March 4, 2013

Mr. Eddie Streeter
Acting Deputy Regional Director - Trust Services
Bureau of Indian Affairs - Eastern Oklahoma Region
Department of the Interior
3100 W. Peak Blvd.
Muskogee, OK 74401

Mr. Streeter,

Please accept the following comments, as addressed to, and please forward to the Osage Negotiated Rulemaking Committee:

First, whereas the Committee has proposed changes to §226.1.B regarding the responsibilities of the Superintendent, we believe this change allows the Superintendent 'carte blanche' rulemaking and enforcement authority and does not provide in any way for checks and balances among or between the Agency and the Osage Minerals Council. The ability of the Superintendent to make 'carte blanche' changes or adaptations to existing regulations, once adopted, by adding onshore oil and gas orders or notices to lessees, gives undiluted control to one office without requiring said office to be 'kept in check' by the Mineral Estate shareholders, vis-à-vis the Minerals Council.

Second, whereas the Committee has proposed changes to §226.6 regarding Bonds, we believe the proposed changes will debilitate the majority of leaseholders within the Mineral Estate. The majority of leaseholders in the Osage Mineral Estate are small to mid-sized operators and a $10,000 per well bond is beyond realistic requirements to meet the 'cost of plugging a single well.' Wells within the Osage Mineral Estate are of varying depths and bores, and

many require far less than the stated minimum of $10,000 per well to plug. We suggest a bonding schedule that reflects the variability of wells within the Mineral Estate and suggest language such as "…the per well bonding amount shall be defined as an amount not to exceed (a) $3,000 per well less than 1500' depth, (b)$6,000 per well less than 2000' depth, (c)$9,000 per well less than 2500' depth or, (d)$12,000 per well greater than 2500' vertical depth or a horizontal well and shall be determined at the time of permitting by the Superintendent and lessee according to the drilling plan set forth in the 'application for operation or report on wells.'" Bonding amounts as set forth in the proposed rule changes will deter typical companies from drilling new wells, effectively capping current production in the Mineral Estate, and subjecting the Mineral Estate to a continuous downward curve. The Osage Mineral Estate is largely a depleted play and attracting large, corporate producers over the long-term is unlikely. Nevertheless, small and mid-sized companies typical of the majority of producers in the Mineral Estate will continue to drill new wells as long as reasonable economic feasibility exists. Excessive or blanket bonding amounts diminish the economic feasibility of new wells. Further, as proposed, no procedure is written for the release of bonds. We suggest the Committee support new bonding regulations with a clear, straightforward procedure for the release of bonds upon lessee's fulfillment of plugging requirements.

Third, whereas the Committee has proposed significant changes to §226.9 regarding rental, drilling, and production obligations, we believe clarification is required regarding lease terminations. As currently written, inaction by the Superintendent will cause lease termination by law, effectively licensing the Superintendent to "do nothing" irrespective of a request by a lessee. Notwithstanding promises of Bureau management for "guaranteed service," as a producer, we hereby formally request clarification of rules regarding lease termination, notices, and deadlines and suggest language in §226.9(e)(1) "…a lease that does not produce in paying quantities for a period of 180 days shall be terminated…" and in §226.9(e)(2)(B) "Any request for a temporary suspension…made in writing…no later than the 90th day…" A 90 day notice to the Superintendent and a 180 day period prior to termination allow the lessee reasonable time for correcting lease production problems. As an example,

external agencies, such as the Environmental Protection Agency, can often require interminable time to approve salt water injection wells essential to lease production. Such a circumstance precludes desired production. Given such a circumstance, we fully support §226.9(e)(2)(C) allowing the Superintendent the discretion to extend temporary suspension of operations.

Fourth, whereas the Committee has proposed the insertion of §226.9.A regarding drainage, we believe the definition of drainage as provided in the proposed §226.1.p is insufficient and we hereby request clarification. Further, given said definition, the proposed §226.9.A gives substantial power to subjective interpretation by an office which may or may not be qualified to make a determination of drainage as defined. Moreover, drainage away from the Mineral Estate is unlikely except in leases that border the Estate, and all rules proposed by the Committee subject the entirety of the Estate, thus bringing into question the purpose of entering §226.9.A as written. Again, we hereby request further clarification by the Committee prior to the proposed addition of §226.9.A.

Fifth, whereas the Committee has proposed significant changes to §226.11 regarding royalty payments, we believe the pricing of oil for the purpose of calculating royalty due is in no way subject to NYMEX or any other exchange market. Crude oil is a commodity and while traded at exchanges such as NYMEX, the actual price of oil is the price at which oil is sold on a given day from a producer to a purchaser. While using an exchange price may seem to simplify accounting, or may be an attempt to increase royalties paid to the Estate, using an exchange price for the calculation of royalties due is a punishment to producers and therefore decreases incentive to produce. Therefore, we suggest language in §226.11(2) read similar to the proposed changes to §226.11(3)(b). For example, we suggest §226.11(a)(1) read as "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 of the sale of oil." and §226.11 (a)(2) read, "Should the Osage Minerals Council elect to take royalty in kind, settlement price per barrel of oil shall be the greater of (a) the average NYMEX daily price at Cushing, Oklahoma for the month in which the oil was produced, adjusted for gravity using

the scale applicable under paragraph 4 below, or (b) the actual selling price as adjusted for gravity…" Again, we believe expecting lessees to submit royalty payments on a conjured pricing figure will substantially diminish producers' incentive to produce for the Mineral Estate which will ultimately reduce total revenue rather than achieve the minimal increase the Committee could expect from the proposed royalty rate calculation schedule. Furthermore, we believe changing royalty calculations is tantamount to an unlawful violation of lease terms and will subject the lessor to litigation.

Sixth, whereas the Committee has proposed changes to §226.13 regarding royalty payments and reports, we believe that §226.13(b) should read "Lessee or his authorized shall furnish certified monthly reports…" as run tickets are produced by the purchaser of oil and other products subject to royalty payment.

Seventh, whereas the Committee has proposed changes to §226.19 regarding the use of surface land, we believe that no further changes to this section are required and consent to the modernization of commencement fees. Much public comment has been made regarding the use of surface lands within the Mineral Estate. Historically, since the Act of June 28, 1906, and following the revisions to §226 in 1974 and 1982, and for the preservation of the Mineral Estate, use of surface land has always been subject to the requirements of lessees and his authorized representatives. Procedures are and have historically been in place for the settlement of surface damages, as provided in §226.20 and §226.21 and no further changes should be made to these procedures. Changes to these procedures and/or alterations to the process will damage the ability of a lessee to produce products subject to royalty payment in a timely fashion. One public comment suggested that the Superintendent require a signed surface use agreement between lessee and surface owner and full payment of damages prior to commencement of activities. This suggestion is impracticable as the total damage for which a compensatory obligation may develop is unknown prior to completion and production commencing, rather than commencement of drilling activities. Moreover, an addition such as this allows the surface owner the ability to impede the drilling process by indefinitely avoiding settling a surface damage agreement.

We strongly urge the Committee to use caution when considering changes to §226.19.

Eighth, whereas the Committee has proposed the insertion §226.38(b) regarding informing the Superintendent of the readiness of a tank of oil for removal, we believe this requirement will be cumbersome and burdensome for the Superintendent as well as the lessee. Furthermore, no system exists to facilitate this requirement in the Superintendent's office, nor does Agency funding exist for the implementation of such a process. Correspondingly, the Agency currently receives purchaser's run tickets and lessee's production reports and can corroborate total sales and production.

Ninth, whereas the Committee has proposed an addition to §226.42, regarding penalties for violation of lease terms, we believe funds from penalties should be targeted to repair damages caused by violators for the benefit of the Mineral Estate and surface owners. The proposed changes appear to have funds from penalties disposed to the general fund of the Agency which allows discretionary use for purposes other than those which may benefit the Mineral Estate or surface owners.

The suggestions of the Committee to the Secretary of the Interior will tremendously impact the decisions of producers in the Mineral Estate. Moreover, prudent changes to regulations will maintain the Osage Minerals Council's authority and oversight, particularly regarding §226.1.B. We urge the Committee to consider the aggregate potential cost increases in drilling and operating leases in the Mineral Estate resultant of proposed regulations and the vivid likelihood of the Superintendent's ability to have carte blanche over onshore orders and notices to lessees without vital checks and balances.

As a company, we currently produce nearly 10% of the Osage Mineral Estate's daily production. The average per well daily production across our company is about 1.5 barrels. Nevertheless, we are a typical Osage Mineral Estate producer and hold a significant land position within the Estate, thanks in part to the Osage Minerals Council's conveyance of a sizeable concession. As servicers for the Mineral Estate

and its shareholders, we must reiterate the simple truth that the oil and gas production industry is ruled by economic principles. Further, we believe it is important to understand that drilling for and producing hydrocarbons is a high risk investment. The principles of investment and rate of return rule the daily decisions of most lessees. Our company is at home in Osage County, and has been for over 30 years. With your sound judgment, we can continue to produce the Mineral Estate's royalty producing products, continue to create high-paying jobs, and continue to stimulate the economies of Osage and surrounding counties.

The Osage Negotiated Rulemaking Committee holds a great responsibility in the coming weeks. Your responsibility extends not only to Osage Mineral Estate shareholders. Your responsibility is also to surface owners, lessees, and more importantly, the entire economy of the Osage Nation, Osage County, and many surrounding communities. The oil and gas industry surrounding the Osage Mineral Estate supports countless hardworking families whose livelihoods are in your hands. Please carefully consider the economic impact of your decisions.

Regards,

J. Scott DuCharme

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