

OSAGE COUNTY CATTLEMEN'S ASSOCIATION

Outline of Position/Requests Re: Oil and Gas Development, Regulation and Enforcement in Osage County February 26-27, 2013 Rulemaking Hearing in Pawhuska, OK

A. COMMENTS ON PROPOSED REVISIONS TO CFR AND PROCESS FOR DEVELOPING SAME

1. **Proposed Revisions to CFR Inadequate.** While we appreciate the initial attention paid by the Rulemaking Committee to surface issues as part of the Rulemaking process, the proposed revisions to 25 CFR 226 (Proposed Revisions), which were just posted on February 22, 2013, are inadequate and fail to sufficiently protect public health, natural resources and property rights in Osage County. The Proposed Revisions do not go far enough in adopting some of the best management practices being used by the industry today nor do they change some of the more egregious provisions of the existing regulations. The full list of comments on the Proposed Revisions is attached hereto as Exhibit "A."

2. **Process for Development of Proposed Revisions Deeply Flawed.** In addition, the development of the Proposed Revisions was rushed and conducted without any comprehensive involvement of the landowners the Proposed Revisions are supposed to protect, nor were state agencies or industry experts familiar with state of the art regulations and practices widely used elsewhere consulted. The Rulemaking Committee denied a landowner request at its January 25, 2013 hearing for a subcommittee to be formed to address the Proposed Revisions.

B. IMMEDIATE STEPS NEEDING TO BE TAKEN TO ADDRESS CRISIS

1. **Moratorium on Flaring of H2S Critically Needed.** Because of the inadequacies of the Proposed Revisions and because of the critical public health threat and environmental damage caused by H2S gas, the BIA should require all associated produced gas currently being flared to be tested for H2S. Further, BIA should issue an immediate six-month moratorium on all flaring and combustion of natural gas containing H2S exceeding 10 ppm to allow regulators and producers time to (a) develop uniform rules and processes for safe disposal of H2S gas from horizontal drilling, (b) hire and train capable and knowledgeable enforcement personnel to vigorously monitor/regulate operations, and (c) conduct H2S safety training for all stakeholders (producers, regulators, surface owners, emergency first responders).

2. **Numerous Steps Needing to be Taken to Protect Fresh Water.** BIA should immediately:

(a) Require all existing water wells within 2,000 feet of new oil or gas wells to be tested by the operators prior to drilling and the information to be made publically available; (b) cease using faulty/outdated maps of freshwater aquifers (BIA has been using faulty maps for over 20 years); (c) coordinate with EPA and USGS to acquire best known information regarding the fresh water aquifers of Osage County; (d) until (c) is accomplished, require all wells to have casing set and cemented to surface at least 200' below that recommended by BIA's outdated maps, or at least 50' below any known freshwater aquifer, whichever is deeper; (e) require operators to report the chemicals used in hydraulic fracturing to be reported to the FracFocus website as has been adopted by most states, is voluntary being done by most prudent operators on Federal lands and is being considered by the BLM; and (f) cease issuing permits for surface and groundwater withdrawals.

3. **Comprehensive Outside Review of Oil and Gas Program Needed.** The BIA/DOI/OMC should invite STRONGER, a non-profit public/private organization created to review oil and gas regulations, to (a) conduct a comprehensive review of the Osage County oil and gas program, industry practices, regulation and

enforcement, (b) share best-in-class regulations and industry practices from other states/entities and producers in place elsewhere, and (c) recommend specific changes to the existing CFR rules. The Rulemaking Committee should accept the STRONGER recommendations for formal public comment and submission for formal adoption.

4. **Multi-Agency Coordination Meeting.** The BIA should host a multi-jurisdictional meeting with OCCA, OK Corporations Commission, EPA, BLM, OK Department of Environmental Quality, US Fish and Wildlife Service, US Geological Survey, OK Department of Wildlife Conservation, OK Department of Natural Resources, and the OK Water Resources Board to clearly delineate each party's respective areas of responsibility going forward following adoption of the STRONGER recommendations.

5. **Pull Enforcement from Conflicted BIA and Give to BLM.** Because the BIA (a) lacks the funding, staffing and technical expertise required to enforce current regulations and (b) suffers from a conflict of interest whereby it is performing both the royalty collection and land protection functions including having head right owners as enforcement personnel, the land protection function should be removed from BIA and given to the BLM. Such bifurcation of the leasing and enforcement roles was implemented with the Interior Department's Minerals Management Service in the aftermath of the BP Gulf Disaster. We should not have to wait until the equivalent of a BP disaster occurs in Osage County for this situation to be fixed.

CONCLUSION: Osage County Needs to Go from Worst to First. The OCCA's goal is for the oil and gas program in Osage County to go from the worst in North America to the best. If the aforementioned steps are taken, we will be well on our way to realizing that goal.