>.

Status Report on Production Accountability

Melissa Currey, Superintendent of the Osage Agency, presented an overview of how production accountability is conducted on Osage lands.

Currey explained that the Osage Minerals Council (OMC) and the Bureau of Indian Affairs (BIA), through the office of the Osage Agency, each have a role to play in maintaining production accountability. The Osage Minerals Council is responsible for setting a schedule for annual lease sales, selecting and hiring an auctioneer, granting or denying leases sold at lease sales,

setting royalty rates, setting the minimum bid for leases, negotiating lease terms for non-lease sale leases, negotiating terms for exploration and development agreement, and granting new concessions (subject to BIA approval). The Bureau of Indian Affairs (BIA), through the office of the Osage Agency, is responsible for maintaining a database of each tract under lease, conducting the lease sale (in coordination with the OMC and the auctioneer), process negotiated and/or concession lease requests, process lease assignments, process division orders, and overseeing well permitting and oversight/monitoring.

In response to Currey's presentation, Committee members asked how many employees of the Osage Agency are engaged in gauging. Currey responded that currently nine employees conduct gauging, but that all accountability positions are being converted to joint field inspector and gauging positions. Currey also noted that new staff are being hired, one to work in the field and another to focus on risk management. Committee members also asked about whether drilling commitments require lessees to begin drilling within 12 months. Currey responded that, while the specific time period is specified in each lease, generally it can be difficult to complete all of the permitting requirements and other procedural obligations in 12 months. Due to the extended period of time it now takes producers to begin drilling, Currey explained that rental payments are collected upfront and that the drilling commitment period had sometimes been extended to 24 months.

Galen Crum, Chairman of the Osage Minerals Council, echoed some of what Currey said about the role of the OMC in ensuring production accountability and explained that the OMC serves as the representative of tribal interests in managing the mineral estate. Crum stated that the OMC provides strategic input to the Superintendent regarding the management of the Osage mineral estate and provided examples of ways in which the OMC does this.

Oil and Gas Royalty Rate and Indexing

Merrill Godfrey, Counsel for the Osage Minerals Council, presented the proposed revisions of the "modernizing royalties for oil and gas production" subcommittee to 25 C.F.R. § 226.11. Although precise modifications to text will be presented in the final version of the regulations that are approved by the Committee, this meeting summary will provide an overview of the themes discussed by the Committee in relation to the subcommittee's recommendations.

The Committee discussed the process by which the Superintendent would inform operators of the average NYMEX daily price for the previous month along with a gravity adjustment scale. In relation to this, Committee members discussed the means by which operators could ascertain

these figures, the additional value of the Superintendent publishing the figures, and the administrative burden that would be imposed on the Superintendent.

The Committee discussed the percentage of the average NYMEX daily price that the Osage Minerals Council will charge towards the 20 percent royalty rate. The Committee discussed the option of including an “escalator” to charge a premium above the NYMEX price and the merits of doing so. The Committee discussed the proposal to charge the higher price of either: the average NYMEX daily price of oil at Cushing, Oklahoma, for the month in which the produced oil was sold, adjusted for gravity, or the actual selling price as adjusted for gravity.

The Committee discussed the mechanics and merits of implementing a graduated gravity adjustment scale. Committee members discussed how a determination would be made regarding where on the adjustment scale a specific lease would fall and what implications adopting a scale of this sort would have for royalties collected on oil produced from Osage lands. The Committee discussed the proposal to institute a gravity adjustment of 0 cents for oil of gravity between 40.0 and 44.9, of 2 cents for each degree or fraction thereof below 40.0 for oil of gravity between 35.0 and 39.9, of 10 cents plus an additional 1.5 cents for each one-tenth of one degree below 35.0 for oil of gravity below 35.0 degrees, and 1.5 cents for each one-tenth of one degree above 44.9 degrees for oil of gravity above 44.9 degrees. The Committee also discussed the proposal to give the Superintendent flexibility to adjust the gravity adjustment scale for oil of gravity below 40.0 degrees or above 44.9 degrees and the bounds of the flexibility that the Superintendent should be given.

The Committee discussed various issues relating to royalties on natural gas. The Committee discussed the proposal to calculate royalty on natural gas based on multiplying the gross proceeds of the gas by the Monthly Index Price in dollars per MMBtu for Oklahoma Zone 1 published by the Office of Natural Resource Revenue (ONRR). The Committee also discussed the proposal to allow the Superintendent to determine a comparable manner in which to calculate the price if ONRR’s Monthly Index Price is not available. The Committee also discussed the point at which gas would be metered and the implications of different points of metering for regulations relating to royalty payments in situations where lessees supply natural gas from one lease to another lease. Finally, Committee members also discussed the frequency by which sampling of natural gas should take place in order to determine the gross proceeds of the gas. Committee members from the Bureau of Land Management agreed to send language pertinent to this last point to the Committee.

The Committee and staff discussed whether the Committee should seek to agree upon revisions to 25 C.F.R. § 226.11 at the meeting or should wait until a future date. The facilitator

advised that it would be preferable to reach consensus on the entire package of regulations as opposed to individual components. A staff member noted that some of the provisions discussed also relate to enforcement and monitoring and so the provisions may need further revision to accommodate those practices. In addition, some provisions would need to be reviewed with the Department of the Interior, thereby indicating that it would be preferable to wait before reaching formal consensus. **The current iteration of 25 C.F.R. § 226.11 is included in Attachment E.** The edits presented are amendments to the previous version of the regulations, as discussed by the Committee, and do not represent the final version of the regulations.

Public Comment

Patrick Field, facilitator, introduced the procedure and ground rules for making public comments. Field noted that individuals who preregistered to make comments would comment first, followed by those who registered to make a comment on the day of the meeting, in the order that registrations were recorded. Each commenter has up to five minutes to speak. Comments should be directed at the Committee as a whole, not at specific members of the Committee. Finally, Field requested that commenters keep their comments germane to the specific purview and work of the Committee.

The following public comments were received during the morning session on Day 1 of the meeting:

- Bob Jackman passed out a report and requested that it be entered into the meeting record; the report is included in Appendix D of this meeting summary. Jackman proceeded to say good morning to the Committee and that it was good to see familiar faces. Jackman stated that he wanted to revisit one of the issues from the previous meeting: the issue of missing gas. Jackman stated that his attorney sent a detailed letter to the Osage Superintendent but did not receive any response. Jackman continued to say that the Office of Inspector General is working on the issue. Jackman called the issue a big, growing, dirty gas bubble, and warned that, when it pops, it will be significant. Jackman explained that the report that he distributed is a management study that presents a model to improve the management of the Osage Mineral Estate and other Osage accounts. The report is about the Oklahoma Commissioners of the Land Office (CLO). Jackman explained that their account is very similar to the Osage account in that it is of a similar size and they also administer mineral rights. Jackman described the report as an apples-to-apples model to look at to improve the management of the Osage estate. Jackman pointed out that the purpose of the Reg-Neg Committee is to improve performance. Jackman stated that he conducted an

evaluation of the Osage mineral estate, and that this is the first time that an evaluation has been conducted of the complete Osage Minerals Estate. He explained that the Osage Minerals Estate is currently valued at \$4 billion. Quick highlights of the report include: the CLO has a large Royalty Compliance Department that is staffed with 7 auditors who were previously involved with oil and gas marketing in the private sector before joining the CLO Compliance Department. The Compliance Department collected \$2.5 million. The Osage do not have anything comparable to the CLO Compliance Department. Jackman noted that a BIA report finds that the Osage estate suffers from understaffing and a lack of timely legal assistance. He continued by saying that there is a change in the wind, in terms of the BIA not meeting its fiduciary responsibilities.

- Nona Roach passed out a written copy of her statement and requested that it be entered into the meeting record; the document is included in Appendix D of this meeting summary. Roach's comments are summarized here and can be read in full in Appendix D. Roach described the process that her client, Encana Corporation, has followed to have its leases on Osage lands approved. She noted that Encana has submitted numerous drilling permits that have not been approved for an average of 52 days. She further explained that the average length of time before a lease is granted final approval is over two months. She proceeded to explain the numerous delays that Encana faces in doing business on Osage lands and emphasized that the system in place on Osage lands is broken and does not work effectively in terms of maximizing the production of oil and natural gas.
- Linda Heskett introduced herself as an Osage shareholder. She said that she was waiting for further information because the Committee had not yet gotten very far. Heskett noted that there is a woman sitting in the audience who previously sat on the Osage Minerals Council and stated that she should be involved in the Reg-Neg process without having to wait to make a public comment to do so. Heskett stated that this woman is also a member of the Minerals Council, and she should be involved in the rulemaking process.
- Charles Pratt said that he is happy to be in front of the Committee. He introduced himself as Charles Pratt, HIV, restricted Osage headrights shareholder. Pratt stated that he is very impressed by the committee. He noted that most committees have not gone very far and stated that he would like the Osage Tribe to be at least on the level of Somalia when it comes to handling oil leases. Pratt stated that he is looking for definition about what the Committee is doing. He said that it is good to see local people on the Committee but that there are a lot of people in the room and he does not know who all of them are. For example, he does not know the gentleman from a law firm that represents him. Pratt stated that he would like to see a mission statement for the Committee. He asked whether the timeframe for the Committee is still 2 years? Pratt

explained that he is placing an emphasis on the word Osage because that is the reason for the Committee's existence. He said that he loves the producers and the BIA, but they are not why the Committee was formed. Pratt stated that the Committee's job is to protect, through its actions, the interests of the Osage trust account. He stated that he is earning \$4,000 per year, and that he is a headright holder. Pratt explained that he is not worried about the producers, because they are making a lot of money already. Pratt stated that the Committee's job is to look out for the interests of the Osage. He reiterated that he would like to know who is on the committee and what their credentials are.

- Cynthia Boone introduced herself as an Osage Minerals Committee member. She explained that she had been asked by her constituents about how they could access meeting minutes and more information about the proceedings of the Committee. Boone said that her constituents also wanted to know more about the Committee's operating procedures and about how they could raise objections. She noted that, although the meeting summaries and other documents were being posted on the BIA's website, some of her constituents do not have computers and cannot access the website. Some are also elderly and do not know how to use computers. They would like to know what is going on.
- Rob Lyon introduced himself as a producer in Osage County and as the current Chair of Osage Producers Commission. Lyon expressed concern about what he had heard earlier in the meeting about how the Committee is proposing to adopt the average NYMEX daily price as the adjusted price for oil royalties. He stated that no producer currently gets the NYMEX price and that the Osage would have the royalty based on a price that the producers do not receive. Lyon explained that the Osage Producers Commission was created because in 1990 a couple of the producers were playing the futures market. Through a market fluke, they got \$130 per barrel, and the OMC determined that all producers would have to pay royalty at that rate, even though other producers did not get anything close to that same price. Lyon said that if the Committee adopts the NYMEX price, that producers would be put at a huge disadvantage. Since producers only get a bonus on the posted price, they will be paying royalties at higher than the stipulated 20% rate. Switching topics, Lyon also stated that many of the producers in the Osage Producers Commission are mom and pop outfits without computers and if the Committee is discussing submitting run tickets to BIA, then the information should be collected from the purchasers, who are already digitally equipped.
- Bob Sullivan thanked the Committee for the opportunity to give some input. He stated that he was not as well prepared as he would like to be. He stated that, as a producer, he has only been in Osage County 15 years. During that time, he and his associates have had a good relationship with the tribe and with BIA. He stated that his main point is

that what the Committee is discussing is a huge signal to the producers and the financial community, those that put up capital – horizontal wells cost \$3M-\$5M. Sullivan stated that he just left a meeting with financiers. Producers do not have the kind of money needed to drill horizontal wells. Sullivan stated that when you decouple what the producers get from what the Osage get, that is a big stop sign to financiers. Mr. Sullivan stated: “What financiers would say: ‘there go those Indians again.’” When you hear that you are going to be paying royalty on more than 20% of the oil, because the pricing is pegged to the NYMEX price, the tribe is sending out a bad signal. Sullivan warned that the proposal also presents a compliance nightmare because it would involve calculating royalty on a basis that is different from what producers receive. Sullivan suggested that the Committee think about what they are doing. He warned that what the Committee is saying is that the Osage are going to keep nipping and gouging. He said that he thought that the Committee is making a big mistake here.

- Jamie Sicking said that he wanted to follow up with what Mr. Sullivan said. Sicking stated that the BIA has a fiduciary duty to the Osage Nation. Eventually, the types of proposals that the Committee is discussing will scare the production out of Osage County. On natural gas, nobody gets close to the ONRR rates. There are no gas pipelines in Osage County, so producers get gouged on transporting gas. Sicking stated that the Superintendent said that they used to be able to permit in 2 hours. He noted that he and his firm have had some experience with it taking way too long. He asked why the rules have changed and said that he thought that it is time to see how the process can be trimmed down. He asked what things can be done simultaneously and suggested that granting a lease and securing a permit could be done simultaneously. Sicking stated that he would never drill unless he has both in hand, and so securing a lease and a permit should be able to done simultaneously. He suggested that the Committee needed to look at what the reality is as opposed to what the reality could be sitting in Washington DC. He explained that the only way that a lease terminates is when somebody else wants to drill and finds out that nobody has drilled on land, and so they file a termination request. Commenting on the Committee’s discussions about paying royalties on gas that is transferred from one lease to another, Sicking stated that typically the way that a lease is written, gas is not allowed to be transferred from one lease to another because different mineral holders are granting leases. But in this case, the Osage are the only mineral holder, so it does not make sense to have that type of clause.
- Matt Beavers said that he represents Devon Energy. He said that he wanted to touch on the NYMEX issue. He explained that Devon negotiates contracts with people who buy their oil and gas. Beavers stated that Devon will get several dollars less than the NYMEX price, and that the price difference will come straight out of Devon’s pockets. He said

that his superiors will see the NYMEX regulation and they will say “stop.” They will not like that one bit. Beavers reiterated that Devon definitely gets less than the NYMEX price and so pegging the royalty to the NYMEX price will cause drilling on Osage lands to stop.

In response to questions and comments posed during the public comment period, the Committee and staff provided the following information:

- A staff member stated that the Department of the Interior will put the roster of Committee members on the website for the Osage Reg-Neg. This person also noted that the mission statement of the Committee is also posted on the website and is included in the notice in the federal register that established the Committee. This person said that they were hesitant to say that the BIA could provide printed copies of all documents to members of the public.
- A staff member stated that specific objections from the public can be raised during the public comment periods and then the Committee can address these as it sees fit. If members of the public have objections regarding the process, these can be raised with the Designated Federal Officer (DFO).
- A Committee member noted that comments raised the issue of what the settlement between the Osage and the BIA calls for. He noted that, in addition to the Reg-Neg Committee, biannual policy consultation meetings are being held between BIA/DOI and the Osage Minerals Council. Policy issues and other systemic problems are addressed during these meetings. These meetings will continue indefinitely. A staff member noted that those meetings are direct government-to-government meetings and thereby are not covered by the Federal Advisory Committee Act (FACA) and are not open to the public.
- The facilitator stated that concerns about accessing documents would be addressed by the Committee and summarized that various producers had expressed concerns about the use of the NYMEX price.

Electronic Reporting

Gary Deters, Program Specialist with the Office of Indian Energy and Economic Development, Division of Energy and Mineral Development, made a presentation about NIOGEMS (National Indian Oil and Gas Evaluation and Management System). He explained that NIOGEMS was developed in the early 1990s to consolidate various natural resource, realty, and geo-technical data into a single management software application. NIOGEMS provides Tribal, BIA, and BLM managers access to well, production, lease, agreement, and other natural resource data on Indian and non-Indian owned lands, both in and around their reservation to monitor oil and gas

and other mineral exploration and development. Deters stated that NIOGEMS facilitates management decisions on energy and mineral leasing and development for optimal use of Tribal resources. He demonstrated how the NIOGEMS system has two user-friendly interfaces, one a data viewer and the second a map viewer. Deters noted that NIOGEMS does not create information nor hold data itself. Instead, it aggregates information from a variety of other sources. This last point is important because data from these other sources could be inaccurate, which would thereby provide inaccurate data to the NIOGEMS user. Deters noted that his office provides training on how to use NIOGEMS. Finally, he provided a live demonstration of the NIOGEMS system for the Committee, including a demonstration of some of the capabilities of the system. A reproduction of the presentation slides used by Deter are posted on the Osage Reg-Neg website.

In response to Deters' presentation, Committee members and staff discussed the following issues:

- The NIOGEMS system currently does not incorporate royalty data or Oil and Gas Operators Report (OGOR) data, although both of these may be included in the future.
- NIOGEMS provides information about allotments indirectly.
- NIOGEMS is accessible to any tribes that are using the system and also to federal agencies supporting tribal functions. The system can greatly enhance existing GIS (Geographic Information System) mapping capabilities.
- Maps can be created in topographic format.
- Some sources of information for Osage County, such as OGOR data and leasing data, would either need to be collected or adapted in order to be incorporated into the NIOGEMS system. Some data would need to be cleaned, and this is doable.
- A Committee member stated that the Osage would like to know more about how run tickets would be entered electronically, would like to receive input from producers on NIOGEMS and electronic reporting, and would like to discuss NIOGEMS and electronic reporting with other tribes before committing to use the NIOGEMS system. Committee members discussed whether it would make more sense to build a separate, parallel electronic reporting system for the Osage or whether it would be better for the Osage to use the NIOGEMS system. Members noted that the Osage want to maintain their uniqueness and as part of this, want to maintain control over their own data and want to manage oil and gas development on Osage lands.
- Members discussed how the Osage could meet these goals, including setting up a server to house data on Osage lands and signing a memorandum of understanding or using other mechanisms to allow the Osage to use the resources of the Office of Natural Resource Revenue (ONRR). Committee members also discussed the value of, the resources required to, keep a system such as NIOGEMS technologically up-to-date and

how the Osage could best meet this need. The Committee members discussed the other tribes that were participating in the NIOGEMS system and the possibility of Osage representatives visiting some of these other tribes to learn more about their use of NIOGEMS, electronic reporting more broadly, and the tribes' experience in working with the Office of Natural Resource Revenue (ONRR). Committee members discussed the tribes that it would be productive for the Osage to visit a tribe using the system. BIA officials noted that the following tribes use the system in some way: Shoshone, Navajo, and Southern Ute, Fort Berthold, Wind River, Apache, UNO, or Jicarilla tribes. The Committee determined that the Wind River tribe would likely be most appropriate for an Minerals Council visit. Different tribes have different arrangement with ONRR, and for example, some of these tribes have signed agreements with ONRR to conduct audits of producers on tribal lands.

Strengthening Drilling Obligations

Paul Tyler, Bureau of Indian Affairs, Office of Natural Resource Revenue (ONRR), made a presentation to the Committee about ONRR's data accuracy efforts. Tyler explained that it is important to ensure that downstream data is accurate because doing so can help to ensure that the Osage are able to collect all of the money that is owed to them. Tyler explained that ONRR receives data from two sources from industry: 2014 forms are where producers report sales and royalty remittances, and Oil and Gas Operators Reports (OGOR) are where operators report production and sales amounts. Tyler explained the ONRR's data-entry systems provide up-front system edits to conduct basic error-checking such that operators can correct basic errors themselves. In addition, the system checks for basic requirements such as timeliness. Tyler proceeded to explain ONRR's use of data mining techniques and compliance reviews to further ensure that the Office is collecting accurate data from producers. ONRR also uses a risk-based approach to decide which producers will be audited. Finally, Tyler explained that enforcement actions consist of civil penalties. He suggested that the simpler that regulations are made, the easier it is for industry to comply and the easier regulations are to enforce.

In response to Tyler's presentation, Committee members and staff discussed the following issues:

- ONRR collects about \$10 billion per year. Many of the tribes have lockboxes so that the royalties collected for their resources goes directly into their account. Different tribes access ONRR data in different ways, with some accessing raw data and others using ONRR's processing tools.
- ONRR's up-front system edits and data-mining systems are tailored for the terms of the different types of leases that exist on different federal lands.

- ONRR has the following staff as of September 12, 2012: 234 auditors, 23 enforcement staff, and 223 financial managers, among others for accounting for production on all federal lands, including but not limited to non-Osage tribal lands. Tyler noted that these figures can assist the Osage understand what comparative level of resources they would need to dedicate to enforcing drilling obligations.
- Tyler's presentation was about royalty compliance, not about the broader topic of production accountability. The Strengthening Drilling Obligations subcommittee will make a presentation about this topic at the next Committee meeting.

Public Comment

Patrick Field, facilitator, introduced the procedure and ground rules for making public comments. Field noted that individuals who preregistered to make comments would comment first, followed by those who registered to make a comment on the day of the meeting, in the order that registrations were recorded. Each commenter has up to five minutes to speak. Comments should be directed at the Committee as a whole, not at specific members of the Committee. Finally, Field requested that commenters keep their comments germane to the specific purview and work of the Committee.

The following public comments were received during the afternoon session on Day 1 of the meeting:

- Nona Roach stated that she would focus on the NYMEX issue. She said that she was not going to speak as someone who works in Osage County but rather from her previous experience working for a purchaser. Roach stated that they never paid anybody the NYMEX rate and they never even got the NYMEX rate in Cushing. If the Committee goes through with the proposal to charge oil royalties at 100% of the NYMEX rate, people are going to start jumping ship. Roach stated that the Osage are already charging 20%, which is the upper limit of what mineral rights holders in the area are charging. She stated that most purchasers pay the extra between the royalty adjustment rate and the market price and make up the difference. She said that she was guessing that the purchasers who are paying the NYMEX rate. Roach warned that the purchasers would start jumping ship. She stated that the Osage have the best oil and gas in the state, and Osage oil has great gravity, but she asked what the Osage would do if they cannot move it. She noted that the tribe has previously tried having its own oil and gas company and has tried having a cooperative agreement with shippers, and neither of them worked. Roach stated that, if the NYMEX proposal goes through, there will not be anyone banging on the door to drill. She stated that drilling on Osage lands is great because there is only one owner, but if the tribe goes through with the NYMEX proposal, no one

will want to drill. Roach stated that the Osage have all the advantages and now they need to digitize production, by using OGOR or another system, but the tribe needs to have a way such that it is easier for producers to access information. Roach reiterated that the Osage will have issues with the NYMEX proposal and will have similar issues with gas. The Osage cannot expect producers to pay the NYMEX rate because people will drill elsewhere.

- Gary Brown introduced himself as the General Manager of the Wireless Automation Group. Brown explained that his firm is installing a wireless system for oil wells in Osage County. Brown explained that the Wireless Automation Group could provide the Osage the ability to obtain accurate information on a timely basis through all phases of the production system. Brown stated that the firm's solutions can help the Osage monitor in-/out-flow levels and record the information in a secured database.
- Stephanie Erwin introduced herself as an Osage headright owner. She stated that everything that she heard over the previous few hours is about money. This is a multi-billion dollar business. Erwin stated that the Osage need more money to operate. She noted that, out of the oil revenue, all of the money except for \$1 million goes to headright holders. Erwin suggested that the tribe should be spending all of the money that it can to invest in the management of the mineral estate and in the tribe. She stated that she did not think that the shareholders would mind if the Minerals Council were accountable for their money with the purpose of maximizing return for the shareholders. She closed by saying that nobody could tell her that there are not oil pirates out there.
- Linda Heskett said that when she read the settlement agreement, including all of the findings and everything to expedite oil and gas business, it seemed to her that everything she read was about the Osage Tribe, and specifically about the shareholders. Because, based on what she was hearing during the meeting, Heskett said that the Committee will be throwing the Osage Nation to the dogs. She said that she did not think that the Committee was working for the shareholders. She recounted that she had land to survey and test for oil. Now there are two oil wells on it. And Heskett recounted that she went on her land, and they ran her off of it. Heskett recounted that she said that she would not get off of her own property. She recounted that when they put those two wells in, they also built a tepee on a bluff overlooking her land. She said that she does not know if they thought it was funny. Heskett asserted that headright owners need to be shown more respect because they are the vested interest. She said that she hoped that the Committee is working for headright owners and that she hoped that the regulations are not already a done deal that will be signed.
- Charles Pratt introduced himself as Charles Pratt, HIV, real Osage. He said that he would like to reiterate what the Committee had already heard. He said: Remember, Osage,

Osage, Osage. He stated that the Committee's mission does not have to do with other parties. He requested that the Committee define itself, on paper, in terms of what its mission is. He noted that everyone in the room has sat in many of these kinds of meetings. Pratt urged the Committee to look at what government management of the Osage estate has done and noted that, in the beginning, there were 2230 headright holders while today that are over 15,000 owners of those headrights. He noted that many of these owners are not Osage. Pratt noted that the 1906 Act says that the mineral estate is for the Osage and for their descendants. Pratt asserted that the US government has been in charge of the Osage losing their headrights and that these same people have been in charge of managing the mineral estate. Pratt stated that the Solicitor's Office is present to protect the interests of the Bureau. The Osage Minerals Council's job is to protect Charles Pratt. He continued by saying that the Solicitor's Office does not have his interest at heart. He closed by saying: "Protect me. I'm Osage."

- Bob Jackman opened by saying "good afternoon." He thanked Tyler for his presentation and noted that he and Tyler agree on something. He said that, until the Osage get ONRR systems installed, more auditors must be put in place and royalty compliance must be done manually until then. Jackman asked that the Committee expedite the adoption of NIOGEMS software as it is a good system that is modern. Jackman stated that explorationists like himself must have it in place. On the NYMEX issue, Jackman stated that he spoke with a respected oil and gas attorney who said that the Osage should implement the proposal if it wants to induce lawsuits because it has a basic legal flaw: the royalty rate will trump the effort to charge on the basis of the NYMEX rate. That is, operators will say that they have to pay a max of 20% royalty. Jackman advised the Committee to check around to see what other entities and states are doing. He said that Texas uses a flexible lease in which, for a three-year lease, 15% royalty is charged the first year, 18% the second year, and 20% the third year. Jackman stated that this system provides an incentive to drill while also allowing time to conduct testing. Changing topics, Jackman said that all of the tribes discussed in relation to using NIOGEMS have a different relationship with the BIA than the Osage have. Osage has a unique relationship. Jackman said that other tribes use BIA as an advisor or service provider. He continued by saying that the elephant in the room is whether the Osage will sign a compact with the BIA to take complete charge over Osage's mineral estate. Jackman closed by saying that the operators are the Osage's long-term dancing partners and requesting that the Committee make it easy for the operators.
- Jamie Siking noted that the whole meeting is about federal regulations. He said that the more federal regulations that the Osage have, the more damage they are doing to the Osage mineral estate. He said that most things should be done at the Osage level, not

the federal level. Sicking stated that federal regulations are awfully hard to change and the Osage lose flexibility. He said that it takes power away from the Osage. Sicking said that “We are all producers and we are all on the same side.” He said that he got the feeling that not everyone feels that way. He said that he would hate to see it become an adversarial situation and that, right now, the Osage and the producers work well together.

Update from Drilling Obligations Subcommittee

The Committee discussed preliminary ideas regarding strengthening drilling obligations, as pertains to 25 C.F.R. § 226.9. Although precise modifications to text will be presented in the final version of the regulations that are approved by the Committee, this meeting summary will provide an overview of the themes discussed by the Committee.

The Committee discussed the length of time that must elapse before a lease terminates if a lessee does not place a well on production. The Committee discussed leaving the current 12-month period of time in place as the condition can be satisfied by either placing a well on production or by paying rent.

The Committee discussed the revision of fixed dollar amounts to indexed amounts throughout the regulations in order to provide for variance in future rates.

The Committee discussed the circumstances under, and the procedure by which, the Superintendent would be able to grant an extension of the primary term of a lease. Around this issue, the Committee discussed the degree of flexibility that the Superintendent would have to make a decision granting an extension and what the role of the Osage Minerals Council in granting the extension would be. The Committee also discussed the charge that the lessee would incur for the granting of an extension.

The Committee discussed the circumstances under which the Superintendent could order further development of leased land by a lessee. The discussion included conversation about “maximizing production” in relation to using “paying quantities” or “prudent operator” standards. The Committee also discussed the use of the term “proven reserves.”

The Committee discussed the time period within which the Superintendent could cancel a lease that is not producing in paying quantities. The Committee discussed adopting a 30-day standard for such cancellation. The Committee also discussed language by which a lease would be self-terminating under certain, pre-defined circumstances, rather than requiring the

Superintendent to take proactive steps to cancel a lease. The Committee also discussed the possibility of bypassing the federal appeals process in the event of termination and agreed that such a bypass would not be possible.

The Committee discussed the concept of the Osage Minerals Council requesting a termination decision by the Superintendent for a lease that is subject to termination.

Public Comment

Patrick Field, facilitator, introduced the procedure and ground rules for making public comments. Field noted that individuals who preregistered to make comments would comment first, followed by those who registered to make a comment on the day of the meeting, in the order that registrations were recorded. Each commenter has up to five minutes to speak. Comments should be directed at the Committee as a whole, not at specific members of the Committee. Finally, Field requested that commenters keep their comments germane to the specific purview and work of the Committee.

The following public comments were received on Day 2 of the meeting:

- Stephanie Erwin introduced herself as an Osage headright owner. She stated that wanted to make a comment about the people who produce 1 barrel per day of oil or 10 barrels per day of oil. Erwin said that, when the price of oil goes down, the large producers leave. When that happens, the mom and pop operators are the only ones left and Osage headright owners get money from them. Erwin asked what the headright owners will do if the Committee creates regulations such that the small producers cannot produce.
- Cynthia Boone thanked a Committee member for highlighting one word in the discussion about the text of the regulations and noted how important one word can be in changing the meaning of a regulation. Boone also addressed the “prudent operator” issue. She said that she has lived in Pawhuska almost her entire life and some of her neighbors are small operators. She said that, if she were a small operator and were surrounded by large operators, she would hate to think that she would have to shut down because the Osage Minerals Council told her that she had to produce more. Boone asked the Committee to remember that, although the larger operators are coming in with horizontal wells, when they hit one or two dry holes, they will leave. She asked the Committee to consider the future very carefully. She thanked the Committee members for all of their work.
- Rob Lyon pointed out that his company has been in Osage County for 79 years, as well as operating in other counties. He said that they know today, tomorrow, and the next

day what to expect. Lyon said that he and his colleagues have personal relationships with the BIA. He said that it “seems like we’re creating a scratch where there’s no itch.” Lyons said that it seems like a bunch of lawyers are creating language for a situation that already works. He also said that he wanted to speak to some things that he heard on the first day of the meeting. He said that, as a producer, on the 25th of every month, he has to submit a report about the number barrels produced, sold, and the royalty amount. Lyon said that all of that data come from the purchaser. He said that, if there is an implication that some of the producers are fudging the numbers, that he is not smart enough to do that, because the purchaser sends the data to the tribe. Lyon said that fudging the number would be impossible unless he is colluding with the purchaser. Lyon said that he could ensure the Committee that, if his sheets are not submitted by the 25th, then he receives a phone call asking where they are. He explained that he has different sheets for different leases. Lyon said that he also wanted to talk about horizontal drilling and the implication that some people are sitting on leases and they are not drilling. Lyon explained that he is a geologist and often times there are good reasons not to drill – the geology or economics does not support drilling. Lyon said that, before the Committee makes regulations on that issue, he hoped that it would consider that.

- Bob Jackman said good morning. He said that he really appreciates the professionalism with which the hearings are being conducted and the reports that are given. He said that his comments would be rather candid, but they are not directed at anyone personally. Jackman stated that everyone is here to improve the trust management of the \$4 billion Osage mineral estate. He said that he thought that the Committee was putting the cart before the horse. He said that everything that the Committee is talking about is to the effect of “the Superintendent will decide or define it.” Jackman stated that it’s imperative to decide on a highly experienced and highly credible executive for a \$4 billion estate. He said that this professional must have many different types of knowledge and expertise. Jackman said that to come to the meeting and hear some of the ideas is like being a pilot and having non-pilots come in and tell them what to do. He said that he could not believe that he is hearing all of the conditions about operators having to pay for extensions. He said, let’s be practical; sometimes it’s *force majeure*. Jackman said that, as a trustee, the BIA has failed to ensure that the Superintendent either has the appropriate knowledge or has a large professional staff. Jackman stated that well spacing is not even being conducted. He continued by saying that is not management of a mineral estate and that needs to be addressed rather than all of the details that the Committee is discussing that are not necessary. Jackman said that you have to look at the top of the management to improve. He said that the Osage Minerals Council is using 1920s measures to run a \$4 billion estate.

- Nona Roach said that Jackman is always a tough act to follow and that she agrees with everything he said. Roach said that it is time for people to realize that the Osage estate is a \$4 billion mineral estate. The Minerals Council needs to realize that this is a business. She said that it is nothing personal. Roach said that she cannot agree more with what Erwin said. Roach said that most people that she represents are mom and pop units. Roach said that, under the terms of what the Committee is discussing, the small producers would be terminated. They cannot get rigs, cannot get pulling units. Roach said that, if the lease is terminated, then it goes under their concession units. She said that it does not make any sense to her. She asked why the Minerals Council would you give up an 8 barrel per day well and terminate that and throw the lease to the majors that may or may not produce it. Roach transitioned to natural gas and said that the theoretical standard is to sample and test every 6 months, but the “unique Osage standard” is every 5 years. Roach said that that should indicate to the Committee that nobody is out in the field calibrating those meters. Roach said that gas is the new oil and we are going to go to that. She said that while the BIA may say something is getting done, she is telling the Committee that it is not done. She continued by saying that 25% contracts are getting done and the BIA approves that contract. Roach said “you got issues, you got problems. To me, you’re choking on a gnat and swallowing a camel.” Roach said that the Committee needed to look at a report on these issues because the Osage are losing \$10 million.
- Linda Heskett said that she wanted to speak about getting this process redefined to have enhanced ability to run this business. She said that the BIA has undercut the Osage with the Superintendent because they are spread pretty thin. Heskett said that cutting the BIA staff did not help the Osage at all because the Osage understand the relationship between the shareholders and the BIA. Heskett said that more people are needed to handle the leases. Heskett said that she has seen from the past that the inability to get the information you need runs rampant sometimes so that the shareholders will not know what is happening and will not know whether the Osage Minerals Council is getting the shareholders more or less. Heskett said that the Superintendent needs a lot of help and is understaffed.

In response to questions and comments posed during the public comment period, the Committee and staff provided the following information:

- A Committee member noted some concerns that he heard during the public comments and said that he is taking it all into consideration. He said that what he is especially concerned about what another Committee members said about the Osage being a society that owns a great amount of land. The Committee member said that some people are keeping their gates closed and that means the drilling people cannot get

through. As a result, less money is being generated and if the operators take the Osage to court, that costs money too. The Committee member said that the Osage would probably need the support of the BIA and the ONRR from time to time. He said that he remembered that from the 1950s when his parents talked about the Superintendent having to do this and that. He said that he remembered when the former chief went to Washington D.C. The Committee member closed by saying that the Osage will need some support in the future from the federal agencies.

- A Committee member asked Rob Lyon the rates that he pays for the mineral leases that he holds on Osage lands, and Lyon responded that none of the leases had 20% royalty rates because they were all older leases.

Other Agenda Items and Work Planning for Future Meetings

- Committee members and staff discussed the possible inclusion of water as an agenda item in the Reg-Neg discussions. Committee members representing Osage mineral interests expressed a desire to include the use of water on Osage lands for drilling as an agenda item. A federal representative responded that the use of water involves complex, unadjudicated questions involving water rights, and the federal government is not prepared to enter into discussions around these issues. An Osage representative stated that the Osage would discuss the issue further amongst themselves to see how to best proceed.
- The Committee reached agreement to approve the meeting summary from the first Osage Reg-Neg meeting.
- The Drilling Obligations subcommittee will endeavor to present draft updated regulatory language for 25 C.F.R. § 226.9 at the October Osage Reg-Neg meeting.
- Members of the Osage Minerals Council intend to visit Wind River on October 18-19 to discuss electronic reporting, coordination with ONRR, and other issues.
- Committee members from the Bureau of Land Management intend to visit Committee members representing Osage mineral interests between October 9 and October 13 to discuss production accountability and financial accountability.
- Revised draft language on royalties for oil and gas production for 25 C.F.R. § 226.11 will be presented at the October meeting.
- The Committee will receive a report from the Production Accountability subcommittee at the October meeting.

After a closing prayer, the Designated Federal Officer adjourned the meeting at 11:30 am.

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 2 – September 27-28, 2012

COMMITTEE MEMBERS

Last Name	First Name	Caucus	Principle or Alternate	Date(s) Present
Abbott	Sonny	Osage	P	9/27, 9/28
Bear	Curtis	"	P	9/27, 9/28
Crum	Galen	"	P	9/27, 9/28
Yates	Andrew	"	P	9/27, 9/28
Core	Melvin	"	P	9/27, 9/28
Red Eagle	Myron	"	A	9/27, 9/28
Whitehorn	Dudley	"	A	9/27, 9/28
LaCounte	Darryl	Federal	P	9/27, 9/28
Manydeeds	Stephen	"	P	9/27, 9/28
Stockbridge	James	"	P	9/27, 9/28
Tyler	Paul	"	P	9/27, 9/28

AGENCY AND OTHER STAFF

Last Name	First Name	Title	Organization	Date(s) Present
Godfrey	Merrill	Legal Representative	Akin Gump, <i>for</i> Osage Minerals Council	9/27, 9/28
Reineke	Dan	Consultant	Consultant <i>for</i> Osage Minerals Council	9/27, 9/28
Currey	Melissa	Superintendent	Osage Agency	9/27, 9/28
Mouton	Mitch	Minerals Revenue Specialist	Office of Natural Resource Revenue	9/27, 9/28
Ray-Hodge	Vanessa	Legal Representative	Department of Interior, Office of the Solicitor	9/27, 9/28
Streater	Eddie	Alternate Designated Federal Officer	Bureau of Indian Affairs	9/27, 9/28
Stills	Candace		Bureau of Indian Affairs	9/27, 9/28
Loftin	Rhonda		Bureau of Indian Affairs	9/27, 9/28
Canady	Cammi		Bureau of Indian Affairs	9/27, 9/28
Deters	Gary	Program Specialist	Bureau of Indian Affairs	9/27
Tryon	Steve	Field Manager	Bureau of Land Management	9/27, 9/28
Field	Patrick	Facilitator	Consensus Building Institute	9/27, 9/28
Kansal	Tushar	Facilitator	Consensus Building Institute	9/27, 9/28

MEMBERS OF THE PUBLIC

Last Name	First Name	Public Comment	Date(s) Present
Ammons	LeAnn	Y	9/27, 9/28
Beavers	Matt	Y	9/27
Bodenchuk	Dennis	N	9/27, 9/28
Boone	Cynthia	Y	9/27, 9/28
Brown	Gary	N	9/27
Dionisio	Monica	N	9/27, 9/28
Erwin	Stephanie	Y	9/27, 9/28
Heskett	Linda	Y	9/27, 9/28
Hurlburt	Charles	N	9/27, 9/28
Jackman	Bob	Y	9/27, 9/28
Jacobson	Deborah	N	9/27, 9/28
Kickingbird	Kirk	N	9/27
Lacy	Heather	N	9/27
Lindsey	Amy	N	9/27, 9/28
Lyon	Rob	Y	9/27, 9/28
Meyer	Jane	N	9/27, 9/28
Phelps	Floyd	N	9/27
Pratt	Charles	Y	9/27, 9/28
Purcell	Jewell	N	9/27
Roach	Nona	Y	9/27, 9/28
Ross	Brian	N	9/27, 9/28
Sears	Clay	N	9/27
Sicking	Jamie	Y	9/27, 9/28
Stong	Patrick	N	9/27, 9/28
Sullivan	Bob	Y	9/27
Thomas	Warren	N	9/27
Treat	Brian	N	9/27
Tryon	Steve	N	9/27
Waller	Everett	N	9/27, 9/28
Wilson	Julie	N	9/27

Attachment B: Draft Summary of Action Items
Osage Negotiated Rulemaking Committee
Meeting 2 – September 27-28, 2012

Task	From	Deadline
Arrange next meeting location	OMC	Early October
Prepare meeting summary	CBI	Mid October
Send language pertinent to the frequency by which sampling of natural gas should take place in order to determine the gross proceeds of the gas to Committee	BLM	Mid October
Visit Wind River to discuss electronic reporting, coordination with ONRR, and other issues	OMC	October 18-19
Prepare draft updated regulatory language for 25 C.F.R. § 226.9 for presentation at the October Osage Reg-Neg meeting	Drilling Obligations subcommittee	October 22
Visit Committee members representing Osage mineral interests to discuss production accountability and financial accountability	BLM	October 9-13
Prepare draft updated regulatory language on royalties for oil and gas production for 25 C.F.R. § 226.11 for presentation at the October Osage Reg-Neg meeting	Royalties for Oil and Gas Production subcommittee	October 22
Prepare a presentation for the Committee to be delivered at the October Osage Reg-Neg meeting	Production Accountability subcommittee	October 22
Publicize meetings in advance via Federal Register and Osage Minerals website and other means	DOI	Mid October
Organize next detailed meeting agenda	Co-Chairs	Mid October
Create and maintain a public repository with hard copies of all Committee materials at a location accessible to the public during business hours (<i>determined after meeting</i>)	OMC	Mid October

Attachment C: *Materials Distributed*
Osage Negotiated Rulemaking Committee
Meeting 2 – September 27-28, 2012

1. Final Agenda
2. Draft Operating Procedures
3. Osage mark-up of the current regulations
4. Draft Meeting Summary from Meeting #1
5. Reproduction of slides from NIOGEMS presentation
6. Diagram titled “ONRR Data Accuracy Efforts”
7. Draft markup of 25 C.F.R. § 226.11
8. Email exchange discussing possible revisions to 25 C.F.R. § 226.9

Attachment D: Written Public Comments Received
Osage Negotiated Rulemaking Committee
Meeting 2 – September 27-28, 2012

Study Presented to US Dept. of Interior's BIA Osage Negotiated Rulemaking Committee – Tulsa, OK 9/27/2012

Model for Improving The Osage Nation Mineral Estate & Other Osage Trust Accounts.
'The Oklahoma's Commissioners of Land Office ' (aka Oklahoma School Land Trust)

Oklahoma Commissioners of Land Office, (CLO) a State Agency managing surface and mineral acreage similar to BIA-Osage Agency. CLO is mandated by State Law to have charge of leasing State owned 1.1 million mineral acres of oil & gas royalty rights in 74 of 77 counties, plus management of proceeds derived. (Osage Mineral Estate is 1.47 million acres) CLO additionally manages and leases 758,000 surface acres in 74 counties owned by Oklahoma. CLO's oil and gas royalty income averages \$50 million annually, Osage Mineral Estate's annual royalty income for 2010-11 averaged \$ 73 million. The Osage Nation Mineral Estate is currently valued at \$ 4 Billion Dollars on *Net Asset Value*.

Comparative Analysis of CLO Departments vs. BIA–Osage Mineral Estate Trust Departments:

CLO's Mineral Management Department [MMD] holds six lease auctions per year. All are 3 yr - 3/16th royalty '*paid up*' leases issued in less than sixty days. Before a tract can be leased, the mineral and leasehold inventories must be rechecked and researched to make sure that the Trust owns it and that it is not currently leased. CLO allows no margin for error. Once the research is done, a tract is advertised. The staff geologist monitors all drilling activity in the State to insure that the trust assets are protected from offset drainage. All properties are monitored to insure that any lease that ceases production is returned to production or plugged, cleaned up and released. Staff evaluates proposals for secondary recovery units and negotiates for terms optimal to the Trust.
OCL MMD Staff: 1- geologist, 3 - accountants. 1- CPA. 5 – Landmen. 1 – Surface Damage Appraiser. 3 – Support Techs. Total: 14 staffers.

Osage MMD Department: 1- Supervisory Petroleum Engineer, 7 Petroleum Engineer Field Staffers, 4 – support staff including archeologist and subsurface Tech... Total: 12 staffers.

CLO Royalty Compliance Department; Collects average annually \$2 million dollars from producers not in compliance in royalty payment requirements. They audit all deductions by operators prior to calculating royalty payments due. CLO has 'No Deductions Allowed' regulations with few exceptions, they collected \$20 million total in recent years: Pre-audit on every royalty paid is checked against producing well's area current oil and gas market prices. CLO has oversight on 5,000 wells and 4,000 leases.

Royalty Compliance Staff: Director & 3 gas and oil contract auditors, several are former industry gas and oil marketers '*that's smart management*' -3 Landmen and 1 support person.

Total Royalty Compliance staff: 7 plus 3 law firms retained for collections and related law suits.

BIA – Osage Agency doesn't have a separate Royalty Compliance Department. Its Supervisory Petroleum Engineer and Gas Accounting Technician plus other accounting techs, which are counted staff in other Osage departments function as Osage Royalty Compliance auditors. A Trust without adequate auditors is primary reason for this Osage Rulemaking Committee.

CLO's Accounting and Investments Department: Uses a private Financial Consulting Firm and eighteen external Investment Managers for equity and income fixed assets investments in their \$ 1 Billion permanent trust fund. Its Accounting & Investments Department is responsible for all accounting and investment functions of the agency, including receipt of all funds, payment of claims, accounting for the fixed assets of the trusts and budgeting plus annual report to public. Oklahoma citizens counter-parts to Osage Nation shareholders. CLO's Accounting and Investment Department totals; 8 employees including CFO.

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Osage Accounting and Investments Department's actual number of full time employees not available to this report, estimated – 5 BIA employees.

CLO Legal Department: The legal division gives advice and counsel to the Commissioners, Secretary, division directors and agency personnel. The legal division also represents the department and Commissioners in all legal matters before State and Federal Courts, administrative matters and other legal proceedings. Staffers: 3 Attorneys and 2 paralegal.

BIA-Osage Legal Department: Uses US Dept of Interior Solicitors Tulsa Office attorneys and one private attorney retained by Osage Mineral Management Council.

CLO Real Estate Management Department; The Real Estate Management division is responsible for the lease, sale and management of 745,000 acres of Trust lands located in 44 counties. Annual income in excess of \$9,800,000 is derived from the leasing and management of these lands. While the majority of this income is from agricultural leases, the division experiences a greater financial rate of return with its commercial leasing program. Staffers: 9 with Commercial property plus 10 staffers covering 74 counties. Total: 19 employees.

BIA-Osage Agency Real Estate Management and Trust Department's number of employees not available to report. A fair comparison between Osage Agency and CLO in this section was difficult due to differences in acreage each manages, and trust accounts managed for individual tribal members

CLO Administrative Department includes Director, Asst. Director, Executive Asst. Personnel Director, Internal Auditor and Director of Communications. Total: 5 Administrators.

BIA – Osage Agency Administrative Branch is involved part time, full time with Mineral Subsurface Leasing, Mineral Lease Management, and Mineral Field Operations. Total: 2-3 Administrators

Summary & Findings: Fair and balanced comparative analysis of different management models utilized at Oklahoma Commissioners of Land Office (CLO) and BIA-Osage Agency was arduous, however certain areas show concerned differences in management styles. Example: CLO employs higher numbers of staffers, many college graduate professionals many having experiences in oil and gas industries. This is reflected in the following.

1. CLO's high collection numbers - \$ 2 million per year average of recovered unpaid royalty funds, where Osage Mineral Trust appears to have recovered zero past-due royalty collections, unless awarded or settled in Federal court.
2. CLO's annual rate of royalty returns from its smaller base of thirty-three percent less mineral acres and lower royalty rate of 18.75% vs. 20% for Osage Mineral Estate, reflects CLO higher fiduciary duties standards. Combining royalty + leasing & concessions (Osage) bonus shows CLO & Osage similar in total annual incomes from managed mineral trusts.
3. CLO's Encumbrance: State of Oklahoma owned minerals are scattered over 74 counties, creates thousands of different abstracts, legal records to examine on 5,000 wells and 4,000 leases. Compared to BIA-Osage Agency Trustee's 1.47 million acres estate having only one contiguous mineral owner to contend with.
4. BIA-Osage Agency Encumbrance: It's charged with administering both leasing and permitting drilling permits, CLO does not issue drilling permits. Plus BIA -Osage management splits their time with other trusts duties, and the daily on-going multi-million dollar petroleum exploration and development / production operations business.

5. CLO's major technical advantage in attracting potential lessees by availability of all digitized data accessible via internet to entire global petroleum industry. i.e. Oklahoma's thousands of well records including logs, production reports, geological maps & reports and seismic data. This comes from multiple public and commercial website sources including Oklahoma Geological Survey. Osage Agency operates an obsolete manual system for access to agency's large important library of Osage County area's geo-tech data: Data which must be reviewed by most operators prior to drilling and leasing. Digitized reports by quick and easy internet access are a must in 21st century.

Findings: BIA-Osage Agency's report card of poor performance is public knowledge from Federal Court awards and settlements. Among other things this sad performance, and continuing, is largely attributed to (A) chronic understaffing. (B) Under-qualified personnel without petroleum industry business expertise in key positions managing Osage's massive Mineral Estate Trust. Executives with professional skills to manage a multi-billion dollar mineral estate are lacking at Osage Agency.

From this report's comparisons and outside observations and numerous creditable individual's examples, another negative contributor is lack of timely accessibility to legal assistance from oil & gas experienced lawyers. There is a 'non user-friendly' atmosphere at the BIA Osage Agency. Alarming differences found between the two managements styles on uses, or lack of in-house professional auditors. The Osage Agency by not using industry and other national mineral trust's accepted 'paid-up lease forms' will continue to cause avoidable tensions and problems.

With change in the wind for BIA-Osage Agency from it not fully meeting its fiduciary duties - then obviously the current BIA Model must be changed, and a temporary fix by replacing some is not a long term solution... A new model is desperately needed - but why reinvent the wheel? See oil and gas producing States of Texas, Oklahoma, New Mexico, Wyoming, and Alaska's Public Mineral Trusts, using their government's time-tested and proven management models improving as they go. Beside Oklahoma's CLO, the Texas School Fund has 12.5 million acres of oil and gas mineral rights, FY 2006 income \$ 590 million for public schools.

Recommendation that officials of BIA-Osage Mineral Trust & Osage Nation's Mineral Management Council officials and Operator's Executives visit one or more State Mineral Trusts to gain new productive management insights. See their websites' annual reports audit disclosures plus officials' phones and email address. i.e. www.clo.ok.gov To further compare professional staffing, see Rockefeller Foundation (\$ 3.6 Billion) Trust's top management listed at www.rockefellerfoundation.org , it's one of US oldest and most successful private trusts. How come Rockefeller Foundation hires cream of the crop while they manage fewer assets than the Osage Nation Mineral Estate Trust?

Positive comments to Osage Mineral Management Council in facilitating potential financial boom to Osage Nation by strict and binding concessions negotiated to allow & encourage horizontal drilling of Mississippi Chat formation. A word of caution: Do not let big discoveries' income mask major management problems, its been the death knell of many an oil and gas operator.

Bob Jackman – Tulsa, Oklahoma
robertjackman@sbcglobal.net

September 27, 2012

Notes: Report volunteered & by Robert 'Bob' Jackman, Independent Oil and Gas Operator / Geologist OSU 57, currently not operating in Osage County, fifteen years of Osage County petroleum industry experiences. Info and figures compiled from websites and companies plus Osage Nation Officials, tribal members living, working in Osage oil and gas industry.

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I have been retained By Encana to assist them in their operations in the Osage. **Encana Corporation** is one of North America's largest natural gas producers

We have over **16 Submitted Drilling Permits** average of **52 Days** not approved as of today.

Lease Tracking Spreadsheet dates requested, timing, for an average of 71 Days for approval from time submitted until final signed copy. Drilling Permit Tracking which averages 73 Days. Note we have already paid \$1,120,000.00 in Lease Bonus' to the Osage. Our Leases and Concession have contributed to your Multi Million Dollar Business and yet we are continually having issues with getting our Leases and thus wells approved and drilled.

Process for a lease if you have a Concession:

1. E-mail Lease Request for the Legals specified in the letter. If we need 3 leases in order to drill the laterals all submitted on same request.
2. Leases timing from 2 days and as long as 59 days with the average being 26 days. Preprinted form with all that is required to be entered on the form: NAME, PRICE, TERM, LEGAL DESCRIPTION, ACREAGE. Lessor could type, sign and submit with the Bonus Payment, just like the Assignment of Leases are done **THIS WOULD GREATLY EXPEDITE THE PROCESS IF WE WERE ALLOWED TO SUBMIT OUR OWN LEASES FOR APPROVAL.** Contract Number is assigned by BIA. Signed by Lessor and submitted with a check.
3. Fed Ex to BIA for signatures of the Chairman of Council and Supt. of the BIA and then returned back to us. The average time for Final Approved Lease is **71 DAYS**. In as little as 42 DAYS or as long as 111 DAYS, almost FOUR MONTHS!

Next Hurdle... DRILLING PERMITS:

1. Lease approved, apply for the Drilling Permit. Concession was negotiated in November 2011 not approved until February 2012 after the Solicitor finally approved it FOUR MONTHS LATER. First Drilling Permit not submitted until 5/8/2012... Six days after receiving our first Lease, THREE MONTHS AFTER Concession was finally approved. We have our own Archeologist and Beetle Analysis done in order to speed up the process, submit the copies required and WAIT.

On Friday September 14th Charles Hurlburt reported:

"...the last batch of permits that he evaluated which were the last ones that we did averaged 37 days from getting them in and getting them out."

2. Drilling Permit approved by BIA to OKC for the 30 day SHIPO waiting period. Is the time required to be 30 days for a comment period like an injection well permit or is it in fact sent to OKC and since they never act on it, just have to wait and see if they are going to act on it for 30 days and then on the 31st day, we get an approved Drilling Permit?

Never know where we are at in the process. Call and inquire we are bothering people, if we don't call we have a Permit that is lost and no one knows it hasn't been submitted because no one knew about it. Waited an average of **72 DAYS** for our permits to be approved. Least was 61 DAYS and most was 100 DAYS. BIA told us on Friday September 14 that their timing is now 37 DAYS. I want to know who sets the curve for that AVERAGE? We were told at the BIA Drilling Training that if everything goes perfectly that we could NOT get a lease faster than 45 DAYS.

3. Drilling Permit Approved then site prep taking from 4 to 6 weeks and one of the newest ones will take 8 weeks to prep. Began drilling our FIRST WELL in the Osage on Sunday September 16... **SEVEN MONTHS AFTER CONCESSION APPROVAL**. Accused of demanding that our permit be placed in front of other permits and then saying that it was not important to have it expedited. What was said was that we did NOT have a drilling rig on standby because we had already sent them to KS. Would have NEVER said that we didn't need that Permit because it is tied to our first well to be drilled **TEN MONTHS after getting our Concession**. Drilling Permit was NOT put ahead of other Permits unless you consider the fact that there were at least seven other Permits on the Supt. Desk that day to be signed. I was contacted at least twice that day by Sharon at Encana asking me if I had gotten that third permit so we could begin the site prep for our first well. I mentioned the delays in the Osage Neg/Reg Comments and afterwards asked what could be done to expedite it? I explained it was on the Supt. desk waiting on a signature. It was brought to the meeting where the Supt. signed it and it was IMMEDIATELY e-mailed to Sharon at Encana in TX so she could order the site prep work. That was August 22, we began site work and on September 16, 25 days later the rig was brought in to start drilling our first well. Does that sound like we didn't need that Permit??? I didn't demand to be taken out of the queue but since the Lease was requested on March the 9th, took **54 DAYS** to be approved and then the Permit took **63 DAYS** for a total of **ONE HUNDRED AND SEVENTEEN DAYS FROM START TO FINISH**, all I can say is our average of **142 DAYS acceptable?** It takes 3 - 5 Days to get a Permit Approved in KS, lower 76 in Oklahoma, walk into the OK Corp Commission with \$100 and about 3:00 in the afternoon, my Permit has been e-mailed to my computer. I realize that there is a 30 Day waiting period from the State of OK, but is there a better way to get that done, faster?

You are trying to manage a Multi Million Dollar Business with 2 people to assist the Operators. We Fed Ex a request for a Seismic Permit and six weeks later when I inquired about it was told that we had never submitted it. We pointed out who signed for it and it was found after searching... **SIX WEEKS later**. Requested two New \$200 Plat Books for Encana over a month ago and was informed on Tuesday of this week that they were ready. BIA is sadly understaffed for the volume of manually entered reports and tracked data that your Multi Million Dollar business is generating. Why can't new people be hired to resolve this deadlock in getting Leases and Drilling Permits approved? It is certainly time to stop doing the same thing over and over and expecting different results... we all know what that defines.

I know that you all know this process works but my perspective is how **IT DOES NOT WORK**. I hope that you have come to a great realization that your system is broken and needs immediate

resuscitation for it to survive the coming wave of even more mountains of paperwork. As a great man has been heard to proclaim "There IS a reason why the government had to pay us \$380 Million!" I am here to tell you that he is a very wise man and is 100% correct on that point.

I thank you for this opportunity to share with you the issues that we are experiencing and if I can do anything differently in order to expedite our processes to further our goal of producing more oil in the shortest amount of time please inform us what we need to change.

Nona Roach, President
Agape & Associates Inc.
PO Box 100
Avant, OK 74001
918-263-4011
918-629-7267

Attachment E: Proposed Revisions to 25 C.F.R. § 226.11
Osage Negotiated Rulemaking Committee
Meeting 2 – September 27-28, 2012

§ 226.11

Royalty payments.

(a) Royalty on oil—(1) Royalty rate. Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 20 percent of the gross proceeds from sales.

(2) Unless the Osage Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the greater of (a) the average NYMEX daily price of oil at Cushing, Oklahoma, for the month in which the produced oil was sold, adjusted for gravity using the scale applicable under paragraph 4; or (b) the actual selling price as adjusted for gravity. The applicable average NYMEX daily price and gravity adjustment scale shall be ~~available from the Superintendent upon request~~ on or before the fifth day of the month following production.

(3) Royalty in kind. Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

(4) Gravity Adjustment of Average Daily NYMEX Price. The gravity adjustment under paragraph 2(a) above shall be a deduction from the price per barrel, as follows: for oil of gravity between 40.0 and 44.9 degrees, zero; for oil of gravity between 35.0 and 39.9 degrees, two cents for each degree or fraction thereof below 40.0; for oil of gravity below 35.0 degrees, ten cents plus an additional one-and-a-half cents for each one-tenth of one degree below 35.0; and for oil of gravity above 44.9 degrees, one-and-a-half cents for each one-tenth of one degree above 44.9. The Superintendent may, on or before the fifth day of the month following production, publish a gravity adjustment ~~scale~~ for oil of gravity below 40.0 degrees or above 44.9 degrees that supersedes this paragraph, but only if the Superintendent determines, based on substantial evidence, that market conditions so warrant.

(b) Royalty on gas. All gas removed from the lease from which it is produced shall be metered ~~before removal~~ unless otherwise approved by the Superintendent and be subject to a royalty of not less than 20 percent of the gross proceeds of the gas. Gross proceeds of the gas shall be determined by multiplying the entire volume of gas at the well (including all liquids) times the heating value of the gas measured in MMBtu as determined by ~~periodic gas~~ analysis at the well. Unless the Osage Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, settlement shall be based on the gross proceeds of the gas times the Monthly Index Price in dollars per MMBtu for Oklahoma Zone 1 published by the Office of Natural Resources Revenue. If that Monthly Index Price ceases to be published and is not otherwise available, the price shall be calculated in a comparable manner to be determined by the Superintendent. If ~~any~~ lessee supplies gas produced from one lease for operation and/or development of ~~any~~ other lease, ~~including another lease held by the same lessee~~, royalty calculated under this section shall be paid on all gas so used.

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