

TRANSCRIPT OF PROCEEDINGS OF THE
OSAGE TRIBAL CONSULTATION MEETING
JULY 17 THROUGH JULY 19, 2023
OSAGE CASINO - TULSA
TULSA, OKLAHOMA

REPORTED BY: TRENA K. BLOYE, CSR

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1 JULY 17, 2023, COMMENCEMENT OF CONSULTATION MEETING

2 (Proceedings commenced on July 17, 2023,

3 at 9:37 a.m. as follows:)

4 MR. STREATER: All right. Good morning
5 everybody. It's a little past 9:30 so we'll go ahead
6 and get started for this consultation of the proposed
7 Osage rule. I appreciate everyone for attending. Thank
8 you, Chief Standing Bear for coming this morning. I
9 know it's kind of a hectic week last week, but we
10 certainly appreciate you coming and getting your
11 valuable input as we go forward with the proposed rule.

12 What we're going to do first for the
13 court reporter is go around the room and say our name,
14 introduce ourselves. And then when you have a comment,
15 go ahead and say your name for her so she can get it on
16 record as well when she gets comments.

17 So, Kristen, if you want to start.

18 MS. KOKINOS: Why don't we start --

19 MR. STREATER: Well, we can start with
20 Chief Standing Bear and go --

21 MS. KOKINOS: -- with the chief and go
22 around that way.

23 CHIEF STANDING BEAR: All right.
24 Geoffrey Standing Bear, Principal Chief, Osage Nation.

25 MR. SCHERER: Kyle Scherer, counsel for

1 Osage Nation.

2 MR. PATTERSON: Good morning. Clint
3 Patterson, Osage Nation Attorney General.

4 MS. KOKINOS: We can't hear you. Make
5 sure when you're speaking -- so the orange lights will
6 stay on. They are muting and unmuting us from the main
7 board so we don't mute or unmute ourselves.

8 You need to hit your button again, Candy.
9 And then make sure you have the microphone --

10 MS. THOMAS: Candy Thomas, Director of
11 Strategic Planning and Self Governance.

12 MS. KOKINOS: Thanks.

13 MS. HAYMAN: Jann Hayman, Secretary of
14 National Resources for the Osage Nation.

15 MR. WALKER: Craig Walker, Director of
16 National Resources for the Osage Nation.

17 MR. BURNETT: Lee Burnett, Bureau of
18 Indian Affairs, Field Operations.

19 MS. WILLIAMSON: Tracy Williamson, Deputy
20 Regional Director with the Eastern Oklahoma Regional
21 Office.

22 MS. WELLS: Wendy Wells, the interim --
23 my voice is pretty loud. Wendy Wells, the interim
24 Acting Superintendent for Osage Agency.

25 MS. CANADY: Cammi Canady. I'm currently

1 the Acting Deputy Superintendent for the Osage Agency.

2 MR. COAKLEY: Matt Coakley, ONRR, royalty
3 evaluation guidance.

4 MR. JAY: Jeff Jay, Office of the
5 Solicitor.

6 MS. LOCKLER: April Lockler, Program
7 Manager, Data Intake Solution and Coordination with
8 ONRR.

9 MR. MOUTON: Mitch Mouton. I am Tribal
10 Liaison with ONRR.

11 MR. BABST: Charles Babst. I'm with the
12 Solicitor's Office in Tulsa.

13 MR. STEVENS: Yeah. Charles --

14 MR. BABST: Oh, I'm sorry.

15 MR. STEVENS: -- skipped me, but that's
16 okay. Good morning everyone. I'm Bart Stevens. I'm
17 the Deputy Field Director of Field Operations for the
18 BIA.

19 MR. STREATER: Eddie Streater, Eastern
20 Oklahoma Regional Office, Regional Director of the
21 office.

22 MS. KOKINOS: Kristen Kokinos. I'm a
23 Senior Attorney in the Solicitor's Office in the Indian
24 Trust Litigation Office.

25 Chief Standing Bear, we'll turn it over

1 to you if there is anything you would like to start
2 with.

3 CHIEF STANDING BEAR: Thank you, Kristen.
4 Director Streater, thank you, and all the federal
5 partners that are here.

6 Osage Nation, as a federally recognized
7 tribe, has a Constitution approved by the Osage people
8 in 2006. Under that Constitution we have an Osage
9 Minerals Council, as many of you know. That Osage
10 Minerals Council is described as an agency of the Osage
11 Nation. And I would say it's something like a, in a
12 broad view, the Bureau of Indian Affairs being an agency
13 within the Department of Interior and the United States.
14 The Osage Minerals Council, much like the BIA, is
15 charged with the day-to-day management of the Osage
16 Minerals Estate under our Constitution.

17 The Osage Nation Legislature, the
18 Congress, and my office are charged with the
19 environmental issues, the protection of natural
20 resources, and all the matters that Dr. Jann Hayman, our
21 Secretary of Natural Resources will present in a minute.

22 And we also have with us Kyle Scherer, an
23 attorney with the Venable Law Firm, which is our
24 attorneys, as he announced. We have David Mullan also
25 working with Kyle.

1 The -- those will be our two main
2 presenters. The Osage Minerals Council I understand has
3 a separate schedule they are working with, Mr. Streater,
4 your office and the BIA. But as far as our comments we
5 wanted to pick up where we were at the last
6 consultation, and we did not have Kyle here at the time.

7 So before I turn it over to Kyle first,
8 if that would be a good order of things, I would like to
9 point out from a broader, very broad perspective my view
10 and the view of many other Osages who have been talking
11 about oil and gas in the Osage with BIA for many years
12 in that we worked with the Superintendent and others
13 over 30 years ago to try to point out what we consider
14 deficiencies. One of the main deficiencies that has
15 been consistent is the lack of funding.

16 And I'd like to also, before I go
17 further, introduce Assistant Principal Chief R.J.
18 Walker. He has arrived here. R J., we just started.

19 MR. WALKER: Sorry, Chief. Good morning.

20 Always late, never straight; right?

21 Yeah. Good morning.

22 CHIEF STANDING BEAR: So, I was just
23 about ready to talk about stuff that happened right
24 before you guys grew up, your generation.

25 MR. WALKER: I'm older than I look.

1 CHIEF STANDING BEAR: To a point when you
2 think about how long we've been doing this, entire
3 careers at the BIA have been fulfilled and those folks
4 are in retirement now.

5 So -- and I'll have to preface a lot of
6 this with when I -- in 1989 and 1990 when I ran for
7 Assistant Chief position, now held by Assistant Chief
8 Walker, in 1990 we were sworn into office the Chief,
9 Assistant Chief, and eight Council members, the oath was
10 delivered by the Superintendent of the Osage Indian
11 Agency, and that oath was the oath of the BIA employee.
12 And there was no mention of Osage Tribe, as we were
13 called at the time, no mention of our tribal existence,
14 our treaty relations. It was all from the
15 Superintendent and the oath of office, which I was
16 somewhat familiar with having been, for a brief time, a
17 former BIA employee myself. It was one of the papers
18 that we signed.

19 So that was the attitude I saw close up,
20 somewhat shocking. I had, by 1990, already worked with
21 many other tribes as an attorney and tribes that were
22 fully engaged in contracting under 93-638 at the time.
23 And to see my own tribe receive their oaths from the BIA
24 Superintendent was quite a shock. And I almost didn't
25 sign up, but I thought, well, I ran for office and I

1 have an obligation to those who voted me into office.

2 In those days those were headright owners.

3 Now we have come a long way in many
4 respects since then. But I do want to say during that
5 four-year term I had an opportunity to ask the Solicitor
6 at Osage Agency -- we had a full-time Solicitor, some of
7 you may remember, at Agency. We even had two for a
8 while.

9 And I was pointed out to the Council
10 where the solicitor's client responsibility was. And at
11 the time there was a belief that the Solicitor
12 represented the Osage Council, Chief, Assistant Chief.
13 And I asked the Solicitor if there was a conflict
14 between the Osage Tribe and the United States of
15 America, which side would he be on? And without
16 blinking he gave the -- well, to attorneys the obvious
17 answer -- well, I would represent the United States of
18 America. And then I turned to my Council and said,
19 "Well, you see?" And they all just looked at me like,
20 "Well, yes, of course."

21 So that was the attitude. And I'm not
22 saying that was good or bad. I'm just saying as a fact,
23 that was the attitude that I started with in tribal
24 government. Now, during that time the Chief and Council
25 and I pointed out, well, we believe were deficiencies in

1 operations.

2 We also had the 1906 Act we went by and
3 the regulations to which this day we're still talking
4 about 33 years later. And I -- I know we hired
5 consultants, accountants. And then eventually after I
6 left office that work was continuing, and we ended up
7 with the predecessor memorandums and the Inspector
8 General report of 2014 saying the Agency needs sweeping
9 reforms.

10 Now, within that document when you go
11 back and look at it, which we're still working off of in
12 some respects, I take issue with the statements on page
13 5, which is Findings. And just from the very beginning
14 about what are the weaknesses at the Osage Agency, and
15 it talks about the significant external influences over
16 agency policies and procedures that inhibit effective
17 management, including existence of additional oversight
18 and accountability by the Council. That would be the
19 Osage Tribe, now Osage Nation.

20 And then it talks about we found, in the
21 next paragraph under "sweeping changes needed," we found
22 that the general mindset of the Agency is that it cannot
23 effect change in the oil and gas program because it is
24 bound by the 1906 Act and 25 CFR, part 226, which we are
25 here again on, which exclude the Osage Nation from other

1 Indian oil and gas regulations.

2 We found, however, that BIA has the
3 ultimate responsibility to manage the Osage Nation's oil
4 and gas program under the act and 25 CFR, part 226.

5 Now, this is a fundamental problem in
6 that our Osage Constitution says otherwise. It says our
7 Osage Minerals Council has that responsibility, and here
8 we have the Inspector General saying they have found
9 that it is the Bureau of Indian Affairs. Whatever we
10 do, we have to overcome and resolve that contradiction.

11 And, under the principles of the federal
12 trust responsibility, that resolution of that conflict
13 needs to be that in favor of the Osage Nation as stated
14 in our treaties and as stated in relevant federal law.
15 So, we believe our Constitution and our views for the
16 Osage people trump the views of the Department of
17 Interior.

18 So, with that, Mr. Director, I would like
19 to turn it over to Kyle Scherer. Thank you.

20 MR. SCHERER: Good morning. So, I just
21 wanted to first put on the record that the Nation is
22 here to consult because we -- because we feel like
23 there's an obligation to do so and we are committed to
24 meaningful government-to-government consultation.

25 However, I think just for the record it

1 needs to be pointed out that, you know, these dates
2 were, in the view of the Nation, unilaterally proposed
3 by the Bureau of Indian Affairs. The Osage Minerals
4 Council, the regulatory body that has the expertise for
5 the Nation is not here and they, in the Nation's view,
6 proposed a reasonable, sort of reasonable alternative
7 dates that were essentially two-and-a-half weeks later
8 within the public comment period, which did not end
9 until August 18th, the proposed dates were August 2nd
10 and August 3rd, and those dates were flatly rejected.
11 And, you know, I just think that needs to be said on the
12 record.

13 You know, I think -- I think sort of, you
14 know, this is I think where we could benefit from some
15 dialogue or some discussion. It's difficult for me to
16 understand how that sort of flat rejection of a
17 reasonable alternative is consistent with the
18 department's consultation policy.

19 And, you know, as I understand the
20 consultation policy, which is now within the
21 Departmental Manual and the Indian Affairs Manual, you
22 know, it talks about -- it talks about consensus seeking
23 and that when, you know, a project or a proposed rule
24 impacts a tribe's land or trust resource that that is,
25 you know, so fundamental that that is sort of like the

1 bullseye view in the chart, right, for those -- you
2 know, for those instances where -- where agencies should
3 strive for consensus with tribes for a mutually desired
4 outcome.

5 And could you talk a little bit about
6 sort of how we got here? Because I think, again, in the
7 Nation's view, two-and-a-half weeks later within the
8 public comment period seems reasonable. And looking
9 through the past transcript it also seems like, you
10 know, there was, you know, back in March at least an
11 interest from folks around this table for proceeding
12 with a series of consultations. And I know that, you
13 know, that needed to be taken back. But, you know,
14 that's not where we are today. And so, I think it would
15 be helpful for the record and for us to understand sort
16 of how we got to this place.

17 MR. STREATER: Well, where we got to this
18 place, you know, we have -- since the negotiated rule
19 was taken back and we fulfilled our responsibility under
20 the settlement act with the negotiated rule, we did
21 complete it with the Nation and that Minerals Council at
22 the time it was in place, as it went forward we were
23 sued on that and we took the rule back. But we
24 fulfilled the government's obligation.

25 However, with the OIG report and everyone

1 in senior leadership in Indian Affairs knowing that the
2 regulations still needed to be addressed, that didn't go
3 away with our taking back the negotiated rule, and
4 that's when we started the Agency rulemaking process to
5 address these concerns.

6 You know, I don't think anyone around
7 this table would debate that a regulation hasn't been
8 even minorly updated in 47 years, it needed to happen.
9 Today is a different world than when the rule was
10 promulgated. Actually, before the CFR was even in place
11 the core of 226 was in place before there was even a CFR
12 regulation.

13 So that -- that's the framework of where
14 we went forward. We've been working on those for over
15 three years now. During that time the Minerals Council
16 has been provided -- and the Minerals Council is not
17 here to comment, but I can tell you from our side they
18 were provided a draft copy, they were asked to come to
19 the table many times during that time which we will --
20 we have a record of. Not once, not twice, not three or
21 four times. Many more than that.

22 And that's why we're at the point now
23 where we're moving forward with the rule. The Assistant
24 Secretary has been very involved in this, even to the
25 point where he came and sat down and had a meeting with

1 the Chief and the Minerals Council both. That wasn't a
2 consultation. That was just a meeting to kind of show
3 that, you know, he was here to listen. And during that
4 time I think that he put forth what he was looking for
5 for going forward with this. Some substantive change --
6 some substantive input from the Minerals Council, which
7 we still haven't received.

8 But his path forward, that is his path
9 forward. Bart and I are here to sit down and consult as
10 meaningfully as we can with everyone. His schedule --
11 I'm not saying he's not (sic.) committed to more
12 consultation or he's not committed to more consultation.
13 He's just not conveyed that to me so I can't comment on
14 that.

15 But that's why we are here now, is in the
16 past, we have been led to believe that Minerals Council
17 would consult and then at the last minute chose not to.
18 And that's pushed this out further and further and
19 further, and we're at the point now where we just have
20 to move forward.

21 Public comment is officially back open,
22 as you mentioned. So, anything that's submitted we will
23 certainly look at, scrutinize, and hopefully we'll get
24 some good ideas going forward what the true issue is
25 here.

1 And I think that's -- I'll be frank with
2 everybody, I think that's the frustration of -- of our
3 team is we don't know what the issue is. We -- we have
4 not been told what those issues are, and we try. At the
5 prior consultation with the Minerals Council, bonding
6 was brought up and we hope to have some talk about that,
7 but we have not seen anything from the Minerals Council
8 saying this would be a better option.

9 We -- for bonding we reached out to
10 surrounding areas, tried to walk that tight rope, that
11 balance of what's good for industry as opposed to what
12 protects the Osage Nation and the Osage headright
13 owners. It's not easy. Bonding is an issue, state,
14 federal, everywhere, where it's really tough to thread
15 that needle on what good bonding is. And I think we
16 have three good options.

17 The Minerals Council, when they commented
18 on it, it turned out, which was the gentleman, the
19 Council person said he hadn't read it so he didn't know,
20 but he just grasped one part. There was two other
21 options that producers are able to utilize for bonding,
22 not just that one.

23 And I think that's what it boils down to
24 is just getting some substantive things that we can work
25 through. We have this great staff from ONRR here. They

1 had brought up some stuff in that consultation which I
2 wasn't even aware of with regards to the NYMEX pricing
3 and the offset for transportation costs. All of those
4 things can be addressed.

5 But those were the only two things. We
6 met for all day that day, almost eight hours, and those
7 were the only two things that were discussed the whole
8 day. And we didn't get any other type of input and
9 haven't got any type of input.

10 So that's kind of where I stand here, and
11 I think, Bart would -- you'd like to --

12 MR. STEVENS: Okay, yeah. Just to
13 address some of the issues and concerns that were
14 brought forward with how we got to or why we're at this
15 point. Definitely there were, as Eddie indicated, a lot
16 of communication and documented communication of date
17 proposals and next steps and so forth.

18 And I want to address first of all that,
19 me being fairly new to this process with Osage and the
20 Osage Minerals Council in saying in our previous
21 consultation that I thought that that was something that
22 would be viable to continue more dialogue.

23 Certainly we ended that meeting that day
24 by clarifying my comments, and I think I even retracted
25 part of that, indicating that we needed to talk to the

1 Assistant Secretary and then identify what next steps,
2 knowing full and well that this has been a process
3 that's been ongoing for some time, and with that the
4 changes made and the direction rolled down. So taking
5 ownership of my comments and then making that adjustment
6 and clarifying by the end of the day is what was done.

7 We certainly have, as Eddie indicated,
8 experienced some delays in responses, getting an
9 understanding of where the Osage Minerals Council sits
10 on specific issues and being able to address those has
11 been frustrating a little bit, but, nonetheless, we
12 persevere and continue to come forward and, according to
13 Bryan Newland, being able to gather again and have
14 another consultation, which it's still unknown if that's
15 going to happen or not happen in the next several days.
16 So we stand ready to listen and to understand better.

17 Going back, as Eddie indicated as well,
18 with the last consultation not really getting anything
19 in terms of what the Osage Minerals Council's issues are
20 with the proposed rule was -- was just that. I know
21 there's been -- and Kristen can probably pick this apart
22 better than I can -- the ongoing communication back and
23 forth with the request for a red line version was one,
24 another comment that was said in the last consultation
25 that they -- the Osage Minerals Council really wasn't

1 familiar with the proposed rule. I think it was stated
2 it wasn't read thoroughly at that point.

3 So again, over the course of time that
4 we've been doing this the BIA stands ready, again, to be
5 here to listen and to consult meaningfully to better
6 understand what those issues and concerns are. And I
7 certainly want to thank the ONRR team for being here as
8 well to help us unpack that.

9 And that's just what I wanted to add. I
10 don't know, Kristen, if you want to unpack or get,
11 again, the ongoing communication on how we got to these
12 dates because we were standing ready, too. Is it going
13 to happen? Is it not going to happen? Do we lock
14 things in or not?

15 So again, I think we could all, at least
16 on the BIA side, do a better job at how we communicate
17 dates, maybe, but getting them to lock in. But, again,
18 Kristen has that detailed information.

19 MS. KOKINOS: Sure. So, there's been a
20 lot of back and forth between the BIA and myself and the
21 Nation and the Minerals Council trying to get scheduling
22 together both for the dates in March and for the present
23 dates.

24 As both Eddie and Bart noted, at the
25 consultation in March, both the Nation and Minerals

1 Council asked for additional consultation with us before
2 a final rule is addressed. And we generally agreed and
3 said we would take that back to the Assistant Secretary
4 who did agree to hold additional consultation.

5 We offered to consult in June and the
6 Nation and Minerals Council had said they were not
7 available on the date that we proposed. And the
8 Minerals Council, in particular, responded and noted
9 they didn't think one additional day was sufficient,
10 that having the consultation be held virtually was not
11 adequate, and they specifically asked that we hold
12 additional sessions in July.

13 And the Assistant Secretary took that
14 into consideration and so we offered to hold three
15 sessions in July, which would be today, tomorrow, and
16 Wednesday, based on the Minerals Council's request, and
17 we're certainly disappointed to hear that the Minerals
18 Council doesn't intend to show up.

19 As Eddie and Bart noted, I can't speak to
20 whether or not the Assistant Secretary intends to hold
21 additional consultation beyond July because that hasn't
22 been relayed to us. So, there is, unfortunately, just
23 nothing additional I can share on that point.

24 MR. SCHERER: Sure. And I certainly
25 appreciate everyone being here as well. I just -- I do

1 feel like -- and I will just say it again and we can
2 move on. It does seem like, you know, just reading the
3 correspondence, reading one correspondence back to
4 Director Streater, I think the Nation's view, and I
5 think it's still the view today, that more would be
6 accomplished with OMC participation than without, and I
7 think that those dates of August 2nd and 3rd were a
8 reasonable counterproposal by the Minerals Council.

9 And the fact that they are not here I
10 think that is -- that is unfortunate because I think
11 they bring a lot to the table on these specific points.
12 Right? And I am -- you know, I'm glad to hear that
13 Secretary Newland and others may perhaps be interested
14 in additional consultation because I do think that would
15 be helpful.

16 And I think the last thing that I will
17 say on that is that I do think, from the Nation's
18 perspective, I think it's important that any regulatory
19 changes are developed in conformity with the
20 Department's consultation requirements, including the
21 Department's consensus-seeking model.

22 It's stated requests to be deferential to
23 tribal regulatory proposals. And, if necessary, the
24 dispute resolution requirements that are outlined in the
25 revised consultation policy if consensus can't be

1 reached,

2 So, moving on to other issues. So I'm
3 interested in, you know, your interpretation or your
4 response to the procedural matters related to Executive
5 Order 12866 and 13563. That Executive Order directs
6 agencies to consider regulatory approaches that reduce
7 burdens and maintain flexibility and freedom of choice
8 for the public where those approaches are relevant,
9 feasible, and consistent with regulatory objectives.

10 You know, as I read the proposed rule,
11 you know, it's 270 pages by centa (phonetic) -- by 70
12 pages; right? We've all heard those statistics. But it
13 seems very difficult for me to understand how the new
14 regulations would reduce burdens on the producers, you
15 know, or others that are impacted by these proposed
16 regulations.

17 So could -- could someone comment briefly
18 on sort of how that -- how you understand these
19 regulations to be reducing burdens consistent with the
20 executive orders?

21 MS. KOKINOS: Sure, so, I think Executive
22 Order 12866 talks about improvements in our regulatory
23 system for the purpose of reducing uncertainty and using
24 the least burdensome tools to achieve that. And so a
25 big goal of the proposed rule was to reduce uncertainty

1 and to improve clarification. We know there are some
2 blind spots in the current regs, especially with respect
3 to measurement requirements, things that the Minerals
4 Council has brought up both in bi-annual consultations
5 as well as in other forums.

6 And we think that that clarification,
7 especially under the proposed rule, makes a big
8 difference in providing certainty both as to the
9 obligations of the Superintendent and ONRR under the new
10 rule, but also as to clarifying what lessees'
11 obligations are for measurement and other items relating
12 to production accountability, which are critical to
13 ensuring that the Nation and headright holders receive
14 the full value of their production and that it's
15 measured properly and things of that nature.

16 There's really not many different tools
17 for achieving regulatory ends. The rulemaking process
18 is simply what it is. But I think that we have
19 certainly tried to improve the regulations through
20 significant changes in clarity and certainty. That was
21 certainly a goal, it was something that I think during
22 the negotiating rulemaking process the parties
23 identified as being problematic, that there were so many
24 places where there were either overbroad or unclear
25 statements in the regulations.

1 Which, for example, there were questions
2 about orders relating to measurement. Because there
3 were no real measurement regs really, it caused issues
4 with whether or not operators had to submit certain gas
5 analysis reports because there wasn't any statement on
6 that basis in the current regs. And so those are things
7 we tried to look at.

8 And with respect to Executive Order
9 13563, I think that's really whether or not the
10 regulations are based on the best available science and
11 data. And we believe that they are. We looked, like
12 Eddie said, for bonding, we looked at other areas, both
13 in Oklahoma and elsewhere, that have a high volume of
14 oil and gas to look to what they are doing for issues
15 like bonding. We looked at the department's regulations
16 that govern the rest of Indian country with respect to
17 oil and gas to see which parts of those, if any or all,
18 can be used to help improve processes here,

19 So, we think that the proposed rule was
20 in the spirit of both of those Executive Orders.

21 MR. SCHERER: Sure. So, I think I
22 understand the answer. Just to clarify, though, is the
23 view that the proposed rule reduces burdens on producers
24 or is the thought that these are sort of balancing, you
25 know -- these are criteria that need to be balanced and

1 improving predictability and reducing uncertainty is
2 something that need to be balanced against the
3 regulatory burdens?

4 MS. KOKINOS: The latter.

5 MR. STREATER: Certainly. And, you know,
6 I think that executive order, we can't abdicate our
7 trust responsibility by making something just easier.
8 We certainly go into the process saying we're going to
9 make it more burdensome on the producers.

10 Some things that they will find
11 burdensome at this time, the rest of the United States
12 feels like that's the best way to do it. You know, they
13 are having to do a mountain of written reports instead
14 of electronic reports like everybody else does.

15 And it's those type of things that right
16 now they think that's -- you know, we've been told
17 repeatedly that a lot of people don't have computers.
18 Well, ONRR is going to set up -- they will have a kiosk
19 at the Agency and we will actually have somebody there
20 in the early stages of this helping everybody input that
21 information. And, in the end, that's always going to be
22 an easier ask than having somebody sit down and do it
23 all written in today's society. You know, it is
24 certainly a balance.

25 MS. KOKINOS: But there are also things,

1 too, I mean, just in terms of the burdens, I know if
2 you're thinking about just day-to-day operational
3 burdens where, you know, there are changes that will be
4 made to the Agency that will actually help folks, too.
5 For example, right now everything is paper. These
6 operators have to do everything by hand, everything
7 submitted in paper, in hard copy. Certain types of
8 things under the new regs will be able to be submitted
9 via e-mail. Not everything has to have an original
10 copy. I mean, there would be a lot more electronic
11 submission of data which, for certain operators, would
12 be easier, and we know that there are certain operators
13 who think it would be more difficult. But we're doing
14 as much as we can to have the folks at the Agency on the
15 ground to help those folks get all of that stuff
16 inputted. But it will both reduce burdens on operators
17 and the Agency to be able to have much more electronic
18 submission of data, both for permits and other
19 processes.

20 And so, like we said, we're trying to
21 balance the need for major changes in clarity because
22 these regulations are so old, plus the updates in
23 technology, plus trying to streamline processes for both
24 operators and the Agency, with the need for the
25 additional information the Agency currently doesn't get

1 from operators, which is really critical to production
2 accountability.

3 MR. SCHERER: So, I guess maybe moving on
4 or -- or dovetailing off in that response, you know, I
5 heard both in the transcript last time and even just
6 some of the responses just now that certain operators
7 think this and certain operators think that.

8 Is that -- is that information that's
9 being gleaned from the Agency or have you actually
10 spoken to producers, operators that say, "Hey, these
11 regulations are going to work for us," or "we don't like
12 this, we like that." We know that's not, you know, the
13 Nation's role, but there are other producers on the
14 Minerals Council that could have provided that valuable
15 feedback. And, you know, I think that's another reason
16 why it's important to consult with Minerals Council who
17 regularly deals with the leasing and the operations of
18 the Osage Mineral Estate.

19 Because, you know, as you are very well
20 aware, you know, these American Petroleum Institute
21 policies and guidelines and procedures, they may work
22 for 80 percent or 90 percent of the rest of Indian
23 country, but Osage and the Osage Mineral Estate is very
24 unique and that's reflected in the 1906 Act. And, you
25 know, time and again if Congress had chosen to create a

1 uniform oil and gas policy for the entirety of Indian
2 country, it could have chosen to do so.

3 But it continued to use the 1906 Act as,
4 you know, something that was very different than
5 everywhere else. And so I'm curious a little bit on
6 what conversations you had with producers that you have
7 a level of confidence that what you do on Southern Ute
8 or Navaho Nation or anywhere else is actually sort of
9 the best outcome for the minerals.

10 MS. KOKINOS: Sure. So, in terms of
11 electronic data in particular, the Agency constantly
12 receives requests in the accounting branch from
13 operators. They don't like that the current forms are
14 paper and they are not fillable electrically. They
15 don't like that they can't submit them electronically.
16 It's something that the Agency has received complaints
17 on for years from various operators.

18 So, while there are some who really are
19 concerned about starting electronic reporting, there are
20 lots who are very upset that we don't even have fillable
21 forms. And, so, there are things like that that will
22 change.

23 We got quite a bit of feedback from
24 operators during the public comment period, both for
25 this rulemaking and the prior negotiated rulemaking.

1 And they also attended the public meeting where they had
2 a significant amount of input. We know they have
3 concerns about various processes.

4 Unfortunately, I mean, I think as Eddie
5 noted, our trust responsibilities is to the Nation and
6 to headright holders and not to operators. And so, we
7 hear their concerns and we certainly want to try and
8 ease the potential burdens on them from changes. Change
9 is hard and, unfortunately here, because the regulations
10 haven't been updated in so long, there are a lot of
11 changes that have to be made at once as opposed to
12 incrementally over time, and I think that makes it more
13 difficult as well.

14 But we are hearing them. We did receive
15 their public comments. All of that is being considered.
16 And we would love to get additional feedback from the
17 Minerals Council because of their day-to-day engagement
18 with operators. It's something we were really hoping
19 for in the public comment process as well as in the
20 prior consultation and this consultation.

21 MR. STREATER: And during that
22 consultation and going back, our bi-annual consultations
23 we do -- we take this as a whole, the producer that is
24 most vocal on the Minerals Council, he -- I would say in
25 that eight hours he held the floor for seven hours

1 talking about producer issues during the last
2 consultation. So, we certainly do that. And in the
3 bi-annual consultations we hear these things, too.

4 Like I said, this has been ongoing for,
5 this particular agency rulemaking, for three years now.
6 And we have sat down many, many times and heard the
7 issues so we know how -- obviously the uniqueness of it.
8 But, yeah, we have certainly had input from the
9 producers association and they had a fairly -- a fairly
10 good podium at the public comment meeting. They were
11 there in force.

12 MS. KOKINOS: Oh, I'm sorry. One more
13 thing. I apologize. Kristen Kokinos. I've been guilty
14 of not saying my name before I start speaking. I
15 apologize.

16 With respect to the operators -- oh, now
17 I lost my train of thought. Shoot.

18 MS. LOCKLER: But we got your name.

19 MS. KOKINOS: But you did get my name.

20 MR. SCHERER: Well, I think that that's
21 helpful. While I do think that there is -- I think
22 reading the transcript from the last -- the last meeting
23 in March I do think the back and forth that was
24 discussed regarding bonding was very helpful in having
25 the Minerals Council and the Nation better understand

1 the three different options which seem to be
2 clarifying -- (Inaudible) -- you know, initial comments.

3 And I do think there are opportunities
4 like that to continue where the Minerals Council, really
5 the Nation's sort of experts on this can walk through
6 all of their concerns and have that type of dialogue
7 that you had on bonding about other concerns that they
8 have.

9 Regarding the producers, I just want to
10 make sure that I'm understanding. You said you have
11 heard from producers. I am -- maybe you don't have
12 these numbers off the top of your head, but are you
13 hearing from sort of all producers or just sort of the
14 very large producers? Because I can certainly see a
15 situation where very large producers might really like
16 electronic reporting or they might -- they really might
17 be advocating for certain changes. But the 200 or so
18 mom and pop --

19 MS. KOKINOS: Um-hum.

20 MR. SCHERER: -- producers might have
21 very, very different views. And I hope that some of
22 these changes aren't sort of at the request or sort of
23 consistent with what these larger producers might want
24 at the expense of the mom and pop.

25 MS. KOKINOS: Sure. No, we got a lot of

1 public comments from a variety of sizes of operators
2 that we're familiar with within the Mineral Estate,
3 including quite a few mom and pops. So, there was a
4 pretty broad spectrum.

5 I remember what I was going to say now.
6 With respect to, you know, hearing operators and, you
7 know, the Minerals Council at the prior consultation,
8 NYMEX pricing was certainly a heavy focus of public
9 comments plus the Minerals Council's concerns. And
10 virtually, you know, every size of operator, at least
11 one or two of them made those comments, you know,
12 regarding concerns or questions relating to NYMEX.

13 When we just reopened the public comment
14 period on the proposed rule to accept additional
15 comments, because of those comments we received, both
16 from operators and Minerals Council, we explicitly
17 requested specific feedback relating to transportation
18 costs in Osage County because of the information
19 Councilman Revard and other public commenters provided.
20 We're looking and hoping to receive that information
21 from operators regarding their transportation costs so
22 that we can take a harder look at the NYMEX pricing and
23 determine whether there is a sufficient basis for a
24 percentage reduction or some other type of reduction to
25 account for the differences based on transportation

1 costs.

2 So, we are hearing what the operators are
3 saying, as well as the Council. And the NYMEX was such
4 a heavy focus we're soliciting specific feedback on an
5 issue that we think bears directly upon our
6 consideration of pricing in Osage.

7 So, I know the Minerals Council is not
8 here today, but if you do speak with them, if you could
9 highlight that for them, too. I mean, if Councilman
10 Revard or other operators that are close to the Council
11 would be willing to submit the information we're
12 requesting, we need that information in order to
13 consider the reduction.

14 Transportation costs are not currently
15 reported because of the nature of the current
16 regulations. The more information we have from the
17 Council and operators on that point, the easier it is
18 for us to consider ways to make adjustments consistent
19 with their concerns.

20 MR. SCHERER: Sure.

21 MR. BABST: If I could for just a second.
22 This is Charles Babst with the Solicitor's Office in
23 Tulsa. The Solicitor's Office in Tulsa, in response to
24 your specific question about size and various operators,
25 I think the evidence indicates -- well, first of all,

1 let's be clear about what we're talking about with mom
2 and pops. I don't know that "mom and pop" is a
3 definition in the regulations. Perhaps it should be,
4 but I don't think it is.

5 What we're talking about with mom and
6 pops are local, mostly, in Osage County, independent
7 family-owned oil companies that have been up there and
8 tend to be sort of on the smaller end of the food chain
9 in terms of oil and gas production in Osage County in
10 the Osage Mineral Estate. And it is in response to
11 their concerns about computer submitted forms that we
12 have made the decision to put a kiosk in the Agency in
13 order for them to be able -- if they don't have a
14 computer, they would have access to that by just driving
15 into Pawhuska. And we hope that that, you know, takes
16 into consideration their concerns regarding that kind of
17 equipment deficiency.

18 And I want to make it clear that we -- we
19 understand the very important role that small
20 independent family owned operators in the Osage Mineral
21 Estate play and we hope to be as supportive of them as
22 we can be.

23 MR. STREATER: I think she knows who I
24 am. Eddie Streater.

25 Yeah, and also the Osage Producers

1 Association, they are very robust. They have over 200
2 members and they submit comments directly for all of
3 their members, which are the small operators as well as
4 your big -- big -- I would say big three because
5 between, you know, the top five produce over 75 percent
6 of the oil in Osage County. The rest of the 200 and
7 whatever operators produce about, you know, split up
8 between them, maybe 15 percent.

9 MR. WALKER: Fifteen?

10 MR. STREATER: Maybe.

11 MR. WALKER: Wow.

12 MR. STREATER: I think the -- I think the
13 top 10 produce almost 90 percent maybe. Kristen knows.

14 MS. KOKINOS: Yeah. It's a little -- the
15 top 10 operators for oil produce about 80 percent of oil
16 from the Mineral Estate, but there are approximately 250
17 oil lessees.

18 CHIEF STANDING BEAR: Yeah. The current
19 production rate now is less than .7 barrel a day.

20 MS. KOKINOS: For the small -- for the
21 small operators.

22 MR. STREATER: Per well, per well.

23 CHIEF STANDING BEAR: Kyle.

24 MR. WALKER: Okay.

25 MR. SCHERER: So can I just -- I don't

1 want to jump around too much here, but just out of
2 curiosity -- and I could see this going both ways. But
3 as one example, like the revision to 226.20, right, this
4 is the provision that removes the oil-only leases or gas
5 only leases and requires, sort of, everything beyond the
6 effective date to be a combination oil and gas lease.
7 Was that something that was, sort of, part of the net
8 reg? Was that something that you heard from producers
9 were requesting? Was this an effort to just sort of
10 conform everything with what was going on in the rest of
11 Indian country? Sort of like a maybe the -- maybe your
12 response to that might be insightful on how the process
13 is working on many of these other -- other --

14 MS. KOKINOS: Sure. It's not something
15 that we had many comments on this time around. It was
16 something that I know was discussed by the negotiated
17 rulemaking committee during the prior rulemaking,
18 because, as you mentioned, elsewhere in Indian country
19 these oil-only/gas-only leases don't really exist.
20 Everything is considered oil and/or gas lease.

21 It's more administratively efficient.
22 And I think it's also easier for operators. It doesn't
23 necessarily cost the operators more to have an oil
24 and/or gas lease than it would just an oil-only or
25 gas-only lease. Most of the leases these days are both

1 oil and gas.

2 But this would not impact any of the
3 leases that are already in force. So, operators who
4 have current oil-only or gas-only leases would still be
5 able to maintain those leases without any change to
6 their operations.

7 MR. SCHERER: Sure, sure. I understand
8 that. My only point was that, you know, me sitting here
9 I don't know whether that makes new leases more costly
10 such that it would negatively impact any prospective
11 producers' interest in having a lease. So I was just
12 curious whether you have engaged with producers on that.
13 And it sounds like -- it sounds like there weren't many
14 comments, but maybe the answer is no.

15 MS. KOKINOS: They didn't really submit
16 any comments on it, yeah. It wasn't something where
17 there was any --

18 MR. STREATER: Pushback.

19 MS. KOKINOS: -- pushback or real
20 interest.

21 MR. SCHERER: Okay.

22 MR. STREATER: There is really no cost to
23 a producer on it. In actuality, it would appear to be
24 easier.

25 MR. SCHERER: Okay.

1 MS. KOKINOS: It wouldn't -- it wouldn't
2 obligate you to produce --

3 MR. SCHERER: Yeah.

4 MS. KOKINOS: -- both oil and gas.

5 MR. STREATER: It's still up to the --

6 MS. KOKINOS: It would just give you the
7 title to both on your lease.

8 MR. SCHERER: So, I wanted to talk a
9 little about the Regulatory Impact Analysis. But, you
10 know, maybe as a lead-in to that I wanted to talk about
11 two sort of conclusory statements in the reg. This
12 relates to the Small Business Regulatory Enforcement
13 Fairness Act. Again the -- (Inaudible)

14 COURT REPORTER: Sir, can you talk into
15 your microphone, please? You're really far from it.
16 Thank you. Sorry to interrupt.

17 MR. SCHERER: So, you know, again, on the
18 Small Business Regulatory Enforcement Fairness Act there
19 is a conclusory statement that this new rule wouldn't
20 have any significant adverse effects on competition,
21 employment, investment, productivity, innovation, other
22 things.

23 You know, I -- it seems like what I keep
24 hearing is that there is a view that this would have a
25 negative impact on competition, that some of these

1 changes would result in producers going next door to
2 neighboring counties or to Kansas or -- or other
3 locations.

4 And then I will just raise the other and
5 then you can speak to both. The Unfunded Mandates
6 Reform Act, there is a conclusory statement that, quote,
7 "The proposed rule would not a have significant or
8 unique effect on tribal governments or the private
9 sector." And it seems like it might. You know, or at
10 least that's what we hear, that it actually might have a
11 significant or certainly unique effect on the entire
12 propagation of state rule or tribal governments.

13 So, I'm just curious whether there was a
14 lot more analysis done in -- in reaching those
15 conclusions. And if so, you know, what that analysis
16 looks like, why it wasn't concluded.

17 MS. KOKINOS: Sure. So, for the Small
18 Business Regulatory Enforcement Fairness Act, the
19 primary focus is on whether there is an effect on the
20 general economy of the United States for \$100 million or
21 more. And so, the determination was that the present
22 proposed rule would not have that type of impact.

23 We -- you know, because you're looking
24 just at Osage County we don't see there would be a
25 massive change in the costs to consumers or various

1 individual industries. The effects on competition,
2 employment investment, that's kind of looking at all
3 U.S. enterprises and so I think it's just kind of a
4 bigger view than something more back row (sic.).

5 With respect to the Unfunded Mandates
6 Reform Act, again you're looking at the, you know, \$100
7 million a year or more sort of end of things.

8 As far as significant effects on tribal
9 governments, we didn't receive any comments from the
10 Nation or the Minerals Council as to significant impacts
11 they thought there would be on tribal government
12 operations. But if you believe there would be then
13 please submit that additional information during the
14 open public comment period now so that we can consider
15 it, because it wasn't submitted before, as previously
16 mentioned, and it's certainly something we would
17 consider. If there are quantifiable impacts to the
18 tribal government, we would need to know that.

19 MR. SCHERER: Thanks. So, I wanted to
20 just talk a little bit about the Regulatory Impact
21 Analysis.

22 So, you know, one of the things that I
23 saw in the transcript from the March meeting was, you
24 know, this cost that is mentioned in the rule, right,
25 that this, you know, would be approximately \$18,000 per

1 producer. And then I heard when the Minerals Council
2 sort of said, "Oh, that's going to put a lot of people
3 out of business," you know, the response was, "Well,
4 that's an average cost." That's -- you don't even
5 really look at that number because there are two
6 producers that are producing 41 percent of all -- my
7 question is, if that's the case can we -- is it possible
8 that you could produce a Regulatory Impact Analysis that
9 provides better information on the actual cost to, you
10 know, the 60-something percent of producers that are not
11 the top two that are skewing all the numbers, because I
12 think that would be really helpful.

13 MS. KOKINOS: Yes. We've actually -- we
14 have a contractor who prepared the Regulatory Impact
15 Analysis, and we've already spoken to them. Actually,
16 we spoke to them after the public meeting and then again
17 after our prior consultation about revising the
18 Regulatory Impact Analysis to more carefully break out
19 costs for small versus large operators, because large
20 operators can so easily skew numbers.

21 Generally, in these types of reports
22 you're looking at just the average. But here, because
23 you do have an anomalous number of small operators, we
24 understand that it would be useful for folks who are
25 evaluating everything to see the breakout between small

1 and large, because there are some significant
2 differences in the regs where small operators are
3 exempted from certain requirements that large operators
4 will have to comply with. And so there are areas like
5 that where it does change compliance costs and others
6 burdens on smaller operators.

7 So, we intend to clarify that so that
8 it's more easy to see exactly where those costs will
9 lie. A majority of them do lie with the larger
10 operators who are also more accustomed to complying with
11 those same requirements elsewhere, more easily ready to
12 make the changes required.

13 MR. SCHERER: Sure. That's really
14 helpful to hear that the Regulatory Impact Analysis will
15 be updated. Will there be an opportunity for the Nation
16 and the Minerals Council to review the final Regulatory
17 Impact Analysis before the final rule is published?

18 MS. KOKINOS: I will have to check into
19 whether or not that's permissible, because there are
20 always issues under the Administrative Procedures Act
21 with the sharing of draft final rules and information
22 like that. So, I can certainly get back to you on
23 whether or not that's something that can occur.

24 MR. SCHERER: And something else that,
25 you know, I heard at the last meeting in March was from

1 the Minerals Council that, you know, these changes would
2 really, really stifle competition. Some of the -- some
3 of the comments I was making regarding the Small
4 Business Regulatory Enforcement Fairness Act and other
5 things.

6 And, you know, I was a little bit
7 surprised at some of the responses to the Regulatory
8 Impact Analysis as to the effect of this rule on oil and
9 gas production in Osage County. And, you know, maybe I
10 was a little bit surprised that the Regulatory Impact
11 Analysis wasn't, you know, telling all of the good that
12 this would do and all of the, you know, the benefits to
13 producers coming into Osage County.

14 What I saw instead was, you know, a
15 statement that due to the high level of investment in
16 existing operations, operators are unlikely to abandon
17 existing wells. Right? Basically, well, there is so
18 much sunk cost already you're not going to need to worry
19 about producers -- producers exiting. That doesn't --
20 you know, that isn't necessarily an attractive prospect
21 for new producers.

22 And I think the other thing that I'm
23 looking at the impact analysis specifically stating is
24 that, well, you know, quote, "Operators may not abandon
25 productive wells without demonstrating lack of further

1 profitability production to the Superintendent's
2 satisfaction."

3 So those two things to me just seem like,
4 when you talk about the impact of the new rule, they're
5 not -- there's not a lot of focus on sort of the
6 positive aspect and bringing new producers into Osage.
7 It's essentially the sunk cost is too high and the
8 regulatory burdens are too high to leave. And so, could
9 you comment on that?

10 MS. KOKINOS: Sure, sure. So, I
11 understand why it reads that way. So those statements
12 weren't intended to really be justifications as much as
13 just statements of fact on the state of affairs. Right?

14 So, you know, people who are already
15 invested, especially with significant capital
16 investment, it does make it more difficult for them to
17 switch gears. As far as abandoning operating wells
18 there is -- they are simply precluded from just, you
19 know, shutting in under current regs and that would be
20 true under the new regs.

21 As far as, you know, the potential impact
22 for attracting investment, with the rulemaking, no
23 rulemaking is really aimed at attracting business. We
24 certainly don't want to drive business away, but the
25 purpose of the rulemaking is to ensure proper operations

1 in the county. And so, while attracting new investment
2 is certainly something that's critical to the Mineral
3 Estate, what we have to look at is making sure that the
4 work that's happening, that the current operations and
5 future operations are both environmentally sound, but
6 more importantly, that the Nation and Minerals Council,
7 headright holders are receiving the money that's due to
8 them. And the current regs have some issues with
9 measurement and other things like that where that's a
10 priority focus.

11 The Regulatory Impact Analysis, just by
12 its nature, isn't going to be a particularly
13 aspirational document just because it's supposed to be
14 looking for where the costs lie as opposed to
15 efficiencies that aren't easily quantified. We have to
16 look very heavily at things that are quantified, and so
17 we get that.

18 We can certainly look at the language
19 that you mentioned, though, about how it's posed and how
20 it's explained. Because the opinion isn't, like, "Well,
21 we can do whatever we want in these regs and people
22 can't leave." That's certainly not the thought. Even
23 if we understand now that's how it reads to people,
24 that's not the position.

25 MR. SCHERER: And then just to provide a

1 little bit more context, I think from the Nation's
2 perspective the Mineral Estate is its most valuable
3 trust asset. And I think, you know, I think it is
4 looking for regulations that support the development of
5 the Mineral Estate. And it does seem like reading the
6 Regulatory Impact Analysis there wasn't very much at all
7 that talked about how these regs would be sort of
8 positive in the development of the U.S. Osage Mineral
9 Estate. It's a lot of, "Well, you can't leave, it's too
10 expensive, there is so too much sunk cost."

11 And I understand the other issues that
12 you're mentioning that for the environmental parameters.
13 And I'm sure those are both shared by the Nation and
14 Jann can speak more succinctly than I can about those
15 things.

16 The other thing that struck me as a
17 little bit odd was in the Regulatory Impact Analysis --
18 I understand you'll be taking -- (Inaudible) -- but, you
19 know, there is this -- there is this notion that -- and
20 this has been talked about before that these regulations
21 are just -- these regulations are consistent with what
22 else -- with what's going on BLM land or elsewhere in
23 Indian country.

24 And so there is this statement in the
25 impact analysis that said, you know, these regulatory --

1 they are not going to actually affect producers because
2 they are not going to be more favorable on other federal
3 or Indian lands outside of Osage County, therefore it
4 appears unlikely that operators would move elsewhere
5 rather than being affected by new regulations.

6 But that's not really how it's working on
7 the ground. Right? It's not like, you know, a producer
8 is operating an Osage County, these new regulations come
9 in and say, "Well, I guess, you know, Southern Ute is
10 the same as Osage County so I'm not going to move
11 locations." What they are doing instead is they are
12 going to adjacent counties that have a very different
13 regulatory scheme.

14 So, it seems like it's an apples and
15 oranges comparison the way it talks about how, you know,
16 these new regulations won't affect competition because
17 they are in line with everything else in Indian country
18 and on BLM land when, in actuality, that's not the
19 comparison.

20 MS. KOKINOS: Sure. I mean, it's -- it's
21 relevant for comparison for our purposes simply because
22 when we're looking at competition, we are looking at
23 competition among tribes, especially in the state of
24 Oklahoma where there is so much oil and gas, there are
25 multiple tribes with oil and gas.

1 We get your point that there is obviously
2 competition in surrounding counties that may be on fee
3 land, certainly not on trust or restricted lands and so
4 that's different. It's difficult for the Federal
5 Government to, essentially, you know, be in line with
6 state laws. There's very few places where we would
7 really do that. It's certainly something we can look
8 more at as to how that works. But as far also as, you
9 know, information and data that we would have regarding
10 the potential impacts of state regulatory efforts versus
11 federal efforts, it might be difficult to -- to really
12 quantify. But we can certainly talk more about that in
13 RIA.

14 MR. STREATER: Certainly, you know, we do
15 have a neighboring county, Pawnee County. And that
16 particular tribe has a moratorium on oil and gas
17 development and has had one for quite some time now. So
18 it is tough to, you know, balance those.

19 MR. SCHERER: Sure. And I think I heard
20 this discussed previously. It might have been at the
21 meeting with Secretary Newland.

22 But I think it's very important in the
23 Nation to preserve the flexibility of self-governance
24 and including, you know, specifically the option for a
25 TERA or a TEDO going forward. That isn't -- that isn't

1 specifically mentioned in the proposed rule. But did I
2 understand that there was -- that was a consideration
3 that that might explicitly included?

4 MS. KOKINOS: No, it wouldn't be because
5 these regs would not impact the Nation's ability to
6 enter into a TERA or any type of self governance
7 agreement. So, the proposed rule or a final rule would
8 not impact that.

9 And as both, you know, 638 and TERA
10 currently stand, if the Nation were to take over, you
11 know, the Agency's oil and gas functions, they would be
12 operating under the BIA's regs in 25 CFR, part 226, with
13 the exception of potentially the environmental
14 regulatory efforts where, if the nation were to write
15 their own environmental regulations that were as
16 protective or more protective than the BIA's applicable
17 regulations then those would be in force.

18 MR. SCHERER: Sure. I understand that.
19 So perhaps when or if a final rule is developed, if it's
20 not included in the actual regulatory text, perhaps a
21 discussion in response to a comment --

22 MS. KOKINOS: Sure.

23 MR. SCHERER: -- it's --

24 MS. KOKINOS: Yes.

25 MR. SCHERER: -- discussed in sort of

1 a --

2 MR. STREATER: Yeah.

3 MS. KOKINOS: Absolutely.

4 MR. STREATER: Yeah, the Minerals Council
5 has -- has aggressively explored a TERA for quite some
6 time now. I don't really know where that lies with
7 them, but as a matter of fact even we had some
8 one-on-one meetings with DC people came down and sat
9 down to discuss a path forward with a TERA. But I don't
10 know where, you know, if that's -- if that's an option
11 that they want to pursue at this point.

12 MS. KOKINOS: But we can certainly
13 address it in response to public comments or otherwise.

14 MR. SCHERER: And it does seem like -- it
15 does seem like there have been a series of comments,
16 whether it's through public comment period or through
17 engagement with Osage Minerals Council or the Nation and
18 the tribal meeting in March that will be reflected in a
19 revised rule. Is that accurate?

20 MS. KOKINOS: Yes.

21 MR. SCHERER: Given the number of
22 changes, you know, I think at the very least, if there
23 is not going to be additional consultation, I think the
24 Nation would very much appreciate either seeing a
25 preview of the final rule -- I know that there are EPA

1 challenges associated with that, or perhaps an iterative
2 rule, something that, again, goes out for public comment
3 or additional consultation that reflects, you know, the
4 hours of -- of on-the-record comments at the March
5 meeting and what I understand to be significant input
6 from the producers' association and others as part of
7 the normal public comment period.

8 MS. KOKINOS: Yeah. So, I mean, there --
9 there would be likely APA issues with providing the
10 Nation and Minerals Council with what is essentially a
11 draft final rule or a final rule prior to its
12 publication. We can certainly let the Assistant
13 Secretary know that the Nation and Minerals Council has
14 requested that. But I'm not sure -- or I can't say
15 today whether or not that would be something we could
16 do. And the potential for further public comment
17 obviously would completely change the rulemaking
18 process. Aside from extending it, it's a different
19 process. So, I would have to talk to the regulatory
20 affairs group as well as the Assistant Secretary. But
21 we can certainly note that for him.

22 MR. SCHERER: Sure. No, I appreciate
23 that. I mean, the preference is for a series of
24 consultations where there is consensus seeking with the
25 Nation and the Minerals Council on next steps what this

1 rule looks like.

2 But, you know, if that is -- if that's
3 not going to happen because of decisions that folks at
4 this table aren't making, I think seeing an iterative
5 rule, even if that prolongs the process, would be
6 helpful because there's been a lot of time and energy
7 spent on meetings and public comments.

8 And it sounds like, from everything we
9 hear, that there are quite a few changes that are either
10 already going to be made in the Regulatory Impact
11 Analysis that's going to be done and revised and
12 attached to the new final rule. And I think it would be
13 helpful to see what those things are, particularly if
14 there is not a series of new consultations.

15 MS. KOKINOS: Sure. And just to clarify
16 what I said before, so, I mean, there is no current
17 draft final rule. The public comment period is still
18 open and we're still considering public comments. So I
19 didn't want to imply that we know what changes will be
20 made and that those changes have already been finalized.

21 MR. SCHERER: Well, I think with that I
22 may take a break and pass it on to Jann to talk a little
23 bit about environmental issues.

24 MR. STREATER: Sure. Do we want to take
25 a quick five-minute break, then, and then we'll start

1 with Jann? How does that sound?

2 CHIEF STANDING BEAR: This is Standing
3 Bear. I would like to, when we come back to start with
4 assistant chief and see if anything in this discussion
5 has prompted questions from them or Attorney General
6 Patterson, because once we move into Jann and that
7 subject matter I didn't want any questions they had to
8 get lost. So, if we could do that when we come back.

9 MR. STREATER: Absolutely.

10 CHIEF STANDING BEAR: Okay.

11 MR. STREATER: We'll start off with
12 Assistant Chief and move to Clint. Thank you.

13 (A break was had from 10:45 to 11:00
14 a.m.)

15 MR. STREATER: All right. I appreciate
16 everybody back. And, Assistant Chief, if you would like
17 to start off.

18 ASST. CHIEF WALKER: Yeah, sure. Again,
19 good morning, everybody.

20 CHIEF STANDING BEAR: State your name for
21 the court reporter.

22 ASST. CHIEF WALKER: Oh, yeah. R.J.
23 Walker, assistant chief.

24 It's a -- I don't really know how to
25 preface this. You know, I'm the assistant chief, right,

1 so, you know, kind of I know my role; right? I'm also
2 the oldest brother. I have eight younger siblings so
3 I'm used to being candid.

4 So really my first question is
5 understanding that after the settlement, which was,
6 right, nearly a decade ago or a decade ago that it was
7 mandated that these rules be put into place.

8 Just curious, though, did the United
9 States, did they consider asking the Osage Nation or the
10 Minerals Council, and/or both, to propose their own
11 rules and allow the United States to consider those?

12 MS. KOKINOS: So as part of the 2011
13 Osage Tribal Trust Settlement of the lawsuit, the Osage
14 Nation and Osage Minerals Council, they had a -- it was
15 called the Osage Trust Team was the group of Minerals
16 Council and Nation representatives who worked on the
17 settlement.

18 They wanted the regulations to be revised
19 for all of the reasons we've discussed before. And so
20 in the settlement agreement they included a term saying
21 that the United States would engage in negotiated
22 rulemaking with the Nation and Minerals Council to
23 revise the regulations. The negotiated rulemaking
24 committee was formed in about 2012 and it consisted of
25 five representatives from the Osage Minerals Council and

1 four representatives from the Federal Government, plus
2 subcommittees.

3 And the Osage Minerals Council and their
4 legal representation at the time essentially drafted the
5 proposed rule that came out of the negotiated
6 rulemaking, but they later sued us over the rule and it
7 had to be taken back.

8 ASST. CHIEF WALKER: Can you describe
9 that a little bit more?

10 MS. KOKINOS: Sure.

11 ASST. CHIEF WALKER: Right? So there was
12 a -- there was a negotiated rule that was, I guess,
13 proposed by that team and then -- and then it was said
14 no type deal?

15 MS. KOKINOS: They -- so the negotiating
16 rulemaking committee, there were subcommittees to draft
17 a new proposed rule to revise the regulations, and it
18 was primarily written by the Minerals Council's
19 attorneys. And the Federal Government issued the
20 proposed rule in the Federal Register arising from that
21 process, received public comments, and then issued the
22 final rule in 2015. And after the final rule that arose
23 from that negotiated rule-making was published, the
24 Osage Minerals Council and Osage Producer's Association
25 sued the United States to prevent it from being

1 implemented and we took it back.

2 MR. STREATER: Yeah. One thing that may
3 need to be mentioned, one of the driving factors of that
4 is there was an election of the Minerals Council after
5 the rule had been issued and they were not -- the new
6 composition of the Minerals Council were not in favor of
7 the rule, and that's kind of where the shift in paradigm
8 came.

9 ASST. CHIEF WALKER: Okay. Gotcha,
10 right. I understand Osage politics a little bit.

11 Yeah, so -- so as far as like the -- like
12 take, for instance, the Skiatook meeting there were
13 producer after producer that got up there and spoke
14 against certain things. And I don't -- I really don't
15 want to be critical of some of my colleagues,
16 particularly the Minerals Council for not being here or
17 having produced written comments. I understand -- I
18 understand you guys' perspective, I really do.

19 So, taking the comments that were made in
20 Skiatook that night, which were many, how do you guys
21 compartmentalize that or how do you -- how do you make
22 changes and are those changes in progress?

23 MS. KOKINOS: Yes.

24 ASST. CHIEF WALKER: Or are there?

25 MS. KOKINOS: Yes. So we take the

1 comments that we receive, both the verbal comments we
2 received at the public meeting, the written public
3 comments that anyone can submit through the public
4 comment period, all of the comments that the Nation and
5 Minerals Council make at the government-to-government
6 consultations on the regs, including this one, we take
7 all of those and we consider them and we essentially
8 have to kind put them in categories based on -- because
9 there is lots of overlap, lots of people will comment on
10 the same thing.

11 And so, we take all the public comments
12 from all areas and we put them into different
13 categories, we break down exactly what the comments are
14 so that we can respond to them. We have to actually
15 respond to them and explain whether we are going to make
16 a change in the final rule -- in the beginning, we put
17 in whether we are making a change or whether the comment
18 was outside the scope of the rule and so it's not
19 addressed.

20 And then for the final rule we take all
21 of those comments and then we review them and determine
22 is there -- are there meritorious comments that we
23 missed something or there was something else we should
24 have considered or is there a better way to do it. Did
25 someone propose something that we think, "Oh, that's

1 right," were there issues where we knew what the
2 language meant, but clearly the public was reading it a
3 different way and so we need to make all of those
4 changes.

5 So, the process for us is to go through
6 everything we received from all places and to identify
7 the comments and then go through the rule and see, okay,
8 what changes should we make in response, what can we
9 make? Certain comments, you know, may be for things
10 that are illegal that we can't do or are contrary to our
11 trust responsibility potentially and things like that.

12 But there's not a final rule that's been
13 prepared. The public comment period was just reopened
14 to solicit additional public comments. So there's not
15 currently a final rule that's ready to be issued.

16 ASST. CHIEF WALKER: So, Kristen, I
17 respect your knowledge of the minerals estate and I
18 understand that you have been intricately involved for a
19 long time and I appreciate that. And I believe that you
20 are working on behalf of the Osage Nation, I really do.

21 So, again, so I just -- not to get into
22 details, but what does that look like? Where those
23 comments -- are you guys -- are you guys redlining
24 already? No?

25 MS. KOKINOS: No, no. So, I mean, I

1 can't give you a copy. We have put together, like, a
2 table where we identify all of the comments, we break it
3 down where did it come from? Which provision would it
4 relate to? And we have to go through and see, okay, you
5 know, if they said, um, for example, you know, lessees
6 have to submit reports. I recommend that, you know, you
7 change the technical and economic requirements for this.

8 So we go through and we have to identify
9 which provisions would this apply to, how can we address
10 it, is there anything in there that is asking us to make
11 a change or proposing a change, or is there anything
12 they said that we think maybe there could be a change to
13 make something more clear.

14 If on the bonding, for example, someone
15 submitted a public comment proposing a totally different
16 bonding regime, we would fully analyze whether that
17 would be consistent, is it better than what we proposed,
18 is there a way we could -- maybe if we can't implement
19 what they said, is there something in that that could be
20 tweaked in the final to make a change that's more
21 consistent. We fully evaluate everything that everyone
22 receives, even comments, you know, that may not have
23 been exactly on point, we have to review everything.
24 It's a step-by-step process.

25 So there is no red line right now where

1 we have made edits because the first step in the process
2 is for us to evaluate all of the comments and then
3 categorize them, which is a lot. Because one letter
4 from someone is not one comment. In that document, in
5 that letter they could address 15 or 20 different topics
6 and those are the categories that we have to break it
7 down into. So even if there were only a hundred public
8 comments that were written that were submitted there
9 could be, you know, a couple of hundred substantive
10 issues in those documents that we look at.

11 ASST. CHIEF WALKER: So -- so how do
12 you -- how do you, like, balance the fiduciary
13 responsibility of the United States versus the sovereign
14 right of the Osage Nation to administer and take on
15 their own responsibilities given the fact that we are in
16 negotiations right now to take over the entire minerals
17 branch, Superintendent, in the entire Osage agency?

18 MS. KOKINOS: So, we certainly give
19 weight and value to the Nation and the Minerals
20 Council's input on the proposed -- on the proposed rule.
21 As we talked about earlier, the proposed rule doesn't
22 impact self-governance, it doesn't impact negotiations.
23 If you were to move forward with 638 and take over
24 minerals functions then it would be the Nation that
25 implements and enforces the new regulations.

1 ASST. CHIEF WALKER: So what -- let's
2 say, for instance, we're a year, two, three years down
3 the road and we see problems with the regulations and
4 the Minerals Council or the Chief's office says, We want
5 to change subsection, whatever, you name it, in the
6 regulations, that we are considering right now?

7 MS. KOKINOS: Um-hum.

8 ASST. CHIEF WALKER: Could that be done
9 relatively easily or would it have to be a whole process
10 like we're going through now?

11 MS. KOKINOS: No. So, I mean, if there
12 was a specific provision in the regulations, say there
13 was a final rule that was already passed, there were
14 these new regulations, if a couple of years down the
15 road something in there is not working in practice and
16 the way that it's written would require a change to fix
17 that problem, then the government can, you know, do a --
18 propose to change that provision. You would have to do
19 a proposed rule and a final rule so there would be
20 notice and public comment, but you can be targeted in
21 what you change. You wouldn't have to do a wholesale
22 "everything is starting over" if it was just one
23 provision or two provisions that were going to be
24 changed, that could happen, and it's happened in the
25 past for the current regulations.

1 So, they are largely the same as they
2 have been since the 70s. But in the 1990s maybe five or
3 six different provisions in there were adjusted, but the
4 rest of the rules stayed the same. So you can changes
5 individual things as time goes if there are changes that
6 need to be made without the whole do-over with the whole
7 rule.

8 ASST. CHIEF WALKER: And that's an
9 Interior Department function.

10 MS. KOKINOS: Right.

11 ASST. CHIEF WALKER: It's not an act of
12 Congress type deal?

13 MS. KOKINOS: No. It's an Interior
14 function. Rulemaking is within the Department of
15 Interior.

16 ASST. CHIEF WALKER: Okay. Gotcha.

17 MS. KOKINOS: So, if the Nation were to
18 take over certain programs and you're operating the
19 programs and see that there is an issue with the
20 regulations then you would be consulting with Eddie and
21 his office and other folks and they can determine
22 whether an additional rulemaking effort is needed to
23 make changes or corrections.

24 ASST. CHIEF WALKER: Gotcha. I'll stop
25 for now. Thank you.

1 MR. SCHERER: I had two additional
2 thoughts that I wanted to share. I think the first was
3 Chief had earlier, I believe he was referencing OIG
4 reports at the beginning of his comments.

5 And, you know, I do see that one of the
6 rationale for the proposed rule was that, you know, the
7 BIA will take the necessary actions to resolve certain
8 recommendations made by the Office of the Inspector
9 General. This is from 2014. Specifically the proposed
10 rule states that the revisions are, quote, "consistent
11 with OIG's recommendation for the BIA to use its
12 authority to correct program deficiencies by modifying
13 25 CFR, part 226 to mirror other Indian country oil and
14 gas regulations." Now, that's the stated -- stated
15 purpose for this, for this project.

16 I was going back to the -- to the actual
17 Office of the Inspector General report and I saw that
18 BIA actually didn't concur with that OIG recommendation.

19 MS. KOKINOS: Um-hum.

20 MR. SCHERER: And, you know, it
21 specifically, BIA's response, it says, BIA does not
22 concur with this recommendation. As a result of the
23 tribal trust settlement, BIA and other interested
24 parties discussed mirroring other Indian country oil and
25 gas regulations to improve managing the minerals estate.

1 The Council and other interested parties -- referring to
2 the Minerals Council -- and other interested parties
3 voiced concerns regarding making Osage mirror other
4 Indian country oil and gas regulations.

5 And so, it seems like the regulation, or
6 at least the NPRM, it's missing key context as to
7 whether the BIA changed its mind. You know, and then
8 I'm also seeing that, you know, OIG's response to BIA's
9 non-concurrence is that we consider this recommendation
10 resolved, but not implemented.

11 And so, you now, I'm a little bit
12 curious. You know, that wasn't in the proposed rule,
13 that, essentially, the BIA reversed itself on the
14 non-concurrence with the -- with the OIG recommendation
15 back in 2014. So could you talk a little bit about
16 that?

17 MS. KOKINOS: Sure. So when the OIG
18 report came out in 2014 the negotiated rulemaking
19 committee was still in force. The negotiated rulemaking
20 process was going on while OIG was putting together its
21 draft report. So, while the report came out in 2014,
22 the groundwork that OIG was doing for that report
23 happened in, I believe, 2012 and 2013, which was right
24 when the negotiated rulemaking began and was in full
25 swing.

1 And so, the BIA's initial response to
2 that was that the negotiated rulemaking process that was
3 going on as part of, you know, the agreement under the
4 settlement would resolve the concerns regarding that.

5 I think a wholesale adoption of certain
6 Departmental regulations at the time was discussed and
7 was shot down. I think part of what was discussed was
8 an amendment to FOGRMA, to make Osage subject to FOGRMA.
9 And we know there was distinct concern with that.

10 The Nation and Minerals Council had also
11 expressed concern about BLM being given any type of
12 jurisdiction over Osage, which was something that had
13 been discussed. So the context for that was that we
14 were already in the process of making the changes, and
15 wholesale adoption of regs that apply elsewhere, to
16 Osage wouldn't work (sic.).

17 So even though there are certainly
18 provisions in these regs that are consistent with, say,
19 the regulations BLM implements to handle oil and gas
20 operations everywhere else, they are not exactly a
21 one-to-one because there are certain things in BLM's
22 regs that are very specific to FOGRMA that would not be
23 useful or helpful here, or there are things that just
24 wouldn't work at Osage because of other issues.

25 And so, we still do not believe that, you

1 know, every single provision in BLM's current regs would
2 work at Osage, especially since it's not subject to
3 FOGRMA. But there is a lot in BLM's regs that would
4 work and would be a significant improvement.

5 And during the negotiated rulemaking what
6 the Minerals Council and Nation and BIA had discussed
7 was an adoption of BLM's On-shore Orders, specifically
8 On-shore Orders 3, 4, and 5. Since the lawsuit
9 regarding the final rule in 2015, BLM codified their
10 On-shore Orders 3, 4, and 5 into rules that are now, you
11 know, in the Code of Federal Regulations.

12 And so, we did pull certain provisions
13 from there, but not every single provision, and we did
14 not necessarily make all of the provisions in these regs
15 relating to even just leasing the same as they would be
16 elsewhere because of the differences that you have at
17 Osage than other places.

18 MR. SCHERER: Sure, I understand that.
19 It does seem like the proposed rule is lacking context,
20 though.

21 MS. KOKINOS: Um-hum.

22 MR. SCHERER: Part of the proposed rule
23 is because the OIG made certain recommendations and if
24 the BIA says we don't agree with those recommendations,
25 you know, that part is missing.

1 MS. KOKINOS: Sure. There were 33
2 recommendations. So recommendation number one was that
3 BIA needs to use its authority to update its regulations
4 so they are consistent with the rest of Indian country.
5 But then you've got the other 32 recommendations.

6 Seven of those remain open and they are
7 substantive types of changes relating to, for example,
8 arms-length transactions, lots of things relating to oil
9 and gas measurement, tank gauging, all kinds of changes
10 that need to be made. Certain of them we can't actually
11 implement the Office of Inspector General's
12 recommendations without changing the regulations because
13 the current regulations don't provide sufficient
14 authority or detail to be able to do those things. And
15 so in order to make those changes we must change the
16 regs to implement those.

17 So, regardless of recommendation one,
18 there are all of the other more substantive
19 recommendations, and certain of them we have to change
20 the regs for.

21 MR. SCHERER: Sure. I understand that.

22 And then this next comment is just sort
23 of an on-the-record comment from the Nation. There
24 doesn't need to be any discussion about it or even a
25 response.

1 But just on the record I did notice
2 that -- or we did notice that the current title of part
3 226 is "Leasing of Osage Reservation Lands For Oil and
4 Gas Mining." And the proposed rule changes that title
5 to "Mining of the Osage Mineral Estate for Oil and Gas."
6 And the Nation would respectfully request that the title
7 remain what has been the title of part 226 since the
8 70s, which is "Leasing of Osage Reservation Lands For
9 Oil and Gas Mining."

10 MR. PATTERSON: Yeah, Clint Patterson.
11 This may not relate directly to what we're doing today,
12 but I believe it does indirectly deserve some
13 discussion. And it goes to what you were saying about
14 the OIG report and implementing their recommendations.
15 Most of them that I read were to due to lack of
16 oversight procedures and compliance, and that was based
17 on the old rule.

18 And to me the new rule seems like there
19 will be significantly more compliance issues. I
20 wondered if you had a discussion internally with the --
21 what that would look like, whether it would reduce the
22 burden on the BIA's trust responsibility or whether it's
23 going to increase your responsibilities here to make
24 sure that they are complying with the new rule?

25 MS. KOKINOS: There were definitely

1 internal procedural issues that OIG had identified. A
2 lot of the internal procedural issues at BIA were
3 resolved. We had to make changes to polices and
4 procedures to implement those recommendations
5 immediately, and changes to the regulations were not
6 required to do that.

7 As far as the changes in the proposed
8 rule, we can't gear them towards whether or not it will
9 be easy for the BIA because we have a trust
10 responsibility. And so, whether that requires us to
11 make significant changes on our end, that's what we need
12 to do because it is our trust responsibility. And so,
13 yes, there are changes that will change processes and
14 policies, but if that's what needs to be done, that's
15 what needs to be done, and so that's what we intend to
16 do.

17 MR. STREATER: And, you know, case in
18 point of that is inclusion of ONRR. That portion will
19 greatly assist the Agency, ONRR's accounting procedures
20 and verification.

21 MS. KOKINOS: But more than that it
22 assists the Nation --

23 MR. STREATER: Yeah.

24 MS. KOKINOS: -- and the headright
25 holders because ONRR is state of the art. So, I mean,

1 getting ONRR on board for production accountability is
2 the best possible outcome, I mean, and it will address a
3 significant number of the OIG recommendations having
4 ONRR on board because they have systems and resources
5 and processes that are already in place and established
6 and state of the art for oil and gas in Indian country
7 and on federal lands.

8 MR. PATTERSON: Yeah, and that's great.
9 It's great to hear them coming on board. I can't
10 believe people are still reporting on paper forms,
11 non-fillable, but that's where we're at.

12 Is any consideration, guys, that those
13 changes will come at a cost to you, financial cost?

14 MR. STREATER: Oh, I am sure there will
15 be additional costs somewhere along the line and we'll
16 just -- as -- as Kristen said, the cost of doing
17 business and fulfilling the U.S. Government's trust
18 responsibility we'll -- that will be an internal
19 discussion with internal, Indian Affairs, and we'll do
20 whatever needs to be done to bolster the Agency.

21 MS. KOKINOS: And I know you have
22 requested increases every year.

23 MR. STREATER: Yeah. We have -- since
24 2011 we've requested.

25 MR. BABST: This is Charles Babst again.

1 I would just say that all of Regional Director
2 Streater's comments regarding additional funding are
3 subject to, of course, congressional appropriation.

4 MR. PATTERSON: I understand that
5 totally. Go ahead, Chief.

6 CHIEF STANDING BEAR: Thank you, Clint.

7 Director Streater, I'm going to be
8 asking -- I'm asking right now that Candy Thomas of our
9 Office of Self-Governance not comment, unless she wants
10 to, but that she work with Mr. Scherer and Attorney
11 General on preparing your view of increased costs that
12 these regulations might impose to fulfill their purposes
13 that the Nation would have to incur or the Federal
14 Government would incur.

15 As we all know, when we do engage in
16 self-governance anywhere we always find there is never
17 enough money and we have to supplement that. And I
18 don't know what increased costs we're looking at.

19 And I think, Candy, if you could, within
20 the comment period, just work in getting that
21 information to Mr. Streater. I know that's a big
22 question and I don't know the answer.

23 So, we'll ask Candy to try to get our
24 best estimate, and that would also address the -- I
25 think the rule --

1 MS. KOKINOS: Sure.

2 CHIEF STANDING BEAR: -- issue.

3 MS. KOKINOS: Yes. And, I mean, I can
4 say, you know, right now, because we don't have the
5 final rule, we can't estimate what the potential costs
6 are and would be. So, in terms of the self governance
7 negotiations there is not current cost information
8 that's prospective that could be shared because of the
9 current state of the rulemaking.

10 CHIEF STANDING BEAR: Well, even without
11 the self governance issue --

12 MS. KOKINOS: Oh, sure.

13 CHIEF STANDING BEAR: -- it seems like if
14 these costs are much larger we have noted already for
15 years, Candy knows this, we have noted our Agency is
16 severely underfunded. And if you increase
17 responsibility it looks like you're creating a position
18 that you can't follow your own rules and your own
19 regulations because of the increased costs, which future
20 elected officials at Osage may, and the attorneys,
21 whoever they may be at that time, may challenge the
22 Agency for not following its own regulations --

23 MS. KOKINOS: Sure.

24 CHIEF STANDING BEAR: -- because of the
25 shortage of costs, and of course that increases more

1 costs for attorney fees. It just seems like an endless
2 cycle. Like I said, this has gone on for decades.

3 MS. KOKINOS: Yeah.

4 CHIEF STANDING BEAR: But so that cost
5 issue is very, very important.

6 MS. KOKINOS: Yes. And some of the
7 modernization that will happen under the regs, both
8 internally at Osage, but -- at the Agency, but also with
9 operators will actually alleviate some of the agency's
10 costs because you won't necessarily be dealing solely in
11 paper and things like that where it eats up time and man
12 hours. And so there is a trade off for sure.

13 CHIEF STANDING BEAR: Well, I think
14 Mr. Scherer would work with Candy and with you and
15 everybody. It's something that I don't want to see as
16 binding as a set rule, but at least it's a comment --

17 MS. KOKINOS: Absolutely.

18 CHIEF STANDING BEAR: -- to follow up
19 what you were saying, Clint.

20 MR. PATTERSON: Sure.

21 CHIEF STANDING BEAR: Okay. But whenever
22 Jann Hayman feels like she's ready, that's our
23 environmental folks.

24 Charles is looking at his watch and
25 telling me something.

1 ASST. CHIEF WALKER: I'm not quite done,
2 Chief.

3 CHIEF STANDING BEAR: Oh, you're not?
4 Okay. Well, here we go.

5 ASST. CHIEF WALKER: All right. Thank
6 you. And I can't help myself, right, because we are
7 involved. Eddie knows we are involved in
8 self-negotiation contracts with -- or compacts now with
9 Candy and stuff and we're talking about congressional
10 appropriations and stuff. Money designated for the
11 Osage Agency even, not only in the Regional Office, but
12 in the Osage Agency.

13 I've got to ask -- and it's somewhat
14 unrelated, but I'm curious while I've got everybody here
15 in the room. When that money is not spent for an Osage
16 designated function or whatever it may be, an employee
17 or maintenance or you name it, does the -- does that
18 money, is it relegated to fiscal year limitations, so it
19 dissolves and goes back into the general fund, say, of
20 the United States? Is the Regional Office, are they in
21 a position to reprogram that money and spend it
22 elsewhere? What happens to it?

23 MR. STREATER: Well, with regards to --
24 to our budget cycle, you are correct, those monies are
25 two-year monies that will expire. However, in Eastern

1 Oklahoma we never have any left. We do a good job of
2 spending it down to the penny, so we have never send
3 anything back of any significance to Treasury.
4 Sometimes you will have maybe 15 or \$20,000 in a special
5 project that has some guardrails around it that we can't
6 reprogram or do anything with, and you may see that, in
7 an odd chance, go back, but not for Osage. Nothing ever
8 goes back for Osage.

9 ASST. CHIEF WALKER: So, your answer is
10 that if it's designated for the Osage, it's spent on
11 Osage?

12 MR. STREATER: Absolutely, and more.

13 ASST. CHIEF WALKER: Okay. All right.

14 CHIEF STANDING BEAR: So, if we can -- I
15 know it's 11:28. I looked. Thank you.

16 So, I think Jann on the environmental,
17 that would, to my knowledge, close out our statements.
18 If we can just get her in on the record and then I'll go
19 back to Assistant Chief, Mr. Scherer, and see if there
20 is anything new that's been brought up by Jann if we
21 could do that, Mr. Streater.

22 MR. STREATER: Absolutely. We're here to
23 listen to the Osage Nation.

24 CHIEF STANDING BEAR: All right.

25 MS. HAYMAN: Well, I'm Jann Hayman. I'm,

1 again, I'm Secretary of Natural Resources. I just have
2 probably just a couple-of-minute brief comment.

3 I just wanted to mention for those that
4 aren't aware that through our legislative branch there's
5 been an Act enacted, it's Osage Nation Congressional Act
6 1735 that vests natural resources regulatory authority
7 in the Department of Natural Resources.

8 So, I appreciate, I have heard "balance"
9 mentioned a few times, balancing development of the
10 Mineral Estate and with sound environmental practices.
11 So, I just wanted to emphasize that it's our duty and
12 responsibility for the Osage Nation just to make sure
13 that all of our natural resources are being managed
14 properly and, you know, responsibly.

15 So with that being said, we have a
16 qualified team of people in my office, three of which
17 are federally credentialed through the United States
18 Environmental Protection Agency. And so, I task them
19 to, and along with myself, to sit down and go through
20 all of these, and they have been for some time. We
21 intend to put together some comments and, of course,
22 circulate it internally through Chief 's office, the
23 Attorney General's Office, to make sure that we are
24 taking everything into consideration and looking, you
25 know, at the environmental side of these proposed

1 regulations.

2 And so, we will have those drafted,
3 reviewed, and then intend to have those submitted by the
4 end of the comment period.

5 So that's pretty brief, but that's all I
6 wanted to say. I appreciate it.

7 MR. STREATER: Thank you, Jann. And we
8 look forward to that input.

9 CHIEF STANDING BEAR: R.J.?

10 ASST. CHIEF WALKER: I'm good.

11 MR. STREATER: We're here.

12 MS. KOKINOS: We're here all day for
13 three days.

14 ASST. CHIEF WALKER: You guys going to go
15 ahead and stay and gamble and eat?

16 MR. STREATER: We're going to eat. If I
17 walk out in the parking lot tomorrow about noon it may
18 be a gamble if I can make it to the car without keeling
19 over.

20 ASST. CHIEF WALKER: I was curious. I'm
21 looking at my tax dollars at work right here. And you
22 guys are going to stay; right?

23 MR. BABST: Assistant Chief, we are
24 committed. We have been instructed to provide today,
25 tomorrow, and Wednesday for consultation and we will be

1 here.

2 ASST. CHIEF WALKER: Yes, sir. I
3 appreciate that.

4 MR. BABST: That is our directive.
5 That's what we've been told to do. That's what we will
6 do.

7 MR. STREATER: And if it plays out and we
8 just get public comment from the Minerals Council we
9 will look at that as hard as if they were in the room.
10 We will -- you know, we're here to do everything we can
11 to get a better understanding of what we need to do for
12 the Minerals Council.

13 ASST. CHIEF WALKER: So, I'm glad you
14 said that because I was curious about this as well.

15 CHIEF STANDING BEAR: This is on the
16 record.

17 ASST. CHIEF WALKER: It is on the record.

18 Councilman Revard has made many comments
19 in this forum. And it's been stated -- and, Kristen,
20 you may have mentioned it, maybe others, and I
21 understand it, I get it and I appreciate it and I agree.

22 Councilman Revard has said, "Well,
23 consider what I have said in this microphone to be on
24 the record and a public comment." Is that how that
25 works?

1 MS. KOKINOS: Yes. That's why we have a
2 court reporter.

3 ASST. CHIEF WALKER: Understood. Okay.

4 MS. KOKINOS: So, that we have the
5 transcript so we can pull discussions from these
6 meetings to be included as public comments that are
7 responded to specifically.

8 CHIEF STANDING BEAR: So from what I have
9 been told by my side here is that we are expecting two
10 written comments, one estimate of costs onto the Nation
11 and our environmental team, both will be forthcoming.
12 And if there is any others, we'll let you know.

13 MS. KOKINOS: That would be great.

14 MR. BABST: Thank you, Chief.

15 CHIEF STANDING BEAR: Thank you, guys.

16 ASST. CHIEF WALKER: One more.

17 CHIEF STANDING BEAR: Go for it.

18 ASST. CHIEF WALKER: Chief, you're an
19 attorney and you're probably thinking, "R.J., just shut
20 your mouth."

21 CHIEF STANDING BEAR: No. You're a
22 heartbeat away from --

23 (Laughter.)

24 ASST. CHIEF WALKER: Right. So, I
25 mean -- so the Osage Nation has a Constitution. I don't

1 know if you guys are familiar with it, read it --

2 MS. KOKINOS: Very.

3 ASST. CHIEF WALKER: -- or not. Okay.

4 Good. Kristen, I would expect that from you. I do have
5 a lot of respect for you. I appreciate you.

6 MS. KOKINOS: All the versions.

7 ASST. CHIEF WALKER: Right. So when the
8 United States looks at the Osage Nation, we have the
9 executive branch, which has given us supreme executive
10 authority, then we have a legislative branch. We have a
11 tri-part (sic.) form of government. We don't have a
12 senate and a house. We just have one congress. And
13 then we have the Osage Minerals Council, which is given
14 authority under our Constitution. I'm not going to say
15 limited, but I kind of did.

16 How does -- how does the United States,
17 how does -- how do you guys view you the Osage Nation
18 and directives from each one of those bodies?

19 MR. STREATER: Well, I guess I'll go
20 ahead and answer that. We read the Supreme Court, the
21 Osage Supreme Court's decision. Boone.

22 MS. KOKINOS: Boone.

23 MR. STREATER: Yes, Boone. Chief
24 Standing Bear is the elected Chief of the Osage Nation
25 and that's the supreme ruling body of the Nation.

1 Anything else is an entity under his purview and that's
2 the way we look at things.

3 MR. BABST: Well, Chief Standing Bear, I
4 think you stated it, sir, that you liken the Osage
5 Minerals Council to an administrative agency of the
6 Federal Government. I think the Federal Government --
7 obviously, there is not a person in here that is
8 authorized to bind the Federal Government in terms of
9 litigation posture and stance.

10 What I can tell you is that Chuck Babst,
11 as an attorney for the Federal Government, agrees with
12 what Chief Standing Bear said about the status of the
13 OMC versus the larger Osage Nation. I think he stated
14 it as eloquently and as accurately as can be done.

15 And I'm not -- we've known each other too
16 long. We're not sitting here buttering your bread.

17 CHIEF STANDING BEAR: Oh, no. We've done
18 just the opposite in years past, a long time ago.

19 MR. BABST: Yeah, yeah. So, I mean,
20 we've known each other a long time, but I think he
21 stated it exactly as it needed to have been said and I
22 don't think anybody here disagrees with that.

23 MS. KOKINOS: No. It's consistent with
24 the Constitution, right. As you noted, the Constitution
25 explicitly states the Minerals Council is an independent

1 agency of the Osage Nation that's vested with authority
2 over development of the Mineral Estate.

3 CHIEF STANDING BEAR: Yeah. And this is
4 Standing Bear. And I can tell you right after the neg
5 reg committee was set up there was a lot more ambiguity
6 on the issue from Washington DC, and even among
7 ourselves, which is why we ended up with a Supreme Court
8 case. And we appreciate our Court giving us guidance on
9 what our Constitution means. I'm glad you also rely on
10 same source.

11 MR. BABST: Well, Chief, I mean, you
12 remember Sharon Blackwell.

13 CHIEF STANDING BEAR: Very well.

14 MR. BABST: Sharon Blackwell was my boss,
15 she hired me. And one of the things that she taught me
16 is as a functionary, as an employee of the United
17 States, we don't speak Osage. Okay? It is for the
18 Osage Supreme Court to tell us in the first instance
19 what that Constitution means and what the role of the
20 Osage Minerals Council is under that Constitution, and
21 the Osage Supreme Court has spoken.

22 CHIEF STANDING BEAR: Now that you
23 mention Sharon, if we can close with that, I'm very
24 satisfied. I will tell Sharon -- anyway, you bring a
25 lot of memories back, John.

1 MR. BABST: Thank you, Chief.

2 MR. STREATER: All right. Well, with
3 that we'll close our morning session with the Osage
4 Nation for this consultation. And we'll reconvene, the
5 door will be open at 1:00.

6 MS. KOKINOS: We'll be here for as long
7 as you would like to be, whether or not you are.

8 CHIEF STANDING BEAR: I want to make it
9 clear that we asked for this time and you have provided
10 it. But as far as I know the Nation's comments,
11 excluding the Osage Minerals Council the Nation's
12 comments have been made except for the written comments
13 that I suggested are coming.

14 MR. STREATER: We will look forward to
15 getting those.

16 CHIEF STANDING BEAR: So, we won't be
17 here at 1:00.

18 MR. STREATER: No. I realize that. If
19 you run across anybody --

20 MR. BABST: Yeah, send them on in.

21 CHIEF STANDING BEAR: Okay. Thank you.

22 MR. BABST: Thank you, Chief.

23 MR. STREATER: All right. Thank you all.
24 You all have a safe week.

25 ASST. CHIEF WALKER: I appreciate you

1 guys, I really do. And I'm glad ONRR is on our team.

2 MR. STREATER: You got that right.

3 MS. KOKINOS: Not as happy as we are.

4 (The lunch break was had at 11:40 a.m.)

5 (Participants returned at 1:00 for the
6 afternoon session. Without going on the
7 record Mr. Streater commenced the
8 meeting with representatives of the
9 Osage Nation and Osage Minerals Council
10 not present. Federal Government
11 Participants waited until 3:30 p.m., at
12 which time Mr. Streater advised they
13 would return at 9:30 a.m. on the
14 following day, July 18, 2023.)

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18 JULY 18, 2023, RECOMMENCEMENT OF CONSULTATION MEETING

19 (Proceedings commencing on July 18, 2023,
20 at 9:31 a.m., as follows:)

21 MR. STREATER: Okay. I think we're going
22 to go on the record. The proposed rule consultation
23 first took place yesterday with Osage Nation, ONRR, and
24 the attendees from BIA in the attendees at the moment,
25 So, day 2 consultation is now in session.

1 Can we go around the room starting with --

2 MS. GIEBEL: Valerie Giebel for the Tulsa
3 Field Solicitor's Office.

4 MR. STREATER: Eddie Streater, Eastern
5 Oklahoma Regional Office.

6 MR. BABST: Charles Babst, Tulsa Field
7 Solicitor's Office.

8 MR. MOUTON: Mitch Mouton. I'm with
9 ONRR, O-N-R-R.

10 MS. KOKINOS: Kristen Kokinos,
11 Solicitor's Office, Indian Trust Litigation Office,
12 Washington, DC.

13 MS. LOCKLER: April Lockler, Office of
14 National Resources Revenue.

15 MR. JAY: Jeff Jay, Office of the
16 Solicitor, Rocky Mountain Region.

17 MS. SEADER: Tonisha Seder, Office of
18 Natural Resources Revenue.

19 MR. BROWN: Rusty Brown, Office of
20 Natural Resources Revenue.

21 MS. WILLIAMSON: Tracy Williamson, Deputy
22 Regional Director Eastern Oklahoma BIA.

23 MR. STEVENS: Bart Stevens, Deputy Bureau
24 Director, BIA.

25 MR. BABST: Is it fair to say that --

1 this is Charles Babst. I guess it's fair to say that we
2 are here at 9:35'ish, and the Osage Minerals Council has
3 not appeared at today's consultation meeting.

4 Mr. Streater, do you believe it would be
5 appropriate for us to go in recess for the time being?

6 MR. STREATER: Yes, until representatives
7 from the Minerals Council show up or choose not to, we
8 will work among ourselves.

9 MR. BABST: We will be in recess?

10 MR. STREATER: We will be in recess, yes.

11 Thank you.

12 (A recess was had from 9:34 to 11:30
13 a.m.)

14 MR. STREATER: Okay. It's 11:30. We are
15 back on the record. We will break for lunch and re-open
16 the consultation at 1:00 p.m.

17 (A lunch break was had from 11:30 a.m. to
18 1:00 p.m.)

19 MR. STREATER: Okay. It's 1:00. We'll
20 go back on the record for the second day afternoon
21 consultation session of the Osage proposed rule.

22 Federal side is represented. No one from
23 OMC at this time, so we will go into recess.

24 (A recess was had from 1:00 to 2:32 p.m.)

25 MR. STREATER: All right. It's 2:30. In

1 light of the Minerals Council's non-participation today
2 we'll close this session of the proposed rule
3 consultation. We'll open again at 9:30 tomorrow
4 morning.

5 (The afternoon session was recessed at
6 2:32 p.m. on July 18, 2023.)

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10 JULY 19, 2023, RECOMMENCEMENT OF CONSULTATION MEETING

11 (Proceedings commencing on July 19, 2023,
12 at 9:30 a.m., as follows:)

13 MR. STREATER: Okay everyone. It's 9:30.
14 We are opening the third day, third and final day of the
15 Osage proposed rule consultation.

16 And we'll go around the room, introduce
17 the federal partners that are here. No one from the OMC
18 is present or from the Osage Nation.

19 MS. KOKINOS: Kristen Kokinos, Senior
20 Attorney, Office of the Solicitor, Indian Trust
21 Litigation Office.

22 MR. STREATER: Eddie Streater, Eastern
23 Oklahoma Regional Office.

24 MR. BABST: Charles Babst, senior
25 attorney, Solicitor's Office, Tulsa.

1 MR. MOUTON: Mitch Mouton, Tribal
2 Liaison, Office of Natural Resources Revenue.

3 MR. BROWN: Rusty Brown, Office of
4 Natural Resources Revenue.

5 MS. SEADER: Tonisha Seader, Office of
6 Natural Resources Revenue.

7 MR. COAKELY: Matt Coakely with Royalty
8 Valuation Guidance with ONRR.

9 MR. STREATER: Okay. We will go in
10 recess but stay in the room awaiting any participation
11 from the OMC or the Osage Nation. We are now in recess.

12 (A recess was had from 9:31 to 11:30
13 a.m.)

14 MR. STREATER: All right. It's 11:30 on
15 the third and final day of the Osage proposed rule
16 consultation. We will be breaking for lunch. Reconvene
17 at 1:00 p.m.

18 (A lunch break was had from 11:31 a.m.
19 to 1:20 p.m.)

20 MR. STREATER: Okay. This is the third
21 and final session of the proposed Osage rule
22 consultation, Wednesday afternoon. We have just been
23 notified that the Minerals Council will not be attending
24 and so the consultation session is closed for the day.

25 (Proceedings concluded at 1:21 p.m. on

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