A WHITE PAPER REPORT ON

The Effectiveness of Oil and Gas Regulatory Oversight on Oil and Gas Operations
Osage County, Oklahoma

by The Environmentally Friendly Drilling Program
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July 2013
The Osage Nation Mineral Reservation consists of approximately 1,475,000 acres and is otherwise known as Osage County, Oklahoma. The Osage Nation owns all mineral rights located within Osage County and has an income from all oil and gas royalties produced in Osage County. The Osage Nation is located in Pawhuska, Oklahoma. Osage county is unique to the State of Oklahoma in that the U.S. Department of Interior Bureau of Indian Affairs (BIA) regulates and manages the minerals on behalf of the Osage Nation.
The Environmentally Friendly Drilling Systems Program (EFD) operates as a not for profit organization which is funded by industry, government and environmental organizations and is managed by the Houston Advanced Research Center (HARC). The EFD program was founded in 2005 by Rich Haut with HARC, Tom Williams who is now a consultant to the project and worked for Noble Corporation at the time and David Burnett with Texas A&M to provide unbiased science to identify and develop solutions to address environmental issues associated with oil and gas development.

The long term goal of the Environmentally Friendly Drilling Systems (EFD) program is to ensure that environmental and societal issues are appropriately addressed in oil and gas operations. The EFD Team works with industry, regulators, environmental organizations and other stakeholders to development cost-effective technologies for sound policy that manages environmental risks associated with oil and gas drilling and production activities. In addition to technology and policy issues, the EFD team performs research on the public perception of operations and practices.

Our initial involvement in the Osage issue was through a request from one of our sponsors, The Nature Conservancy and later from the Osage County Cattlemen’s Association (OCCA). We have assisted the OCCA in reviewing the effectiveness of the regulatory authority in Osage County, current regulations as compared to other States and Federal government and needed changes in the regulations through the Rulemaking Progress which is the result of the 2011 Federal Court settlement between the U.S. government and the Osage Nation.
The overall key objective of this EFD paper is to provide an unbiased assessment of the regulatory process in Osage County. This paper has not been reviewed or vetted by any organization or individuals with vested interests in Osage County.
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A request was made to the BIA to provide public information in order to complete the report. The request was refused so a formal freedom of information act (FOIA) request was filed with the Department of Interior Bureau of Indian Affairs (BIA). After considerable delay, some of the information was provided. Most of this information should have been found on the website; however the BIA in Osage County does not operate in a transparent manner.

The e-mail communication chain following the FOIA included the Director of the BIA, Michael Black, Acting BIA Deputy Regional Director, Eddie Streater, Eastern Oklahoma Regional Director, Robert Impson, Solicitor at the Department of Interior and acted as the coordinator of the Osage Rulemaking Committee, Vanessa-Ray Hodge, and Acting Osage BIA Superintendent (Oil and Gas), Rhonda Loftin.

There was a meeting between representatives of the Osage Cattlemen’s Association, the author of this report and the Assistant Secretary of Indian Affairs Kevin Washburn, his Chief of staff Sarah Harris, BIA Director Michael Black, DOI Deputy Solicitor Kevin Haugrud on June 18, 2013. An early DRAFT of this White Paper was provided to them at that meeting. The report was also provided to the staff of Oklahoma Senators Coburn and Inhofe. The meeting pointed out some of problems and major concerns by the landowners with the lack of BIA’s past performance and stressed the OCCA supported responsible oil and gas activities in Osage County, so long as it was properly regulated.

The two Oklahoma Senators and Congressman Frank Lukas sent a letter to Assistant Secretary (appendix 5) requesting a delay in pending new rules covering Osage Oil and Gas activities and a briefing. We support this request and recommend to the Department of Interior that the rulemaking process to be properly redone.

A follow up email was sent on June 21st to Kevin Washburn and all others in the meeting by Josh Marks, the attorney for the Osage County Blue Stem Ranch and a participant in the June 18th meeting. The email supported the Senators and Congressman’s request, plus requested some of the issues discussed in the meeting would be addressed. To date, there has been no response or acknowledgement to these requests.
Drilling and completion operations can be conducted in a safe manner with minimal impact on the environment when prudent practices are followed. It is being done all over the world. Most but not all companies do this as part of their daily business practice. Because not all companies follow the rules, an effective regulatory body is required to ensure the environment, public health and safety are protected. An effective regulatory process is also needed to ensure permits are properly issued, royalties are collected and the resources are properly managed.

Imagine if you had to do your job in today’s world using 30 year old technology. It would be difficult for any company to be successful without the efficiencies of up to date technology, computers and software and good data. What if an organization had to regulate an industry today using 30 year old technology, with a fraction of the personnel required that were not properly trained to do their job? This analogy summarizes our findings of a study on the Bureau of Indian Affairs Osage regulatory oversight of oil and gas. Oil and gas has been produced in Osage Country for over 100 years. The environmental scars from past operations in the county and the lack of effective regulatory oversight by the Bureau of Indian Affairs (BIA) are well documented and will be discussed in this paper. It must be noted that the problems in Osage County are not just what has taken place in the past, which include the current outdated rules, regulations and ongoing oil and gas practices by some operators. Most of the regulations governing oil and gas operations are titled Leasing of Osage Reservation Lands for Oil and Gas Mining that can be found in 25 Code of Federal Regulations (CFRs) Part 226. They are at least 30 years old, with a few minor revisions made in the 1990’s. The regulations found in CFR 25 Part 226 are unique to Osage County and are highly outdated as compared to other CFR regulations that cover BIA lands with oversight by the Bureau of Land Management (BLM) and regulations found in all other producing states.

The data used in this report came from a variety of sources. Neither this report nor its recommendations was vetted by any Osage group and it is solely the opinion of the EFD program. The findings provide here are our objective assessments of the regulatory process with recommendations.
The Osage Mineral Council represents the Osage royalty owners. It consists of eight Osage Mineral Council members that serve as the elected governing body for the mineral affairs of the Osage Mineral Estate. The Osage Mineral Council provides administration, approves leases and conducts regular meetings to help develop oil, gas and minerals.

The rulemaking committee included representatives of the Council and their attorney.

Information on the Council and its make-up can be found at:

www.osagetribe.com/minerals
THE RULEMAKING PROCESS AND STATUS

The Osage Negotiated Rulemaking Committee was created following a settlement between the U.S. government and the Osage Nation. The Osage Nation was awarded a $380 million settlement in October 2011 to resolve litigation regarding alleged mismanagement of its oil and gas mineral estate. The settlement ended a 12-year dispute over the Interior Department’s accounting and management of the Osage Tribe’s trust assets, including oil and gas property. The settlement compensates the tribe for historical losses to its trust funds, plus interest. As part of the agreement, both the tribe and the government agreed to address ways to improve the trust management of the Osage Minerals Estate. During settlement negotiations, it became clear that a review of the existing regulations was necessary to assist the BIA in managing the Osage Mineral Estate.

The Osage Tribe brought its trust accounting and trust management lawsuits in the U.S. Court of Federal Claims (CFC) in 1999 and 2000. Also, the Tribe brought a trust accounting case in the U.S. District Court for the District of Columbia in 2004 and dismissed that case in 2010. That ruling required the Department of Interior to revise their current regulations.

An Osage Rulemaking Committee was formed in June, 2012 with 9 members. It is a Federal Advisory Committee to the Secretary and members were chosen with a two year term. Five members were chosen by the Osage Mineral Council and two from the BIA; one from the BLM and one from the Office of Natural Resources Review. There is no representation from landowners, non-government organizations (NGOs), oil and gas producers or state boards.

The hearings began on August 21, 2012. The hearings initially focused on the financial part of the regulations dealing with royalties and rates. There were a total of 8 public meetings when the rulemaking committee announced that they had a “consensus” for final rules and approved a revised Code of Federal Regulations 25, Part 226 on April 2nd. The proposed rules cover oil and gas drilling and production in Osage County.

Each meeting was open to the public where public comment was allowed. They considered many comments but the majority of the public comments, including those from the operators and landowners were not included in the proposed rules.

On January 17, 2013 at the request of landowners and members of the Osage Cattlemen’s Association, the rulemaking committee, staff and BIA Director Black met with some of the landowners and representatives at the Osage Casino in Tulsa, OK. The purpose of the meeting was to discuss some of the landowner issues related to lack of regulatory oversight and inadequate regulatory
protection. They agreed to open the hearings up to more broadly address all related regulations. The landowners then prepared comments on the rules which were submitted at the February public rulemaking committee meeting.

The local Oklahoma press has been diligent in reporting on many of the environmental and safety issues related to poor regulatory oversight and inadequate regulations. The press also attended the hearings. The press was not allowed to film any of the proceedings nor conduct any interviews at or outside the meeting facility.

The latest proposed regulations are posted on the rulemaking website. www.bia.gov/osageregneg/. They do not adequately address the key issues described during the hearings by most stakeholders, operators or landowners.

This paper does not address the proposed regulations covering the royalties and the basis of price for oil and gas. The operators have made it very clear through their producers association and the media they do not believe the rules are fair. One of the most contentious issues is setting royalty rates based above the price operators receive. (see appendix 4).

The majority of the landowner comments transmitted through the Cattlemen's Association were not included in the new rules which addressed important issues. The comments were based on best in class state regulations, BLM regulations, orders and industry standards to assure that the new rules would provide for the necessary practices and safeguards to protect the environment (air, water and soil) and to ensure safety, and that there were adequate bonds to assure wells will be properly plugged and abandoned. These comments reflect regulatory practices that are required and followed by operators in every part of the U.S. except Osage County.

According to the BIA website, additional comments will be considered by the Secretary once the rules are posted in the Federal Register and before final rules are promulgated.

On March 20, 2013 the Mineral Council dismissed their legal team from the Washington D.C. based Akin, Gump law firm and the consultant who had been active in the rulemaking process. This no doubt complicates recommendations made in the proposed final rules.

The latest website posting states:

On April 2, 2013, the Negotiated Rule Making Committee voted to approve and transmit a package of proposed revised regulations to 25 C.F.R. Part 226 to the Department of the Interior for consideration. At this time, the public comment period has concluded. The Designated Federal Officer will transmit the package of proposed regulations approved by the Committee to the Department.
Once the Department receives the materials from the Designated Federal Officer, the proposed revised regulations will be reviewed and changes may be made during this process to meet formatting, statutory and other legal requirements. The Department will then publish PROPOSED Revisions in the Federal Register. At that point, as required by the Administrative Procedures Act, the public will be able to submit written comments that will be considered by the Department. After the written public comment period ends, the Department will again review the proposed rule and can make additional changes before publishing a FINAL rule.
The Osage Mineral Estate has approximately 19,500 active wells. This includes 14,500 producing wells, and 5,000 service wells, which in comprised of water injection salt water disposal and water supply). The BIA has primary authority for regulating oil and gas activities in Osage County, with the exception of the U.S. Environmental Protection Agency (EPA) for spill containment and the underground disposal of salt and produced water wells. The U.S. Department of Fish and Wildlife is responsible for activities related to certain species including the Migratory Bird Act requiring netting over open tanks and saltwater ponds. The lack of compliance with this requirement is visible and well documented by many photos provided to the BIA during the rulemaking meetings. The Occupational Safety and Health Administration (OSHA) are responsible for safety and health, although there is no Osage County presence. There is no reference to OSHA or other federal agencies on the BIA Osage website: www.bia.gov/WhoWeAre/RegionalOffices/EasternOklahoma/WeAre/Osage.

According to the BIA, the EPA Region 6 Office and the Oklahoma Department of Environmental Quality are responsible for Air emissions and enforcement and ground and surface salt water discharges. We asked the EPA and the state on several occasions and their response has consistently been to first report the incident to the BIA. The EPA has a website for reports filing reports of violation to the Clean Air Act, the Clean Water Act and the Safe Drinking Water Acts. Clearly this is another disconnect compounding problems of citizens, landowners and operators.

According to a July 12, 2013 letter from the BIA (Appendix 6) the Agency has an authorized staff of 32 with a staff of 10 to process permits. They have 9 inspector positions with only 7 currently being filled. That is only 7 inspectors for 19,500 active wells and another 10,000 plus inactive wells, or fewer staff to inspect and enforce the regulations than the number for permitting. This would also imply they have another administrative staff of 13 FTEs.

They do not differentiate the types of wells permitted and there were 418 wells permitted in FY 2011, 378 in FY 2012 and 220 so far this 2013 FY. Their annual budget is 2,750,155.

The entire BIA regulatory process is at least 30 years behind all states and other Federal oil and gas regulatory bodies. There is no form of electronic reporting, permitting, well records, well permit status or web access to any of the lease or permit process at the BIA office. There is no existing or easy method for the
operator or the landowners to track the process on the web. There is no way for operators to find important data on existing and offset wells, or for the BIA personnel processing permit applications to reduce their time and improve their work flow. These are relatively easy process function efficiency fixes, they don’t have to be reinvented and it is rather perplexing why the office operates this inefficiently or poorly.

There is a link on the website for the forms for the EPA water injection well UIC (Underground Injection Control) permits only.

While promised by BIA Director Michael Black to the OCCA in March 2013 following a rulemaking hearing, there is no accessible link or posted information on the BIA website to identify who is responsible in case of an incident, violation or emergency. In an April 8, 2013 letter (see appendix 2-A) from the BIA Regional Director to the Osage County Cattlemen’s Association from the BIA a number of improvements have been promised but as of July 23, 2013 they have not delivered on the commitment.

The Department of Interior Bureau of Land Management (BLM) manages, permits and provides regulatory oversight most of the BIA lands. The BIA has been providing some assistance to the BIA Osage including training since the rulemaking process began.

It was suggested during the rulemaking hearings, the BLM might be an option for taking over the regulatory function in Osage County. The July 12th BIA letter stated the Agency takes 60 to 90 days to issue a well permit. They require NEPA and a Cultural Resource Clearance prior to a permit being issued. A report issued from the Congressional Research Service March 7, 2013 report “U.S. Crude Oil
and Natural gas production on Federal and Non-Federal Lands” is shown in the Appendix 1.

The report demonstrates inefficiencies of Federal Regulatory process vs. how States operate and shows the resulting increase in oil and gas production on private lands with State permit approvals taking approximately two weeks and the decreased production on Federal BIA and BLM lands with average permit approvals taking in excess of 300 days.

The State of Oklahoma Geological Survey assists with annual technical meetings and has met with the Mineral Council and the BIA in the past encouraging them to have the well records digitized and made useful for operators and functional for the BIA. This would help increase production and improve the permitting and regulatory process. While an excellent investment, and would get the Osage records on par with the rest of Oklahoma and other states and Federal lands, this offers has been ignored.
DISCUSSION ON THE STATE OF OKLAHOMA REGULATORY PROCESS

The State of Oklahoma provides protection for oil and gas activities that covers all landowners in the state – except the landowners of Osage County. This includes the use and protection of the Osage landowner’s water for oil and gas activities and air quality.

The Oklahoma Corporation Commission (OCC) regulates oil and gas activities throughout Oklahoma except for Osage County. In contrast to how oil and gas is regulated by the BIA in Osage County the following information is from the OCC website: www.occeweb.com/og/oghome.htm

Oil and Gas Electronic Filing - Save time submitting applications and forms with Electronic Filing
Information on the website includes:
- Director (contact information)
- Field Operations (contact information)
- Pollution Abatement - Underground Injection Control (contact information)
- Technical Services (contact information)
- E-Filing Questions (contact information)

The website also shows:
- Spill Report Forms
- Base of Treatable Water Maps
- Hydraulic Fracturing and Acidizing forms and data

This is a striking contrast to the BIA’s inefficient Osage regulatory process and lack of information available to the public and operators.

The State of Oklahoma Department of Environmental Quality (www.deq.state.ok.us) deals with health and the environment including air, water, land, environmental complaints and local issues. This includes issues related to oil and gas except those in Osage County where their jurisdiction does not appear to extend.
The Efficacy of State or Federal Oversight of Oil and Gas Operations

There is a notable difference on how states adapt to an ever changing oil and gas industry and the way the Federal Government’s Bureau of Land Management (BLM) operates. For example, the BLM, who has been challenged for months to develop new regulations for hydraulic fracturing, and still have been unable to reach a suitable conclusion; or the Bureau of Indian Affairs (BIA) who are using outdated 30 year old regulations in Osage County, that they do not adequately enforce. In the 2011 Federal Court judgment the BIA was sued by the Osage Tribe for mismanagement. The judgment required them to fix their regulations. They have yet to modernize their regulatory process or update the regulations.

The Interstate Oil and Gas Compact Commission (IOGCC) and the Ground Water Protection Council (GWPC) represent state oil and gas regulatory agencies. Both organizations are addressing ways to improve how regulators do their jobs. The initiative identified by the IOGCC and the GWPC called “States First” includes recommendations that properly provides each state with the necessary flexibility in their regulations and enforcement needs; which includes the unique geographic, culture and geologic differences found in each region of the U.S. “States First” highlights some of the innovative ways regulators can share best practices, leverage collective knowledge and utilize common innovative regulatory tools like the FracFocus data base and the Risk Based Data Management System or RBDMS. FracFocus has over 45,000 entries by over 400 operators of wells hydraulically fractured. Twelve states and 8 pending have included the reporting requirement in their regulations. Many operators are routinely doing this on all jobs throughout the U.S. regardless of the regulatory requirement with two companies reporting in Osage County where 10 new wells can be found to date. The database is easily searchable by the public. It is a requirement in Oklahoma except in Osage County. This system, www.fracfocus.org, was requested to be included in the new rules for all new wells using hydraulic fracturing but was also rejected by the rulemaking committee.

“States First” provides a process for data and best practices exchange on a policy and technical level. The initiative includes regulatory training programs and an inspector certification course, which shows evidence of proficiency, demonstrates to the public there is competency, and provides continuous cooperative efforts between state regulators. The results are savings to the regulatory bodies, a streamlined permitting process, improved field practices, better protection of
land, water and air, while taking advantage of emerging technologies and research.

The initiative includes cooperation with the EPA on the UIC program and also includes peer reviews for continuous improvement.

RBDMS is a powerful tool designed to assist regulators in doing their jobs efficiently, transparently, saving money and improving the process for all stakeholders.

The GWPC RBDMS system was designed to help agencies manage oil and gas injection well data and evaluate the risk injection wells pose on ground water. The RBDMS enables the protection of water resources by sharing data across state lines and by providing the information to operators, their labs, service providers and the public. In the case of Osage County and the State of Oklahoma, the use of RBDMS would solve issues and concerns in sharing data across the county line and could provide all stakeholders with needed information. The tool has been expanded to improve the overall permitting, regulatory and inspection process. Case studies have been published covering most states to demonstrate efficiency and cost savings. Some examples of the advances made include an inspector module to allow inspectors to gain immediate access to field data, elimination of iterative data entry, and the ability to provide immediate documentation of the inspection. RBDMS allows operators to increase their compliance with permit conditions so drilling programs can be managed with efficiency and environmental safety. Routine permits can be processed with greater efficiency, while new permit applications can be subjected to appropriate level of reviews in a timely manner as case studies shown on the GWPC website www.gwpc.org. States like Pennsylvania are using this to process routine oil and gas permits in 1 to 2 days instead of the normal 28 days. Automating monthly reports frees up personnel for within the agency for other important work. States are documenting how the system helps maximize recovery of oil and gas from marginal wells through data access for improved recovery process and re-entry of existing wells. The State of North Dakota Oil and Gas Director Lynn Helms, for example, reported at the 2013 Midyear IOGCC conference the average time for a permit to be issued is 180 days on BLM lands, 290 days on BIA lands in their state and takes less than two weeks on state lands. The State of North Dakota is doing a better job than the Federal Government in protecting the environment providing efficiency and transparency in the regulatory process while increasing production and revenue for the state.

In conducting this study it was learned the GWPC installed the RBDMS data site and digitized some 30,000 idle and producing wells in Osage County through funding from the Department of Energy for the Osage Mineral Council about 10 years ago. The RBDMS system allows tracking and data mining of wells and could, but is not, providing a means for transparent reporting and data management of oil and gas operations. This system is not being used by the BIA office.
The RBDMS data site for Osage County is being updated, through the UIC program, but it is not being utilized for its intended purpose nor data made available for use by the BIA for permitting and well records, nor is it available online to stakeholders. While the website cannot be found by the public, we were able to review the program with the help of the GWPC. Wells within Osage County can be found by entering the API number, landowner or operator name. A map of the county provides access to the well information and the data entered for each well. The lack of use hinders needed efficiency in the office so that inspections, an incident report and tracing could be utilized within the system. Issues concerning on-line casing to protect fresh water, well status, well locations and permitting efficiencies are not being utilized.

Making full use of the system would enable the BIA to demonstrate transparency, allowing all stakeholders access to information.

The Institute for Energy Research recently released analysis on June 10, 2013 (www.instituteforenergyresearch.org) of the Energy Information Administration (EIA) 2013 data “Sales of Fossil Fuels Production on Federal and Indian Lands” showing that production of fossil fuels on federal lands is at a ten year low. The analysis also found that overall fossil fuel production on federal lands in 2012 was down 4% from production in 2011. Crude oil and lease condensate production on federal lands fell 18% from 2010 to 2012. Finally, natural gas production on federal lands in 2012 was down 7% from 2011.

While it is striking how much combined oil, natural gas, and coal production has fallen on federal lands, especially given the fact that federal lands contain vast amounts of energy resources, what is more striking is comparing production on federal lands to production on private and state lands.

While production has dramatically fallen over the past decade on federal lands, the hydraulic fracturing revolution has led to dramatically increasing oil and natural gas production on private and state lands as shown in the chart below.
Percentage Change in Combined Oil, Natural Gas, and Coal Production on Federal vs. Private and State Land 2003-2012

Total Source: MER Table 1.2 http://www.eia.gov/totalenergy/data/monthly/query/mer_data_excel.asp?table=T01.02
SURFACE CONTROL

Rules covering surface use, access and land owner rights are one of the most outdated sections in the existing rules. A surface use agreement between the operator and surface owner is not required and payment of damages and access are woefully inadequate. BIA’s latest proposed new rules were arbitrary and are also not adequate. The vast majority of landowners understand the beneficial need for oil and gas production and activities in Osage County. The rules for access and damages need to be revised. There are a number of good examples in states like Oklahoma, Colorado and Texas which would be good models for the BIA to use and were rejected in the rulemaking process.

Requests submitted by the OCCA are shown in Appendix 2 A and B – “Request by the Landowners for needed Rule Changes”.
One of the most contentious issues is related to surface and ground water rights. The current rules ignore Oklahoma law on water ownership. Proposed rules by landowners addressed this issue which is also included a letter from the Oklahoma Attorney General. (See the letter from the OK Attorney General in appendix 3). The OCCA made a reasonable proposal in the rulemaking process on water use which was not included in the proposed final rules. Additionally the surface owners have no way to determine if wells are permitted, drilled, cased and cemented below fresh water zones. The operators are given the right in the existing rules to use surface and ground water for their well activities without reaching an easement or gaining rights from the surface owners. The Oklahoma laws state the surface owners regardless of their mineral rights own their water. The BIA rules ignore this law.
Oil and gas operator size ranges from large to mid-size independents like Encana, Devon and Linn, to small independents and very small companies, commonly called the “Mom and Pop” operators that produce the thousands of stripper wells in Osage County. Many of these operators are also citizens of the county. The Mississippi Lime Play has attracted a recent uptick in exploration activity and increased oil and gas production with horizontal drilling activity throughout the Northern Part of Oklahoma and Southern Kansas including Osage County. On July 16th 2013 the Oklahoma City based Journal Record newspaper Encana Corporation intended to pull out of Osage County after drilling several horizontal wells and Chaparral Energy an Oklahoma based independent operator was shutting down their future horizontal Mississippi play wells while concentrating on a shallower C02 improved recovery project. Uncertainty of new rules was cited as one of the contributors. If others follow, this could have a negative impact on future production potential. However, on June 29th 2013, (also reported by the Journal Record) Chaparral announced an improved oil recovery project involved with the installation of a C02 (carbon dioxide) gathering facility at a fertilizer plant in Coffeyville, Kansas, and the laying of an 8-inch, 68-mile C02 pipeline across northern Osage County and the construction of field infrastructure facilities for the injection of C02 into the historic North Burbank Unit, which is one of the largest cumulative produced fields in the U.S. mid-continent.

The quality and practices of oil and gas operations is as far ranging as the size of the companies. In touring the county it is evident that some companies operate as well and proper as they do in other regions of the country. Some unfortunately do not.

Unlike every other county in the State of Oklahoma and in every other producing state, and on BLM properties, there is not an adequate provision in the BIA Osage CFRs for surface use agreements and easements. This puts the surface owner and the company who has the permit at odds in many cases.

There are examples of first class operations in Osage County. Some operators, regardless of the regulations or regulators, operate in a prudent and responsible manner. Some companies recently entering the county are even dealing with past problems that were caused by prior operators. There are some companies, however, that do not comply with the rules. There is an arbitration clause in the current rules concerning surface damages in the regulations that is unfair and inadequate as compared to other regional state regulatory requirements.
Saltwater leaking from an old holding tank (no berms) (left). Saltwater damage to the soil and entering into a cattle pond (right)

Regulations need to be in place because of poor performers. Regulators need to also enforce these rules. The poor performers in Osage County, unfortunately, understand that the rules are lax and that the enforcement will not require them to properly deal with the land owners on surface use or protect the land, air, water or safety in most cases. In touring operations throughout the county, we have witnessed some of the worst practices anywhere in North America. We have also seen normal prudent practices as found in other parts of the country.

*All operators suffer from an inefficient permitting process that impacts production.*

In order for well plans and permits to be approved they must comply with National Environmental Policy Act (NEPA) documentation requirements and Cultural Resource permits. NEPA causes the operators to identify potential environmental issues and how they will be addressed. As shown in Appendix 1 the process is slow on BLM lands and in Osage County it is inefficient and ineffective. The Osage Nation royalty owners, represented by the Mineral Council are also penalized by this process if not conducted a timely manner.

Since most of the operators in the area are small, they do not have the resources to adequately monitor water and air quality, nor do they have the resources to properly train service and field workers on safety and environmental issues. The most recent proposed regulations posed on the BIA website www.bia.gov/WhoWeAre/RegionalOffices/EasternOklahoma/WeAre/Osage do not properly take into account the differences in operations and liability risks.

The organization of operators called the Osage Producers Association, (OPA) reportedly has 130 members. These are companies of various sizes who are active in the county. There are annual OPA forums and meetings, but these meetings have not produced any best practices documents or regional standards,
as has been done in other regions. Rob Lyon Jr., founder and head of Tulsa-based Link Oil Co. is the president of the OPA. They have publicly voiced issues with the proposed regulations concerning oil royalty calculations, royalty rates, bonding, site security plans, and termination of leases.

The Oklahoma Producers Association published an open letter (see appendix 4) outlining their problems with the rulemaking process with valid concerns.

The Oklahoma Marginal Well Commission has developed best practices and handbooks. (www.ok.gov/marginalwells) They conduct workshops and meetings to improve practices and increase production on all wells in Oklahoma including Osage County.

The Governor appoints nine Commissioners selected from the oil, gas and royalty owner associations, Osage County and members from the four districts of the Corporation Commission. The Commissioners have established standing committees and created an Advisory Council to gain the maximum diversity in information and experience. According to the Oklahoma marginal well commission, Osage County is the home of more marginally producing stripper wells per capital than any other in the U.S. It is unclear why the Rulemaking Committee did not include a representative from this commission.
A relatively new play being developed with horizontal drilling in the region, called the Mississippi Chat and Mississippi Lime, is in its infancy and the county is just beginning to see the impact of new roads, truck traffic, electric lines, pipelines, ponds used for make-up water, and disposal wells—these are all major issues. This development if the results from drilling proven cost effective for operators will put additional strain on the permitting and enforcement in the county. The Mississippi Lime and an upper formation called the Mississippian Chat are relatively shallow (2,500’ to 4,500’ below the surface), primarily oil reservoirs with various amounts of natural gas, (some wells are producing a significant amount), and potentially will make a lot of salt water. The wells are drilled horizontally for two to three thousand feet and completed with hydraulic fracturing (possibly with some acid) and, unlike the shale plays, they recover most of the completion fluids plus additional water from the formation. Some early wells were over-fractured and encountered too much water. As previously reported in this paper, two companies have already announced they will exit from this play due to marginal costs, technical challenges and uncertainty caused by the recent rulemaking process. The development, if not properly conducted, could have an adverse impact on native species as well as their ranch activities. If properly conducted, it should have a positive impact on the economic well-being of the region.

Summary of findings:

- Current regulations contained in 25 CFR PART 226 - written to protect the environment, health and safety are inadequate and are not being enforced. But, without having the necessary personnel and tools in place the office will not function properly regardless of what rules exist.

- The oil and gas permitting and regulatory processes must be immediately modernized. This office cannot properly function without this taking place.

- There is very poor communication between BIA, the Mineral Council and all stakeholders including operators and landowners.

- The Mineral Council and the BIA should embrace and not reject state resources. They do not appear to acknowledge that the state is a legitimate stakeholder. The citizens of Osage County are also citizens of Oklahoma. Pollution of the water and air does not stop at the county line. They have an obligation to protect the health, safety of the citizens.
• There is more common ground than there are differences, with the common theme that there needs to be a competent regulatory body having and enforcing reasonable rules with accountability and transparency.

• There must be accommodations in the regulatory process for small producers and the legacy fields who are using water floods and improved oil recovery methods to produce the thousands of wells in the county. This must also include assurances that adequate funds are set aside to properly plug and abandon wells once they are no longer economical.

• Good data are essential to an efficient regulatory process and proper protection of the environment and health. The BIA is not taking advantage of the resources available to them.

• The landowners represented thought the Cattleman Association have stated and demonstrated that they do not oppose oil and gas operations and understand that the operations are necessary to the welfare of Osage County. The Association has expressed concerns about the impact of the new horizontal wells, hydraulic fracturing and the overall impact to their property, water and air.

• There are several thousand old wells in the area; as there has been shallow oil production for about 100 years in the county. There is some historic gas production, primarily from coal seams but there is not adequate infrastructure at this time if addition gas in significant quantities is produced from the Mississippi Lime.

• Chaparral Energy Inc. has built a pipeline line that is moving carbon dioxide to help with enhanced oil recovery at the historic North Burbank field in Osage County. It is reported to initially will pipe about 23 million cubic feet of CO2 captured from a Coffeyville fertilizer plant. This will help revitalize production in the mature wells and increase oil production. With better data, fair and certain rules and a commercial and technical success from this project other similar projects could follow.

One of the primary objectives of EFD’s first visit to Osage County was to provide accurate information about the impact of oil and gas operations, horizontal drilling, hydraulic fracturing activities since there is a lot of misinformation distributed by organizations supporting and opposing oil and gas drilling, hydraulic fracturing and production.
- The maintenance of most of these legacy oil wells is, in general, poor.

When spills are reported by landowners and the BIA causes the operators to mitigate the problem, it has been observed the most common solution is to cover or bury the spill.

- Salt water spills are evident throughout the area as well as oil spills and abandoned equipment, gathering lines, and tanks, along with open and abandoned oil pits. While there are exceptions, from the sites visited, normal best practices are not always followed by all operators for construction and remediation of pits, tank batteries, berms, protection from spills, maintenance of gathering lines, land protection and restoration. Larger companies have recently entered the area and are beginning operations; they have distributed information about their operations which, if followed, will significantly “raise the bar” for other operators. Other companies are also practicing in safe and an environmentally responsible manner.
• The newer well sites observed had two or three wells permitted on each site – the producing well, and a disposal well. In some cases a water well was drilled for the makeup water for a hydraulic fracturing treatment. Recently drilled producing wells observed were producing water and oil and flaring the gas, apparently waiting for a gathering gas pipeline; they had a tank battery, including a water holding tank. Some tanks and production facilities were properly constructed with liners and berms; others were not and in violation of regulations. Fresh oil spills were also evident at some sites as was the smell associated with hydrogen sulfide (H₂S) contaminated gas.

Some of the operators are selling the associated gas they produce into a gathering line, but several are also flaring. No gas disposal wells were observed and it is impossible to find this information on the BIA website. Hydrogen sulfide, which is a potentially fatal gas if the concentration is sufficiently high, is found in many new wells in production. This is a significant concern. Documentation provided to the Osage regulators showed that some people have been taken to the hospital because of the H₂S fumes. This information has been provided in the rulemaking committee hearings, the BIA regulators and to the EPA. BIA Director Black has indicated they will work with the EPA to determine the extent of the problem, which is very encouraging. The EPA has also recently stated to landowners and Director Black they will make inspections and measurements in the future.
Meetings with the OCCA and the EPA have also generated a commitment to work on these problems. This has been one of the more positive outcomes of the rulemaking process. Conversations and meetings with the EPA in June, 2013 at wellsite indicated only methane emissions have been measured across the County as part of an inventory project.

Unlike most states, the BIA in Osage does not require operators to conduct and post independent analysis of gas produced, flared or vented. The “rotten egg” odor associated with H$_2$S was evident at every new well visited; we also observed some gas being vented and not flared. Gas leakage from the casing of recently drilled wells was also observed.

Unlike all states, enforcing and reporting violations in Osage County is primarily left up to the landowners. It has been their responsibility to call the BIA and request the inspectors to visit the wellsite, and they are required to provide the well location permit numbers. If there was an issue concerning surface disturbance or other related violations, the BIA’s has told many of the landowners it was not their issue to address. This is wrong.

The primary landowner issues are due to a lack of supervision and enforcement by the BIA along with EPA’s reluctance (so far) to do more other than permit the UIC program or issue penalties for blatant spills. Once a permit to drill is issued and the BIA regulators in the office “check the completed boxes” and, in particularly, have the required completed forms like NEPA, cultural and archeological sites, they issue the drilling permits. Companies certify compliance to the regulators but according to BIA, are rarely overseen by regulators to ensure that well casing is properly set, wells are cemented properly, the wellbore and the horizontal section is located where it is supposed to be and they are actually complying with terms of the lease and the drilling permit. **This is not the way it is done in all states.** The poor drilling and production practices by some operators we have observed, and, particularly mitigating the methane and H$_2$S emissions, are not being adequately regulated at this time by the BIA or according to the BIA by EPA and the State DEQ who they believe have jurisdiction. We have stated to EPA and the BIA after visits to wellsites this presents a significant health and safety danger
to public health. We have encouraged landowners and the BIA to get proper training and safety equipment.

On June 18th 2013 representatives from the OCCA, Josh Marks, an attorney for the Blue Stem Ranch and Tom Williams met with Assistant Secretary Kevin Washburn, his chief of staff Sarah Harris, Jack Haugrud, Deputy Solicitor and BIA Director Michael Black. It was evident there has been poor communication between the BIA, the Assistant Secretary and the DOI. While some improvements have been made in Osage BIA Office according to Director Black, the office has not improved transparency and communication in performing their functions, and delivered upon promises made to the OCCA in March 2013 to simply post information on the website of contacts and responsibilities, how to report emergencies, violations and then provide a system of reporting results have not been kept. It was pointed out to Assistant Secretary Washburn at that meeting there were a number of resources available to improve the performance of the BIA Osage office, with no acknowledgement they intend to take advantage. To date there has been no response to calls, emails and requests made at that meeting.

There are a number of observed salt water pits and ponds that do not comply with Federal rules requiring a screen to protect migratory birds.
Even after the last lawsuit determined that the Federal Government had mismanaged the mineral estate, there have not been any changes to indicate the mineral estate is now being properly managed. The rulemaking process was required in the judgment and formed to solve this problem. As reported in the local press, the Osage Mineral Council has indicated they do not trust the Department of Interior and the BIA to document, collect or manage their resources. Yet they have not provided recommendations for any substantive changes to correct the problem in the rulemaking process either. Many of the Osage mineral estate owners are also landowners and they observe their lands and water are also not being properly protected.

Ironically during the rulemaking process, the BIA did not offer proposed changes in the rules or in the regulatory process sufficient to alleviate these concerns and as a result the rules and process (currently and proposed) do not address the problem.
RISK TO ENVIRONMENT, GROUNDWATER, WILDLIFE AND HEALTH

This report has discussed how the lack of enforcement has allowed a compromise in environmental, safety and health concerns. Safety concerns with the elevated hydrogen sulfide gas in some production wells have been thoroughly discussed in this report. Water is the lifeblood of Osage County. The lack of controls from saltwater discharges and improper proper casing of fresh water has had an adverse impact on water quality for years. On July 17th 2013 the USGS and the Osage Nation announced a study using electromagnetic (EM) mapping technology to map the fresh and salt water aquifers throughout the county. This four year $2.2 million dollar study (according to the USGS) will assist in the overall management of the existing water. It was unclear from the press release the extend of the BIA’s involvement, if they will require water sampling and testing from operators to ground truth this EM data, or if they plan to use this to verify proper depths for fresh water protection when determining casing points for wells permitted or where operators can source makeup water for fracturing. One “hopes” this would be the case, but given BIA’s history of not taking advantage of these opportunities it is doubtful. There is no coordination in the project planning with the Oklahoma Geological Survey or the state according to state officials.

Wildlife has also been compromised through lax operations and poor regulatory oversight. The Nature Conservancy has been an advocate for protecting wildlife.

Nadel & Gussman, Hickory Creek Dome 4A-H taken 2013-06-12 on The Nature Conservancy Property. Spill was reported same day as photo. Note the junk and poor well pad construction.

Same site – photo shown to BIA and EPA, operator called, no resulting fines or penalties were issued. The mess was “mitigated” by burying in a pit with no liner. (The out of site out of mind solution).
habitats with good practice recommendations being largely ignored by the BIA.

Osage is also the home of large herds of wild horses transferred from BIA managed Federal lands. The environmental impacts on the habitat for these horses from poor oil and gas practices have been observed by the BLM. It will be telling of they choose to encourage the BIA to do their job.

It was observed by one landowner the operator had a dip net next to an open saltwater tank to pull out the dead birds. This net would have been obvious to an inspector. There was no required protective netting over the pit. It must have been cheaper to buy the dip net than the protective netting. At the same site there were a number of other violations ignored by the inspectors. A recent visit to wellsites showed live electrical wiring on top of the ground, no conduit and connections spliced with tape open and connected where cattle and the ranchers had full access.

Exposed wiring on top of ground, some wires spliced and connections exposed, no conduit, access to cattle, horses, people and traffic, wellsite littered with thread protectors, this was at a Mississippi Lime Horizontal well wellsite (photo taken 6 23 13)

BLM wild horses in Osage County near unprotected wellsite

Dead cow drug by the operator from the pump jack without the require barriers and was not reported. No violations were issued by the BIA
Recommendation #1. Start over with the rulemaking process.

The current rulemaking committee did not adequately complete their job. The rulemaking committee was required in the Federal Register Notice to have proper representation that was to include objective technical personnel with a background in oil and gas operations, engineering, geosciences, environmental science and regulatory compliance. This did not take place.

This is a serious issue which should warrant the personal attention of the Secretary of Interior Jewell and the Assistant Secretary of Indian Affairs Washburn.

The Federal Register Notice (which can be found on the BIA Osage website previously shown in the report) that was issued, and was required to form the rulemaking committee stated: Under 5 U.S.C. 563, the head of the agency is required to determine that use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the agency head must consider seven factors (factors not addressed are listed below). Taking these factors into account, BIA has determined that a negotiated rulemaking is in the public interest because according to the Federal Register Notice:

- **A rule is needed.** BIA has determined that in order to avoid future litigation and to better assist it in managing and administering the Osage Mineral Estate, a rule is necessary.

The fact is this function has not been sufficiently accomplished and the existing rules invite future litigation.

- **BIA is committed to ensuring that the Committee has sufficient resources to complete its work in a timely fashion.**

This did not take place because it would have required hiring experts in oil and gas operations, standards, regulations and best practices.

- **BIA intends to ensure full and adequate representation of those interests that are expected to be significantly affected by the proposed rule. Under 5 U.S.C. 562(5), “interest’ means with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.”**
This did not happen since stakeholders directly impacted were not represented on the committee.

**Solution:**

1. The Department of Interior should assemble a new rulemaking committee comprised of qualified individuals who are representative of all stakeholders. They need to be provided competent, independent legal counsel.
2. The regulatory office must be staffed with qualified and properly trained personnel in order to conduct the functions of managing the resources, enforcing the rules and to properly serve the Osage mineral owners and the citizens of Osage County.
3. Ethical regulatory practices and assurance that there will be no conflicts of interest and accountability must be required and incorporated in the regulatory office and applied to all employees.
4. There must be a system of accountability and transparency in the regulatory process.

**Recommendation #2. Develop process for accountability.**

If any organization is to be effective and responsive and if the regulatory process is to be transparent to the public, there must be oversight and regular review of personnel and their performance. This should extend to personnel in all functions within the regulatory body involved in the permitting process, regulators, administration, accounting and management. It was recommended by the landowners to the BIA in the rulemaking committee hearings to utilize a not-for-profit organization called STRONGER, “The State Review of Oil and Natural Gas Environmental Regulations.” They have indicated a willingness to help in Osage County and have members on the committee from Federal agencies. The state review process is a collaborative process by which review teams composed of stakeholders from the oil and gas industry, state environmental regulatory programs, and members of the environmental/public interest communities review state oil and gas waste management programs against a set of guidelines developed and agreed to by all the participating parties. There are other options for review and oversight, like the IOGCC and GWPC States First program, but unless there is an accountability process, the credibility of the Department of Interior and the performance of the regulatory body will rightfully be questioned.

**Solution:**

The Department of Interior should engage STRONGER to review regulatory processes used in Osage County.
**Recommendation #3. Ensure that well records and subsurface data are accessible and accurate.**

It is almost impossible to properly protect groundwater without having accurate records that are continuously updated and without taking proper precautions to case and cement the hydrocarbon and salt water zones in order to isolate them from fresh water zones. Proper protection practices of groundwater are defined by the Ground Water Protection Council (www.GWPC.org) which is located in Oklahoma City.

The State of Oklahoma Geological Survey has developed excellent well and subsurface records that are maintained by the geological survey at the University of Oklahoma in all counties in Oklahoma except Osage County. They have done some work in the past in Osage County but the data is out of date and should be updated. The records can then be used by the regulators when permitting wells. All new wells should be logged and the electronic logs should be required in digital format and incorporated into the database. All existing files should be digitized. This is done in all states. The U.S. Geological Survey (USGS) has also done some work in Osage County and should be consulted to assist the BIA in this critical effort. The recently announced four year electromagnetic study by the USGS to map ground water needs to be coordinated with the BIA and the State.

**Solution:**

The BIA should work with the State of Oklahoma geological survey in order to ensure that all well records in Osage County are accurate, accessible and complete.

**Recommendation #4. Both the BIA and the Osage Mineral Council should develop a cooperative agreement with the State of Oklahoma.**

The BIA on behalf of the Osage Nation is required to make sure the oil and gas operations are properly regulated and the mineral estate is properly managed. This is a statutory requirement. BIA has proven they cannot and will not adequately manage the mineral estate or regulate oil and gas operations independently.

We conducted an assessment of the alternatives to improve the regulatory process. One option discussed was to have the BIA use and delegate the BLM for regulatory inspection and enforcement. The BLM has offered inspector training to the BIA inspectors which is a good outcome of the rulemaking process. We have reviewed the performance of the BLM, their rules, regulations and processes and we firmly believe that the BLM is not capable of properly managing and regulating oil and gas operations in Osage County.
to the best interest of the Osage Nation. Replacing the outdated Osage rules with the BLM’s own CFR regulations would be an improvement but they are not adequate. The BLM process is slow, as documented in this report; many of their rules have not kept pace with advances in new oil and gas activity; (a most recent example has been the recent long and drawn out rulemaking on hydraulic fracturing and reporting).

In contrast, the states, through progressive regulations, the FracFocus web based system, and their own regulatory process have done a superior job. As new challenges on environmental protection and better ways to produce oil and gas have developed and a growing need to protect the environment has emerged, the states like Oklahoma are much better equipped.

While the BLM has made some improvements in their regulatory process by passing their Oil and Gas Onshore Orders (Orders) and adopted a set of Best Management Practices, it would not adequately serve the needs of all stakeholders in Osage County; particularly in a timely manner. The permitting approval time on BLM managed lands would cost Osage Nation production and may lay the ground work for another lawsuit against the Federal government. In particular, it would be very difficult for the small operators to comply with a complex and slow BLM bureaucracy. The BLM has also had recent budget cuts that have stretch their resources. There is little reason to believe the BLM can do an adequate job.

The Constitution grants Congress the power to regulate commerce with Indian tribes (Article I § 8). This power has been delegated by statute to the BIA’s Commissioner of Indian Affairs (25 USC § 2). The BIA has promulgated regulation that allows application of state rules to Indian land where the BIA determines the application "to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property" (25 CFR 1.4(b)). Based on this sequence, the BIA has the authority to choose to apply state regulation here.

Legal review has determined the Supreme Court has taken a very functional approach towards agencies and delegation. In litigation following the New Deal, the Supreme Court established what is known as the "intelligible principle test" - where so long as Congress provides its delegee (here the BIA) with an intelligible principle to conform to (here carrying out the US trust to the Indian tribes) the Court has simply avoided the issue (488 U.S. 361).

Two examples are 1) the Office of Surface Mining where the States are allowed to apply and given primacy to enforce the Surface Mining Control Act; and 2) the EPA allowing States to enforce the UIC program. The state could be required to hire and train qualified Osage Native Americans in the regulatory process. They could be required to provide assurances to BIA and the Osage Nation that they comply with Federal NEPA rules. The majority of
operators in Osage county operate profitably in the counties surrounding Osage County.

U.S. Energy Secretary Ernest Moniz, in his first interview since taking office in June 2103, as reported in Platts Gas Daily on July 9, 2013: “the Secretary expressed firm support for the domestic natural gas industry, both in stressing his desire to quickly approve liquefied natural gas exports and backing the role of states in regulating hydraulic fracturing.”

“I think in the end there has to be a very, very strong state role there” for states, Moniz said in an interview set to air Sunday July 17th on “Platts Energy Week.” “The situations are different in different states, the geologies are different,” he said…

The article goes on to report that Secretary Moniz isn’t alone in his opinion. Former EPA administrator Lisa Jackson has strongly defended state regulation of oil and gas development – including hydraulic fracturing – stating in 2011: “We have no data right now that lead us to believe one way or the other that there needs to be specific federal regulation of the fracking process.” Jackson continued in her interview by observing, “States are stepping up and doing a good job. It doesn’t have to be EPA that regulates the 10,000 wells that might go in.” EPA’s Drinking Water Division Director Steve Heare has also said states are doing a “good job” regulating hydraulic fracturing.

Moniz also emphasized the manageability of environmental concerns related to hydraulic fracturing, notably in regard to methane leakage. As Moniz told Platts:

“I think the issues in terms of the environmental footprint of hydraulic fracturing are manageable,” he said. “They’re challenging, but manageable.”

This statement is consistent with this report recommending the state of Oklahoma would do a much better job of regulating oil and gas in Osage County.

Solution:

Both the BIA and the Osage Mineral Council should develop a cooperative agreement with the State of Oklahoma. A suitable alternative to the current ineffective situation is to have the BIA and the Osage Mineral Council work out an arrangement with the State of Oklahoma to have them function as the regulatory body with oversight from the BIA and the DOI. Good and consistent rules are necessary for proper regulation and this cooperation to be successful. These types of arrangements are done in other Federal agencies where the State is given primacy, with proper accountability and oversight to assure they are complying with Federal laws and rules.
Recommendation #5. Conflict of interest concerning royalty collection and accountability should be addressed.

The Department of Interior following the BP Macondo incident recognized they were not doing an adequate job of managing the nation’s oil and gas royalty estate and regulating from the same organization so they reorganized. They removed the conflict of interest and improved the royalty collection and accountability functions through the Office of Natural Resources Revenue (ONRR); an office under the supervision of the Assistant Secretary for Policy, Management, and Budget that is responsible for the royalty and revenue management function including the collection and distribution of revenue, auditing and compliance, and asset management. This office will assist the BIA in managing the Estate and with proper accounting and reporting can provide the Osage Nation necessary assurances the mineral estate is being properly managed and they are receiving the proper royalties due.

In May 2010, Interior Secretary Ken Salazar issued Secretarial Order No. 3299 separating the MMS responsibilities into three distinct organizations, one of which was ONRR. Issued in June 2010, Secretarial Order No. 3302 formally eliminated the former MMS and created the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). Effective October 1, 2010, the functions of MRM officially transferred to ONRR, reporting to the Assistant Secretary for Policy, Management and Budget. Based at the Denver offices of the ONRR’s Minerals Revenue Management (MRM), this service organization is augmented by team sites in New Mexico and Oklahoma. It serves as a focal point for both Indian mineral issues and contact with the Indian community, Allottees, and involved federal agencies.

ONRR is responsible for the management of revenues associated with federal offshore and federal and American Indian onshore mineral leases, as well as revenues received as a result of onshore and offshore renewable energy efforts. This revenue management effort is one of the federal government’s greatest sources of non-tax revenues.

The State and Indian Coordination is a special organization within the ONRR, which is specifically dedicated to serving mineral producing tribes and individual Indian mineral owners (Allottees).

During the rulemaking process there was no discussion and lessons learned replicating a recent reorganization in the Department of Interior Minerals Management Service. Following the BP Macondo incident the organization that regulated and collected royalties was split into three agencies. Out of the MMS they formed the Bureau of Safety and Environmental Enforcement, the Bureau of Ocean Energy Management and the Office of Natural Resources and Revenue (ONNR).
The mission of the State and Indian Coordination is to serve as an advocate for the fulfillment of MRM trust responsibility and to resolve Indian mineral related issues.

**Solution:**

Follow the DOI Minerals Management Service (MMS) example.

Improve the performance, accountability and eliminate the conflict of interest problems by splitting the leasing, regulatory responsibility, and royalty collection functions into separate offices. Provide qualified, well trained personnel for these offices and make available reports on their responsibilities.

**Recommendation #6. Incorporate and utilize the Risk Based Data Management System (RBDMS) described in this report.**

The GWPC is headquartered in Oklahoma and has received grants from the DOE in the past to install a system in Osage County for the Mineral Council. They are more than willing to update the system and train the regulators. The State of Oklahoma uses this system and the transition would not be difficult once the Osage data is entered into the data base. This system data should be made available to the public to add the needed transparency and accountability expected of the regulatory office. This will increase efficiency, regulatory performance, reduce costs, and increase production.

**Recommendation #7. Enforce the rules.**

The bad players need to be made to comply with the rules. People who cut corners or cheat on the environment, and the safety of their workers will also cheat the Osage out of royalties due. The legitimate operators will produce more oil and gas, pay their royalties fairly, and protect the environment.
U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas

Marc Humphries
Specialist in Energy Policy

March 7, 2013
Summary

In 2012, oil prices ranged from $80 to $110 per barrel (West Texas Intermediate spot price) and remain high in early 2013. Congress is faced with proposals designed to increase domestic energy supply, enhance security, and or amend the requirements of environmental statutes. A key question in this discussion is how much oil and gas is produced each year and how much of that comes from federal and non-federal areas. On non-federal lands, there were modest fluctuations in oil production from fiscal years (FY) 2008-2010, then a significant increase from FY2010 to FY2012 increasing total U.S. oil production by about 1.1 million barrels per day over FY2007 production levels. All of the increase from FY2007 to FY2012 took place on non-federal lands, and the federal share of total U.S. crude oil production fell by about seven percentage points.

Natural gas prices, on the other hand, have remained low for the past several years, allowing gas to become much more competitive with coal for power generation. The shale gas boom has resulted in rising supplies of natural gas. Overall, U.S. natural gas production rose by four trillion cubic feet (tcf) or 20% since 2007, while production on federal lands (onshore and offshore) fell by about 25% and production on non-federal lands grew by 40%. The big shale gas plays are primarily on non-federal lands and are attracting a significant portion of investment for natural gas development.

The number of producing acres may or may not be a function of how many acres are leased, and the amount of acres leased may or may not correlate to the amount of production, but in recent years, some members of Congress have proposed a $4/acre lease fee for non-producing leases. This proposal grew out of the efforts to open more public land and water (offshore) for oil and gas drilling and development when gasoline prices spiked in 2006-2008. Some in Congress noted that there were many leases they believed were not being developed in a timely fashion, while at the same time, others in Congress were pushing for greater access to areas off-limits (such as the Arctic National Wildlife Refuge (ANWR) and areas under a leasing moratoria offshore). Higher rents for offshore leases were imposed by the Secretary of the Interior in 2009 to discourage holding unused leases and to move more leases into production if possible.

Another major issue that the 113th Congress may seek to address is streamlining the processing of applications for permits to drill (APDs). Some members contend that this would be one way to help boost energy production on federal lands. After a lease has been obtained, either competitively or non-competitively, an application for a permit to drill (APD) must be approved for each oil and gas well. Despite the new timeline for review (under the Energy Policy Act of 2005, P.L. 109-58), it took an average of 307 days for all parties to process (approve or deny) an APD in 2011, up from an average of 218 days in 2006. The difference, however, is that in 2006 it took the BLM an average of 127 days to process an APD, while in 2011 it took BLM 71 days. In 2006, the industry took an average of 91 days to complete an APD, but in 2011, industry took 236 days. The BLM stated in its FY2012 and FY2013 budget justifications that overall processing times per APD have increased because of the complexity of the process.
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Congressional Research Service
Introduction

In 2012, oil prices ranged from $80 to $110 per barrel (West Texas Intermediate spot price) and remain high (above $90/barrel) in early 2013. A number of proposals designed to increase domestic energy supply, enhance security, and/or around the requirements of environmental statutes are before the 113th Congress. A key question in this discussion is how much oil and gas is produced in the United States each year and how much of that comes from federal versus non-federal areas. Oil production has fluctuated on both federal and non-federal lands over the past five fiscal years. On non-federal lands, there were modest fluctuations in oil production from fiscal years (FY) 2008-2010, then a larger increase from FY2010 to FY2012, increasing total U.S. oil production by about 1.1 million barrels per day over FY2007 production levels. All of the increased production from FY2007 to FY2012 took place on non-federal lands, causing the federal share of total U.S. crude oil production to fall by about seven percentage points (see Table 1).

Natural gas prices, on the other hand, have remained low for the past several years, allowing gas to become much more competitive with coal for power generation. The shale gas boom has resulted in rising supplies of natural gas. Overall, U.S. natural gas production rose by four trillion cubic feet (tcf) or 20% since 2007, while production on federal lands (onshore and offshore) fell by about 33% and production on non-federal lands grew by 40% (see Table 2). The big shale gas plays are primarily on non-federal lands and are attracting a significant portion of investment for natural gas development.

This report examines U.S. oil and natural gas production data for federal and non-federal areas with an emphasis on the past six years of production.

U.S. Crude Oil Production: Federal and Non-Federal Areas (Fiscal Year)

Oil production has fluctuated widely between FY2007 and FY2012, yielding different results when comparing various years. For example, when comparing fiscal year 2010 with 2007, growth in the federal share of production was about 82% of the total. On federal lands, there was an increase in production from FY2008-FY2009 and another increase in FY2010, but then declines in FY2011 and FY2012, which brought production below FY2007 production levels. Historically, according to the Department of the Interior (DOI) data, crude oil production on federal lands was consistently under 20% of total U.S. production until the late 1990s when annual production surged on federal lands (primarily offshore) rising to over 30% in the early 2000s and reaching a high point of about 37% in FY2010. As a result of recent production increases on non-federal

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1 For a broader analysis of offshore oil and gas leasing and resources, please see CRS Report R40645, U.S. Offshore Oil and Gas Resource: Prospects and Processes, by Marc Humphries and Robert Piriz.
2 For more information on U.S. oil development, see CRS Report R40872, U.S. Fossil Fuel Resources: Terminology, Reporting, and Summary, by Carl E. Behrens, Michael Ratner, and Carol Clover; CRS Report R41132, Outer Continental Shelf Leasing on Oil and Gas Development, by Cassy L. Magarity; and CRS Report R42167, Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues in the 113th Congress, coordinated by Rose W. Gerte and Carol Hardy-Vincent.
3 The early data 1980 and 1990s was taken from annual Mineral Revenue reports. The data used at that time were (continued...
lands, a question is raised as to whether non-federal lands will regain a more dominant position of roughly 90%-95% of total U.S. crude oil production. The fact remains, however, that there are 5.3 billion barrels of proved oil reserves located on federal acreage onshore and another 5.6 billion barrels of proved reserves offshore (nearly all in the Gulf of Mexico). Taken together, U.S. federal oil reserves equal about 43% of all U.S. crude oil reserves, which are estimated at 25.2 billion barrels, according to the Energy Information Administration (EIA). Proved oil reserves are amounts accessible under current policy, prices, and technology.

Crude oil production on federal lands is likely to continue to make a significant contribution to the U.S. energy supply picture and could remain consistently higher than previous decades, but still fall as a percent of total U.S. production, if production on non-federal lands continues to rise at a faster rate.

There is however, continued interest among some in Congress to open more federal lands for oil and gas development (e.g., the Arctic National Wildlife Refuge (ANWR) and areas offshore) and increase the speed of the permitting process. But having more lands accessible may not translate into higher levels of production on federal lands, as industry seeks out the most promising prospects and highest returns.

### Table 1. U.S. Crude Oil Production: Federal and Non-Federal Areas FY2007-FY2012 (Barrels per day)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>U.S. Total</th>
<th>Non-Federal</th>
<th>Total Federal (% of U.S. Total)</th>
<th>Federal Offshore</th>
<th>Federal Onshore</th>
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<tr>
<td>2012</td>
<td>6,208,200</td>
<td>4,180,800</td>
<td>1,627,400 (26)</td>
<td>1,295,900</td>
<td>331,500</td>
</tr>
<tr>
<td>2011</td>
<td>5,655,000</td>
<td>3,850,000</td>
<td>1,755,000 (31)</td>
<td>1,408,000</td>
<td>347,000</td>
</tr>
<tr>
<td>2010</td>
<td>5,442,600</td>
<td>3,453,600</td>
<td>1,989,000 (36.5)</td>
<td>1,693,200</td>
<td>295,800</td>
</tr>
<tr>
<td>2009</td>
<td>5,219,300</td>
<td>3,487,800</td>
<td>1,731,500 (33)</td>
<td>1,443,800</td>
<td>287,700</td>
</tr>
<tr>
<td>2008</td>
<td>5,001,100</td>
<td>3,450,400</td>
<td>1,550,700 (31)</td>
<td>1,765,800</td>
<td>284,900</td>
</tr>
<tr>
<td>2007</td>
<td>5,083,400</td>
<td>3,387,500</td>
<td>1,695,900 (33)</td>
<td>1,408,200</td>
<td>287,700</td>
</tr>
</tbody>
</table>

**Sources:** Federal data obtained from ONRR Statistics, http://www.onrr.gov (using sales year data).

**Notes:** U.S. Fiscal Year Total data derived from EIA production data as a percent of total U.S. fiscal year production in Appendix A of EIA publication “Sales of Fossil Fuels Produced from Federal and Indian Lands FY2003-FY2011”, March 2012. The federal production data is consistent with BLM and BOEM statements about onshore and offshore federal production levels as percent of total U.S. crude oil production. 2012 U.S. Total data obtained from EIA Monthly Energy Review, February 2013.

(...continued)

Accounting data which are considered by the Office of Natural Resources Revenue as not very reliable. The more useful production volume data provided by ONRR now are based on fiscal year sales data.
Figure 1. U.S. Oil and Lease Condensate Production: Federal and Non-Federal Areas, FY2007-2012

Million barrels per day (Mb/d)

Source: Federal data obtained from ONRR Statistics, http://www.onrr.gov (using sales year data). Figure created by CRS.

U.S. Natural Gas Production: Federal and Non-Federal Areas (Fiscal Year)

Natural gas production in the United States overall has increased each year since 2007, while production on federal lands has remained static or declined each year over the same period. Much of the decline can be attributed to offshore production falling by over 50%. Onshore production declines were less dramatic. Federal natural gas production has fluctuated from around 30% of total U.S. production for much of the 1980s through the early 2000s (34% of U.S. total in 2003), after which there began a steady decline through 2012. This picture of natural gas production is much different than that of federal crude oil in that federal natural gas had accounted for a much larger portion of total U.S. natural gas over that past few decades.

Any increase in production of natural gas on federal lands is likely to be easily outpaced by increases on non-federal lands, particularly because shale plays are primarily situated on non-federal lands and is where most of the growth in production is projected to occur.

Dry gas proved reserves were estimated at about 305 tcf by the EIA, of which the federal share is about 28% (90 tcf onshore; 16 tcf offshore). Nearly all of the offshore proved reserves are located in the Central and Western Gulf of Mexico.

\[\text{4} \text{ U.S. natural gas production fell from about 7 trillion cubic feet in FY2003 to about 4.3 trillion cubic feet in FY2012.}\]
Table 2. U.S. Natural Gas Production: Federal and Non-Federal Areas FY2007-FY2012

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>U.S. Total</th>
<th>Non-Federal</th>
<th>Total Federal (% of U.S. Total)</th>
<th>Federal Offshore</th>
<th>Federal Onshore</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>24,493</td>
<td>20,242</td>
<td>4,251 (17.7)</td>
<td>1,330</td>
<td>2,921</td>
</tr>
<tr>
<td>2011</td>
<td>23,587</td>
<td>18,978</td>
<td>4,609 (19.5)</td>
<td>1,654</td>
<td>2,955</td>
</tr>
<tr>
<td>2010</td>
<td>22,012</td>
<td>16,846</td>
<td>5,166 (23.5)</td>
<td>2,076</td>
<td>3,066</td>
</tr>
<tr>
<td>2009</td>
<td>21,009</td>
<td>16,233</td>
<td>5,376 (24.9)</td>
<td>2,226</td>
<td>3,170</td>
</tr>
<tr>
<td>2008</td>
<td>21,007</td>
<td>15,460</td>
<td>5,547 (26.6)</td>
<td>2,496</td>
<td>3,051</td>
</tr>
<tr>
<td>2007</td>
<td>19,999</td>
<td>14,415</td>
<td>5,584 (27.8)</td>
<td>2,709</td>
<td>2,835</td>
</tr>
</tbody>
</table>


Notes: U.S. Fiscal Year Total data derived from EIA production data as a percent of total U.S. fiscal year production in Appendix A of EIA publication "Sales of Fossil Fuels Produced from Federal and Indian Lands FY2002-FY2011, March 2012." The federal production data is consistent with BLM and BOEM statements about onshore and offshore federal production levels as percent of total U.S. crude oil production. 2012 U.S. Total data obtained from EIA Monthly Energy Review, February 2013.

Figure 2. U.S. Natural Gas Production: Federal and Non-Federal Areas FY2007-FY2012

Source: Federal data obtained from OMLR Statistics, http://www.oregon.gov (using sales year data). Figure created by CRS.
EIA Projections

While short-term EIA estimates show oil production continuing to decline in federal offshore areas, their longer-term estimates show a slight increase in federal offshore oil production overall, from 1.3 mb/d in 2012 to 1.4-1.8 mb/d in 2040. Overall, the EIA projects U.S. oil production to rise from 5.39 mb/d in 2011 to about 6.13 mb/d by 2040 after reaching 6.7 mb/d in 2025. According to these estimates, offshore production in 2040 could range from 23% to 29% of total U.S. crude oil production. (See Table 3.)

Offshore natural gas production is projected to reverse a years-long decline in 2015, rising to 2.8 tcf annual production in 2040. Even though these projections are in calendar years 2.8 tcf is still very likely a doubling of current offshore production (provided in fiscal years in the earlier sections of this report) but would only account for an 8.4% share of total U.S. production in 2040. (See Table 4.)

Table 3. EIA Oil Production Projections
(million barrels per day)

<table>
<thead>
<tr>
<th>Year</th>
<th>U.S. Offshore</th>
<th>U.S. Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2025</td>
<td>n/a</td>
<td>6.70</td>
</tr>
<tr>
<td>2040</td>
<td>1.4-1.8</td>
<td>6.13</td>
</tr>
</tbody>
</table>


Table 4. EIA Natural Gas Production Projections
(million cubic feet per year)

<table>
<thead>
<tr>
<th>Year</th>
<th>U.S. Offshore</th>
<th>U.S. Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2025</td>
<td>n/a</td>
<td>28.65</td>
</tr>
<tr>
<td>2040</td>
<td>2.8</td>
<td>33.21</td>
</tr>
</tbody>
</table>


Oil and Natural Gas Lease Data for Federal Lands

Currently, there are 113 million acres of onshore federal lands open and accessible for oil and gas development and about 160 million acres off-limits or inaccessible. The Bureau of Land Management estimates (based on data from the Department of the Interior’s Office of Natural Resources) that about 20% of federal lands are closed to leasing.

Leases and permits are available in three categories: public lands that are open under standard lease terms, public lands that are closed to leasing, and public lands closed to leasing pursuant to land withdrawals. Public lands that are open under standard lease terms are leasing available for oil and gas development. Public lands that are closed to leasing are unavailable for oil and gas development, but they are available for other uses, such as recreation, wildlife management, or scientific research. Public lands that are closed to leasing pursuant to land withdrawals are closed to leasing as a result of actions taken by the federal government to protect natural resources or other public uses.

The availability of public lands for oil and gas leasing can be divided into three categories: lands open under standard lease terms, public lands closed to leasing, and public lands closed to leasing pursuant to land withdrawals. Much of this withdrawn land consists of wilderness areas, national parks and monuments, and other areas that are likely to be converted to oil and gas development.
Management (BLM) is seeking to lease in areas where they anticipate fewer legal challenges and according to the BLM, they are addressing public concerns prior to a lease sale at a higher rate than in the past. In 2012, 56% of the onshore acreage under federal lease and 45% of federal onshore leases were not in production. Offshore, most of the 1.7 billion acres of federal water are no longer under leasing and development moratoria. The current five-year leasing program has lease sales scheduled in Western and Central Gulf of Mexico (GOM) and parts of Alaska. In the offshore areas, 72% of the acreage is leased and 75% of the leases are not in production.

According to the Bureau of Land Management (BLM) and the Bureau of Ocean Energy Management (BOEM), there are approximately 72.8 million acres of oil and gas leases in federal areas (onshore and offshore). About 37.0 million acres are located onshore and an additional 35.8 million acres are located offshore. Approximately 11.1 million federal acres onshore and about 6.6 million federal acres offshore are producing commercial volumes. (See Table 5.)

Table 5. Oil and Gas Lease Data for Federal Lands, 2012

<table>
<thead>
<tr>
<th></th>
<th>Onshore</th>
<th>Offshore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage under lease</td>
<td>37.0</td>
<td>35.8</td>
</tr>
<tr>
<td>Acreage with approved exploration or development plan (i.e., acreage in production or exploitation)</td>
<td>16.3</td>
<td>10.1</td>
</tr>
<tr>
<td>Leased acres producing</td>
<td>11.1</td>
<td>6.6</td>
</tr>
<tr>
<td>Leased acres not in production or exploration</td>
<td>20.8</td>
<td>25.7</td>
</tr>
<tr>
<td>Number of Leases</td>
<td>49,213</td>
<td>6,621</td>
</tr>
<tr>
<td>Producing Leases (or with approved DOD)</td>
<td>27,100</td>
<td>1,611</td>
</tr>
</tbody>
</table>

Source: DOI, Oil and Gas Utilization—Onshore and Offshore, Report to the President, May 2012.

a. A DODC is a Development Operations Coordination Document that must be submitted for approval to BOEM before development activities begin.

Producing Acres

The number of producing acres may or may not be a function of how many acres are leased, and the amount of acres leased may or may not correlate to the amount of production, but it is beyond the scope of this report to examine that issue thoroughly. In recent years, some members of Congress have proposed a $4/acre lease fee for non-producing leases. This proposal grew out of the efforts to open more public land and water (offshore) for oil and gas drilling and development when gasoline prices spiked in 2006-2008. Some in Congress noted that there were many leases they believed were not being developed in a timely manner, while at the same time, others in Congress were advocating greater access to areas off-limits (such as ANWR and areas under leasing moratoria offshore). Higher rents for offshore leases were imposed by the Secretary of the Interior in 2009 to discourage holding unused leases and to move more leases into production if

(...continued)

leasing. Some lands are closed to leasing pending land use planning or NEPA compliance, while other areas are closed because of federal land management decisions or endangered species habitat or historical sites. Some of those restricted areas may be opened by future administrative decisions.

b. The Eastern GOM is under a leasing moratoria until 2022 under the GOM of Mexico Energy Security Act and the North Alaska Basin of Alaska was withdrawn from leasing under an executive order by the current Administration.

Congressional Research Service
possible. The escalation in rents are significant over time as they rise from $7/acre to $28/acre (in year-8 forward) in water depths less than 200 meters and increase from $11/acre to $44/acre (in year-8 forward) in water depths between 200 and 400 meters. However, there was no similar escalation for onshore leases, as they remain $1.50/acre for years 1-5, then rise to $2/acre thereafter. A non-producing fee or an escalation of rents may not increase production but may reduce the ratio of producing leases to active leases. Thus, there might be fewer “idle” leases and acreage not in production or exploration. The BLM can re-lease acreage that has been relinquished or passed over at a future lease sale.

Applications for Permits to Drill (APDs)

Another major issue that the 113th Congress may address is streamlining the processing of applications for permits to drill (APDs). Some members contend that this would be one way to help boost energy production on federal lands. After a lease has been obtained, either competitively or noncompetitively, an application for a permit to drill must be approved for each oil and gas well. As noted in the Mineral Leasing Act, Section 226 (g), “no permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area.” The application form (APD form 3160-5) must include, among other things, a drilling plan, a surface use plan, and evidence of bond/security coverage. The surface use plan should contain information on drillpad location, pad construction, the method for containment and waste disposal, and plans for surface reclamation.10

Prior to the Energy Policy Act of 2005 (P.L. 109-58, EPACT ’05) a major concern that prompted the streamlining of permits debate was the lengthy timetable to process an APD. The BLM attributed the longer timelines to the rewriting of outdated Resource Management Plans (RMPs). There were several RMPs revised over the past decade. Leading up to the provisions in EPACT ’05 that would attempt to streamline the permitting process, the BLM announced, in April 2003, new strategies to expedite the APD process. The new strategies included processing and conducting environmental analyses on multiple permit applications with similar characteristics, implementing geographic area development planning for an oil or gas field or an area within a field, establishing a standard operating practice agreement that identifies surface and drilling practices by oil and gas operators, allowing for a block survey of cultural resources, promoting consistent procedures, and revising relevant BLM manuals.11 EPACT ’05 Section 366 (Deadline for Consideration of Application for Permits) provided a new timeline for BLM to process APDs.12

9 DOI, Oil and Gas Lease Utilization, Onshore and Offshore, Updated Report to the President, May 2012, p.18.
12 Within 10 days of receiving the application from the operator, BLM shall notify the operator as to whether the application is complete and also schedule a site visit. If the application is not complete, the operator then has 45 days to submit additional information to BLM to complete the application or the application is returned to the operator. Within 30 days of receiving a completed application the BLM will approve or deny the application. If deferred, the operator has up to two years to take specified actions to complete the application or face the possibility of being denied a permit.

Congressional Research Service 7
While the current Administration processed more APDs than it received from 2009-2011, it received far fewer applications over that period than the previous Administration had received from 2006-2008. As the number of pending applications has fallen steadily since 2008, the ratio of APDs pending to APDs processed was higher than during the period 2006-2008. In addition, there are 7,000 approved APDs that are not in the exploration or production stages (approved but not drilled). The BLM expected to process more than 5,000 APDs in each of the fiscal years 2012 and 2013.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>APDs Received</th>
<th>APDs Processed</th>
<th>APDs Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>4,278</td>
<td>3,200</td>
<td>1,079</td>
</tr>
<tr>
<td>2010</td>
<td>4,231</td>
<td>3,237</td>
<td>1,603</td>
</tr>
<tr>
<td>2009</td>
<td>5,237</td>
<td>5,306</td>
<td>5,589</td>
</tr>
<tr>
<td>2008</td>
<td>7,884</td>
<td>7,846</td>
<td>5,638</td>
</tr>
<tr>
<td>2007</td>
<td>8,370</td>
<td>8,394</td>
<td>6,600</td>
</tr>
<tr>
<td>2006</td>
<td>10,492</td>
<td>8,524</td>
<td>6,194</td>
</tr>
</tbody>
</table>


Despite the now timeline for reviews, it took an average of 307 days for all parties to process (approve or deny) an APD in 2011, up from an average of 218 days in 2006. The difference, however, is that in 2006 it took the BLM an average of 127 days to process an APD, while in 2011 it took BLM 71 days. In 2006, the industry took an average of 91 days to complete an APD, but in 2011, the industry took 226 days. Thus, since 2006, it took the BLM 56 fewer days to process APDs, while it took the industry 145 days longer to submit a completed application. The BLM stated in its FY2012 and FY2013 budget justifications that overall processing times per APD have increased because of the complexity of the process.

Some critics of this lengthy timeframe highlight the relatively speedy process for permit processing on private lands. However, crude oil development on federal lands takes place in a wholly different regulatory framework than that of oil development on private lands. State agencies permit drilling activity on private lands within their state, with some approving permits within ten business days of submission. This faster approval rate does not necessarily diminish the additional work required by the state to address other state requirements. But oftentimes, some surface management issues are negotiated between the oil producer and the individual

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15 Ibid.
16 Under the Federal Land Policy and Management Act (FLPMA), Resource Management Plans or Land Use Plans (43 USC 1712) are required for tracts or areas of public lands prior to development. The Bureau of Land Management (BLM) must consider environmental impacts during land-use planning when RMPs are developed and implemented. RMPs can cover large areas, often hundreds of thousands of acres across multiple counties. Through the land-use planning process, the BLM determines which lands with oil and gas potential will be made available for leasing.
land mineral owner. A private versus federal permitting regime does not lend itself to an “apples-to-apples” comparison.

Streamline Pilot

EPACT '05 also included a provision to initiate and fund (funding authorized through FY2015) a pilot program at seven BLM field offices in an effort to streamline the permitting process for oil and gas leases on federal lands. Results from the pilot project were published according to the timetable required by EPACT '05 (within three years after enactment). The conclusion was that the pilot made a difference in improving the processing times for APDs at the pilot offices overall and increased the number of environmental inspections. The BLM noted that the National Environmental Policy Act (NEPA) processing time for APDs and rights of way (ROW) applications fell from 81 to 61 days or roughly 25% due to “colocation” of agency staff. BLM reported that the number of environmental inspections went up by 78% from FY2006 to FY2007. However, the BLM reported mixed results at the specific field offices. While some of the offices processed more permits in 2007 than they did in 2005, all the pilot sites reported more completed environmental inspections.7

Concerns

A number of concerns may arise in the oil and gas leasing process that could delay or prevent oil and gas development from taking place, or might account for the relatively large number of leases held in non-producing status. It should be noted that many leases expire without exploration or production ever occurring.

Below is a list of often-cited issues which, individually or in combination, are used to explain why more leases are not producing.

- Rig or equipment availability, particularly offshore;
- High capital costs;
- Skilled labor shortages;
- Leases in the development cycle (e.g., conducting environmental reviews, permitting, or exploring) but not producing;
- Legal challenges that might delay or prevent development;
- No commercial discovery on a lease tract;
- Holding leases (because of the lack of capital or as “speculators”) to sell or “farm out” at a later date;
- Ability to secure extensions on non-producing leases; and
- Securing and being able to hold large number of lease tracts, often contiguous, to maximize return on their investment;


8 Ibid.
• The potential for inadequate coordination between the Department of the Interior’s lease management and regulatory agencies (Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement) and other federal agencies to ensure protection of federal areas encompassing coastal and marine sanctuaries.

Conclusions

There are substantial oil and natural gas reserves and resource potential in federal areas, many of which are already accessible. Production from these areas will likely continue to make a significant contribution to the U.S. energy supply picture, but any rise in production, as projected by the EIA, will be outpaced by faster rising production in non-federal areas. A more efficient permitting process may be an added incentive for the industry to invest in developing federal resources, which may allow for some oil and gas to come on stream sooner, but in general, the regulatory framework for developing resources on federal lands will likely remain more involved and time-consuming than that on private land.

Author Contact Information

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APPENDIX 2A

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Eastern Oklahoma Region
Eastern Oklahoma Regional Office
P.O. Box 8002
Muskogee, OK 74402-8002

April 8, 2013

Jeff Henry
Cross Timbers Land LLC
2006 N Lynn
Pawhuska, OK 74056

Dear Mr. Henry:

Thank you for your continued efforts with the Osage Cattlemen’s Association and its concerns for Osage County. The Bureau of Indian Affairs is fully committed to addressing the concerns that have been brought forth and has begun the aggressive implementation of numerous initiatives to better assist in these efforts. Several of these initiatives will have a direct and positive impact upon the surface estate and are as follows:

The internal creation and implementation of a Sharepoint (computer based reporting system) Complaint Tracking System has been established. This system is being populated with current and historical data that will track ongoing and pending complaints. The use of the system will identify the nature of the complaints, ensure proper time frames are being met by responsible parties and verify completion of actions required by the Osage Agency. Global reports of actions will be accessible as well GIS information being merged to allow for the tracking of current well location.

A toll free hotline for spill/incident response is being established. The line will be staffed during business hours by Agency employees and after hours and weekends by a contracted answering service. This will allow for the appropriate Agency personnel to be dispatched. However, it should be noted that the operator should also be contacted when that information is available to the surface owner.

The Bureau of Land Management is providing Petroleum Engineer Technician (PET) training for four Agency employees. The classes are scheduled to start in October of 2013 and be completed in August of 2014. Training will consist of six, two week training blocks. All field staff has been trained and certified for H2S protocol on the lease site.

In addition to the outlined measures, on April 3, 2013 the Director of the Bureau of Indian Affairs and Eastern Oklahoma Regional/Agency staff met with Deputy Regional Administrator and staff of the Environmental Protection Agency, Region 6 to discuss the H2S situation and related matters. We are working in full cooperation with the EPA for the monitoring and response to potential H2S emissions. This will include EPA staff making periodic visits to Osage County in addition to any situation that may arise when a possible high level of H2S is detected.
We are looking forward to a good working relationship with the Cattlemen’s association and your continued input on matters that are of concern to the surface estate.

Sincerely,

[Signature]
Regional Director
May 8, 2013

Robert K. Impson
Bureau of Indian Affairs
Eastern Oklahoma Regional Office
P.O. Box 8002
Muskogee, OK  74402-8002

Dear Mr. Impson,

Thank you for your letter to the Osage County Cattlemen’s Association (OCCA) dated April 8, 2013 in which you detail the BIA’s initial efforts to improve the BIA’s oversight of, and protection of the surface estate from oil and gas production practices in Osage County. While we believe these are important first steps, we have a number of questions about them and also have additional questions and suggestions for how the BIA can further significantly improve the protection of public health, the environment and property rights in the County to everyone’s benefit. In the spirit of trying to create a working relationship featuring input from and dialogue with surface owners, our suggestions are as follows.

1. The SharePoint system is a good start, but needs to be accessible to the public and easy to find on the website to ensure transparency. It would also be prudent to include digitized and mapped locations of existing wells, well and road permit applications, issued permits and status and the freshwater aquifer map that the BIA is using to determine surface casing depths for new wells.

2. We applaud the effort regarding the toll free hotline and hope it will be up soon and that it includes contacts for first responders in case of emergencies. Will training and certifications be provided for these first responders (i.e., gas fire, gas explosion, H2S incidents, oil & salt water spills, pipeline or gathering line rupture, etc.), as well as, additional certification and training of regulators? Also, will there be round the clock dedicated responders aside from the contracted answering service?

3. The PET training is a good start, but it is definitely not a substitute for the hiring and retention of actual engineers and scientists with special expertise in oil/gas pollution (H2S, brine, etc.). As you are very aware, one of our major concerns has always been that the BIA did not have an adequate number of trained staff and inspectors. The Pawhuska office needs to hire educated and degree geologists, engineers and environmental specialists or second personnel from other agencies. Additional administrative staff for maintaining records will be needed to manage new record keeping system and the website. This staffing level
should be on par with what any state or BLM region has to the proportional number of producing wells. If additional personnel are not hired, the existing staff will become even more overburdened than they already are, especially during times when field personnel are pulled out for training.

We are also concerned about the impacts of the sequester on your proposed efforts. A recent article on the BLM states: “The US budget sequester, resulting in millions of dollars in cuts this year for key oil and gas regulatory agencies under the Department of the Interior (DOI), is expected to impact the issuance of land oil and gas leases on federal lands and could also affect the speed at which offshore E&P plan reviews and permitting applications are processed. As of 1 April, DOI was unable to provide any estimated timing or duration of potential delays.

“The DOI has determined that for the remainder of 2013, sequestration will cause delays at the Bureau of Land Management (BLM), meaning that 300 fewer Applications for Permits to Drill on federal lands will be processed this year,” a DOI official who did not wish to be named told Drilling Contractor. Cuts also will result in a $200 million revenue loss in royalty payments to the U.S. Treasury and the states this year. “The $200 million revenue loss does not include foregone future royalties or potentially lost royalties resulting from 1,700 fewer inspections this year,” the official said in a written statement.

How will the sequester impact your plans in detail?

4. The interagency cooperation between BIA and EPA is a definite improvement. However, it should be inclusive of surface owners. Currently, the general public and surface owners don’t know who to call about E2S, pollution or other oil and gas impact issues. We request that within thirty (30) days of the date of this letter there be a meeting among BIA, EPA, Oklahoma Department of Environmental Quality and surface owners to discuss and clarify which agency is in charge of specific issues and identify specific personnel to contact when problems arise.

5. We have heard from Director Black regarding EPA conducting air quality testing and we greatly appreciate BIA working with the EPA in this regard. This testing must be conducted by spot testing and without either the operator or the Osage BIA inspectors knowing the testing is going on. We believe if the Osage BIA inspectors know about this, the operators will be forewarned and will shut in the wells.

6. The EPA has told us repeatedly that certain freshwater aquifer base maps Osage BIA was using to determine casing depths were outdated and not for that intended purpose, and thus should not be used for that purpose. The BIA should invite the USGS or the State of OK Geological Survey to update these base maps. Otherwise, the casing and cementing of wells will continue to be inadequate and the Osage freshwater aquifers will continue to be exposed to severe and permanent contamination from oil and gas operations.
7. We respectfully request that BIA re-consider the idea of inviting STRONGER to conduct a comprehensive evaluation of the whole program in Osage County, which review will fully identify the range of problems and issues to be addressed and propose solutions. As we have mentioned before, the State of Oklahoma has undergone 4 of these audits and has improved its oversight and enforcement capabilities each time. We think that all stakeholders involved -- surface owners, the BIA, the Osage Tribe and the producers -- would benefit from such an effort.

8. We request a copy of the Office of Inspector General’s report(s) on all BIA personnel and activities involving the Pawhuska or the Eastern Oklahoma Regional offices of BIA to further our understanding of what issues should be appropriately addressed.

9. Finally, by separate letter, we will be requesting a meeting with Secretary Jewell and Assistant Secretary Washburn to discuss all of these issues. We would very much appreciate your assistance with facilitating the scheduling of that meeting.

We hope that you will find the aforementioned comments to be constructive. Thank you, again, for your letter, and we look forward to working with you to address these and future issues for the benefit of the people and environment of Osage County.

Regards,

Jeff Henry
OCCA President 2012-2014

cc: Secretary of the Interior, Sally Jewell
Assistant Secretary of the Interior for Indian Affairs, Kevin Washburn
Director of the BIA, Mike Black
Senator James Inhofe
Senator Tom Coburn
Senator Mark Udall
OSAGE COUNTY CATTLEMEN’S ASSOCIATION

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

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

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

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

B. IMMEDIATE STEPS NEEDING TO BE TAKEN TO ADDRESS CRISIS

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

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

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

3. Comprehensive Outside Review of Oil and Gas Program Needed. The BIA/DOL/OMC should invite STRONGER, a non-profit public/private organization created to review oil and gas regulations, to (a) conduct a comprehensive review of the Osage County oil and gas program, industry practices, regulation and
enforcement, (b) share best-in-class regulations and industry practices from other states/entities and producers in place elsewhere, and (c) recommend specific changes to the existing CFR rules. The Rulemaking Committee should accept the STRONGER recommendations for formal public comment and submission for formal adoption.

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

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

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

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

Subject: Osage Negotiated Rulemaking

Dear Mr. Streeter:

Thank you for this opportunity to provide comments in the negotiated rulemaking involving 25 C.F.R. § 226.24. The Oklahoma Office of the Attorney General objects to § 226.24 in its current state, and strongly urges you to amend the rule so that it properly recognizes the State of Oklahoma’s primary and exclusive role in regulating the waters within its borders.

The Oklahoma Water Resources Board ("OWRB") is the State agency that administers and regulates rights to the use of stream water and groundwater in Oklahoma pursuant to the laws of the State. Those laws require, among other things, that those who wish to use stream water or groundwater for non-domestic purposes (including use in oil and gas exploration, production and other operations) must acquire a permit from the OWRB authorizing such a use.

In its current form, 25 C.F.R. § 226.24 authorizes the unpermitted use of surface water in Osage County. In effect, the federal regulation purports to preempt the State of Oklahoma’s regulatory authority, and does so with no basis in law.

As you well know, the Osage reservation was disestablished over a century ago, when the Osage reservation was incorporated into the new State of Oklahoma as Osage County. See Osage Nation v. Irby, 597 F.3d 1117 (10th Cir. 2010). In fact, in concluding that the Osage Reservation had been disestablished, the Tenth Circuit noted that “federal officials responsible for the Osage lands repeatedly referred to the area as a ‘former reservation’ under state jurisdiction.” Id. at 1126 (emphasis added).

Today, with approximately 99.96% of Osage County being lands other than those held in trust by the federal government for the benefit of the Osage Nation, id. at 1127, it is hard to fathom how federal officials now justify exercising regulatory authority over water throughout...
Mr. Eddie Streater  
March 12, 2013  
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the entirety of Osage County. The federal government has no basis in law for assertion of jurisdiction over the waters of the State of Oklahoma either on its own behalf or on behalf of the Osage Nation. Even if the Osage Nation had some basis for a yet-to-be determined federal water right, the State of Oklahoma would remain the regulator of the County’s waters. See 6 id. at 1127-28 (“[W]e note that the Nation conceded that Oklahoma has had a “long-standing practice of asserting jurisdiction” in Osage County. ‘[T]he longstanding assumption of jurisdiction by the State over an area that is [predominantly] non-Indian, both in population and in land use, may create justifiable expectations’ that ‘merit heavy weight.”’ [citations omitted]).

Indeed, consistent with the regulation and administration of all the waters within the borders of Oklahoma, the State has always held and asserted jurisdiction over the waters of Osage County, and has issued nearly 100 permits to Oklahomans seeking to use stream water and groundwater in the County. The federal government’s purported authorization of unpermitted use of water unlawfully usurps the State’s jurisdiction and seriously impairs the State’s ability to exercise this jurisdiction, by: (1) making it difficult if not impossible for the OWRB to accurately determine the amount of water available for future permitting; (2) injecting uncertainty into the State’s prior appropriation doctrine—the doctrine on which all existing stream water permits are based; and (3) creating jurisdictional confusion that is certain to confuse and detrimentally affect water users within the County.

These problems can be easily corrected by amending 25 C.F.R. § 226.24 as follows:

§ 226.24 Lessee’s use of water.
Lessee or his contractor’s use of water shall be in accordance with the laws of the State of Oklahoma.

Thank you again for this opportunity to provide comments in this negotiated rulemaking. We hope that you amend the regulation as we have suggested. If not, the State may be forced to pursue all available legal remedies to protect its sovereign right to regulate the waters within its borders.

Sincerely,

Patrick R. Wyrick  
Solicitor General
OPEN LETTER TO OSAGE MINERAL COUNCIL

SUBJECT: PROPOSED CHANGES IN THE CODE OF FEDERAL REGULATIONS

OSAGE COUNTY, OKLAHOMA

March 6, 2013

Dear Mineral Council Members,

We are writing to you out of concern for the future of Osage County as an attractive province for oil and gas exploration and production. The Osage Mineral Estate has long been viewed as an industry friendly place for risk-taking exploration and production companies to do business. Recently, however, it has come to our attention that several substantive changes to the Code of Federal Regulations (CFR, Title 25, Chapter 1, Part 226) governing operators on the Mineral Estate are being considered that would constitute strong economic disincentives to operators considering drilling programs in the Osage.

As a group, we have great respect for the manner in which the Osage Minerals Council, and its predecessor governing entities, has regulated the development of Tribal resources and provided a framework for operators to take considerable risks looking for new reserves, for the mutual benefit of the Tribe and operators. The relationship among operators, the Osage Tribe, and the BIA has generally been workable and has encouraged orderly development of minerals. Problems have been worked out among parties as they have arisen.

The changes being considered to the BIA Rules and Regulations are viewed by us as operators as collective disincentives to operate on the Osage Mineral Estate. The proposed change in the calculation of royalty pricing is patently unfair (having royalty owners paid on a higher price than working interest owners receive). Increasing lease rental rates 10-fold will have a strong dampening effect on the sale of leases and will discourage operators from drilling leases in marginally productive areas. Regarding more stringent bonding requirements, if the Minerals Council and BIA are experiencing problems on this subject (we are not aware of them), perhaps we can discuss and explore other alternatives where we can be helpful with solutions. Suggested site security plans and other requirements will impose significant additional disincentives and administrative burdens on Osage operators.

As a group, we have drilled over 60% of all the wells drilled in Osage County over the past 12 years, and account for 60% of the current production over that time. Each of us separately lives with capital allocation and drilling budget decisions from year to year, and even month to month. The proposed changes will have a discouraging effect on the attractiveness of Osage County as a place to spend capital when compared with other provinces and plays that compete for scarce funds in our drilling budgets. Significant portions of our drilling budgets, now directed to Osage County, will likely get diverted to other plays, with less restrictive and burdensome operations settings.
We strongly urge you to reject the proposed revisions to the existing CFR, or risk discouraging continued development of oil and gas reserves in your Mineral Estate. We urge you instead, to continue to encourage the flow of capital into Osage County, as you have done so well in the past. As always, we are open to discussing anything that will lead to mutually beneficial economic success for the Osage Tribe and responsible operators.

Respectfully Submitted,

CHAPARRAL ENERGY LIMITED LIABILITY CORP
By: [Signature]
Mark A. Fischer, Manager

SPYGLASS ENERGY GROUP
By: [Signature]
Charles R. McEwen

PERFORMANCE OPERATING COM, LLC
By: [Signature]

NADEL AND GUSMAN
By: [Signature]

SPYGLASS ENERGY GROUP
By: [Signature]

UNIT OIL COMP NY
By: [Signature]
Robert B. Dohm, President

H&B OIL COMPANY, LLC
By: [Signature]
Michael L. Graves

LAMAMCO DRILLING COMPANY
By: [Signature]
Out of Office-Curtis Biran, Attorney

SULLIVAN AND COMPANY, LLC
By: [Signature]
Robert J. Sullivan, Manager

CEJA CORPORATION
By: [Signature]
Greg Oliphant, Board Chairman

DEVON ENERGY PRODUCTION COMPANY, L.P.
By: [Signature]
Bill A. Fenhall
Vice President Land

ENCANA OIL AND GAS (USA) INC
By: [Signature]
Kevin Bruce
Government & Regulatory Affairs Advisor

UNIN OPERATING INC
By: [Signature]
S. Keith Frank, Attorney in Fact

CEP MID-CONTINENT CO, LLC
By: [Signature]
May 29, 2013

The Honorable Kevin K. Washburn
Assistant Secretary, Bureau of Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

Dear Assistant Secretary Washburn,

We write to express our serious concern regarding the Bureau-Osage negotiated rulemaking process and proposed rules that now await your review. It is our belief that the proposal does not adequately reflect the will of the Osage people, nor does it give proper consideration to the interests of other important stakeholders including landowners and producers.

While it is clear that a modernization of the rules governing the mineral estate is long overdue, we believe the current proposal misses the mark in several key areas. First and foremost, while some important steps were included, there are inadequate safeguards to ensure that current and future BIA managers are held accountable for mismanagement of the estate. Second, it is clear that the concerns of landowners who raised serious health and safety concerns were not properly considered. Finally, the proposed rules may seriously diminish oil and gas production in Osage County and lead to lower revenues for Osage shareholders.

A successful rulemaking process will ensure that the concerns of all stakeholders are adequately considered. Specific to Osage, it will prioritize the protection and maximization of the Osage mineral estate, the proper collection, distribution and accounting of all royalty payments to Osage mineral holders, and uphold and respect the rights of landowners and producers. It should also contain specific steps to hold the agency itself accountable for its actions.

As your decision will have far reaching consequences for the Osage economy, we make two requests: First, we believe it is important to delay consideration to allow you to personally hear from all parties impacted by this proposal. Second, so that we may better understand the entire situation, we request a formal briefing from you.

We thank you in advance and look forward to your response within the next two weeks.

Sincerely,

Tom Coburn, M.D.
U.S. Senator

James M. Inhofe
U.S. Senator

Frank D. Lucas
U.S. Congressman
APPENDIX 6

This correspondence is in response to your Freedom of Information Act (FOIA) request, dated and received by the Bureau of Indian Affairs (Bureau), Osage Agency (Agency) on June 12, 2013, via electronic mail. Your request has been assigned the reference number BIA-2013-01501. Please reference this number in any future correspondence regarding this particular FOIA request.

Your request contained several questions. This correspondence will address each question individually and will provide the applicable answer after each question.

**Question One:** Number of permit applications per year in Osage County including the number of new wells and in-fills.

The Agency does not differentiate between in-fill wells and new field wells in permitting activity. In reference to Applications for Permit to Drill (APD), the number processed by Fiscal Year since 2009 is as follows:

- FY 2013 (to date): 220
- FY 2012: 378
- FY 2011: 418
- FY 2010: 338
- FY 2009: 237

**Question Two:** Number of Total Staff and number of Staff the Agency employs to process the permits.

The Agency has an authorized staffing level of thirty-two (32). Processing each Drilling Permit Application involves ten staff members.

**Question Three:** Number of active and producing wells.

Within the Osage Mineral Estate, there are approximately 18,500 active wells of all types. This includes approximately 14,500 producing wells (oil, gas, CBM, and combination O&G) and approximately 5,000 service wells (Water Injection, Salt Water Disposal, Salt Water Supply, etc.)
Question Four: Number of Inspectors; How is the frequency of inspections tracked?

The Agency has nine Inspector Positions. Currently, due to a death and resignation, seven of those positions are filled. Inspections are tracked by the Agency Field Supervisor.

Question Five: The time it takes from Permit Application to the time a permit is issued?

The Agency advises to expect a delay of sixty (60) to ninety (90) days for a permit to be issued in instances wherein a permit has not had any work performed prior to submission. Many of our permittees have begun to obtain cultural resource clearances prior to submitting the AFD. If the Cultural Resource clearance work is performed prior to AFD submission, this delay can be reduced substantially.

Question Six: How long for the EPA and the UIC wells permit / timing requirement?

The Agency does not maintain the EPA requirements therefore this question should be addressed to the EPA Region 6 at the following address:

EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Question Seven: Who is responsible for regulation and enforcement of air emissions? Ground / Surface Water Discharges?

This is the joint responsibility of the EPA and the Oklahoma Department of Environmental Quality.

Question Eight: What is the annual budget for the Osage Regulatory Office?

The Osage Agency budget is: FY 2012 Enacted $2,750,165 [P.L. 112-74]

If you consider this response to be a denial, in total or in part, you may appeal to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA Appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m., E.S.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240
You must include with your appeal copies of all correspondence between you and the Bureau concerning your FOIA request, including a copy of your original FOIA request and this denial letter. Failure to include this documentation with your appeal will result in the Department’s rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend “FREEDOM OF INFORMATION APPEAL.” Your letter should include in as much detail as possible any reason(s) why you believe the Bureau’s response is in error.

The officials responsible for this response are Charles Huriburt, Osage Agency FOIA Coordinator, Letha Wilson, Eastern Oklahoma Region FOIA Coordinator, and Alan Woodcock, Attorney-Advisor, Office of the Solicitor, Tulsa, Oklahoma. Should you have any questions, please contact the Osage Agency, Office of the Superintendent at (918) 287-5700.

Sincerely,

[Signature]

Superintendent

CC: Letha Wilson, Eastern Oklahoma Region FOIA Coordinator, Bureau of Indian Affairs, Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402

CHuriburt 7/10/13 (draft)
Agency FOIA File