

Regulatory Challenges Facing Osage Oil and Gas Estate

Background

BIA has been working to update the regulations governing oil and gas activity on Osage County since 2011. This work follows a \$380 million legal settlement between the BIA and the Osage mineral estate head-right owners over mismanagement of the Osage mineral estate. The regulations were proposed in the fall of 2013 and published as final in the Federal Register in the spring of 2015, slated to be implemented on July 10, 2015. On Tuesday, July 7, 2015, following lawsuits by the Osage Minerals Council and the Osage Producers Association, the Federal Court in the Northern District of Oklahoma stayed the implementation of the regulations until it could hear the merits of the temporary restraining order on August 10, 2015. On August 10, 2015, the Court provided an injunction against the rules until litigation is resolved; the next hearing is scheduled for spring 2016.

Since BIA began work to update the regulations, oil and gas production on Osage County has fallen dramatically. This has been exacerbated by the BIA's effort to separately update the program's compliance with the National Environmental Policy Act (NEPA). Together, these regulatory "updates" resulted in no new wells being drilled for nearly 7 months. Only after repeated Congressional inquiries did BIA approve new wells, but action stopped thereafter and hundreds of permit requests remain outstanding.

Every interested stakeholder has reached to the Senate delegation to express concern with the current oil and gas climate in Osage county. The Osage Minerals Council, the Osage Nation, and various Osage oil and gas producers have expressed frustration with a lack of regulatory certainty and program execution by the BIA. Various surface landowners have also expressed concern about a lack of regulatory enforcement to address issues and challenges that can (and at times have) arisen during the exploration and production process. All of these issues are worthy of addressing in a collaborative way through legislative language.

What has become abundantly clear is that the BIA is incapable of effectively managing the permitting of oil and gas development; nor is it capable of effectively enforcing regulations during the exploration and production process. Only new legislation can effectively address this.

Intent

The Senate delegation's key desire is to improve the near-term and long-term regulatory environment for oil and gas development for the benefit of the head-right owners without jeopardizing the longstanding and appropriate trust relationship between the Federal Government and the Osage.

The Senate delegation is committed to working transparently and cooperatively with the Osage to ensure any changes to the program benefit it in a way that is constructive and mutually beneficial.

The delegation is also committed to ensuring oil and gas activities in Osage county retain appropriate regulatory oversight.

The next page outlines a potential legislative solution to the current regulatory challenges. It is not final, and the delegation is eager to make changes that ensure the long-term success of mineral development for the benefit of the mineral estate without jeopardizing the trust relationship.

Draft Proposal

Summary:

Transition regulation of the Osage mineral estate away from the BIA to the Nation. BIA would retain financial related responsibilities to ensure it maintains the trust relationship with the mineral estate. The Minerals Council would retain sole decision making power with respect to developing the mineral estate. The Minerals Council would also retain sole discretion in determining who will provide regulatory oversight for the mineral estate. Several new regulatory options will be provided, as outlined below.

Details:

1. The Osage Minerals Council would have the option to opt-out of exploration, development, and production regulation of the mineral estate by the Bureau of Indian Affairs and elect a new method of regulation for these non-financial activities:
 - a. The first option would be to elect a regulatory program established by the Osage Nation. This program would be established under a TERA-like system and subject to approval by BIA.
 - i. This regulatory program would likely take several years to develop and ready for implementation.
 - ii. BIA's funding for its current regulatory program would be transferred to the Nation's regulatory program to fund its operation.
 - iii. Determinations of leasing terms, lengths, royalty rates, etc. would be retained by the Minerals Council and would not be subject to approval or oversight by the BIA.
 - iv. Drilling permits and other production related regulations would be approved and established by the Nation under the TERA-like agreement.
 - v. The Minerals Council would retain the option to "de-select" the Nation and return to another option if the Nation pursues an unworkable regulatory program or cannot provide the services needed by the Minerals Council for the development of its estate.
 - b. The second option, which is essentially an interim option, would allow the Council to establish, together with the Osage Nation tribal government, another council responsible for providing self-regulation of oil and gas activities by hiring outside experts.
 - i. The hiring of outside experts is allowed here to provide an *immediate* solution to the regulatory challenges facing the Osage.
 - ii. Both the tribal government and the Council would take part in the decision making process regarding who to hire to provide this immediate service.
 - iii. The entity hired to provide this expertise would need to be approved by the BIA; however, if the entity can demonstrate that it can provide the same level of protection as the Oklahoma Corporation Commission in the rest of Oklahoma, then its plan will automatically be approved by the BIA. If the parties would like to identify another regulatory entity to provide as a comparison, that may be provided. (OCC comparison is provided for the sake of simplicity of this draft document and is to underscore the delegation's commitment to sound and appropriate regulation of oil and gas activities in Oklahoma.)
 - iv. This election is expected to be accepted in order to provide time for the regulatory program under option 1 to be developed while also providing an immediate solution to the many permitting and production needs that BIA has neglected over the last few years.
 - v. At least a portion of BIA's program budget for oil and gas operations would be provided to the new council to retain the experts they select to provide the regulatory authority.

- c. The third option is to allow the Minerals Council to elect to retain BIA as the primary regulatory entity. The current regulatory climate would remain, and BIA would retain the option to continue its work updating the regulations.
2. Separately and regardless of any election made above, the statutory funding limitation for the Minerals Council would be either raised or supplemented so that its operations budget is increased and it can hire the staff it needs to run a professional organization.
3. Separately, the legislation would also require a report or legal opinion by BIA to determine where current and appropriate lines are drawn for regulatory responsibilities between the federal and state governments on surface lands to clear up any confusion that presently exists.