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August 18, 2014

VIA ELECTRONICALLY @ [www.regulations.gov](http://www.regulations.gov)  
Keyword/ID: ONRR 2014-0001

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Re: **1012-AA15; JICARILLA APACHE NATION COMMENTS REGARDING ONRR'S PROPOSED  
INDIAN OIL VALUATION RULE**

The following comments which have been duly authorized to be submitted on behalf of the Jicarilla Apache Nation ("Jicarilla"), are hereby submitted on its behalf by Alan Robert Taradash and Timothy H. McLaughlin, of the Nordhaus Law Firm, LLP, Special Counsel to the Oil & Gas Administration and the Revenue & Taxation Department of the Jicarilla Apache Nation, a federally recognized American Indian Nation.

**The Jicarilla Apache Nation and Its Interest in the Indian Oil Valuation Regulations**

Jicarilla is a major oil and gas producing federally recognized Indian Nation, located in north central New Mexico. Currently, there are in excess of one hundred oil and gas producing leases on the Jicarilla Apache Reservation ("Reservation"). Approximately 377,000 acres or one-third of the Reservation is under oil and natural gas production. According to recent Jicarilla internal reports, approximately 302,000 barrels of oil are produced from Jicarilla lands annually. Presently, approximately 90 percent of Jicarilla's government operations are funded with revenues from oil and gas production. Therefore, maximizing revenue from the production of Jicarilla's valuable non-renewable oil and gas resources is critical for Jicarilla to provide essential governmental services to tribal members and others working or residing on the Reservation. The proposed Indian Oil Valuation Regulations referenced above directly affects Jicarilla; hence, it is important for the Secretary of Interior ("Secretary") to consider Jicarilla's views relevant thereto.

### **Jicarilla's Historic Interest in Oil & Gas Lease Enforcement**

It is, and always has been, a Jicarilla imperative that the United States, in its capacity as Jicarilla's lawful trustee, fully enforce all provisions of Jicarilla's oil and gas leases issued pursuant to federal law. As the *en banc* decision and opinion of the United States Court of Appeals for the Tenth Circuit emphatically reconfirmed in 1986, the United States is responsible for fully enforcing all provisions under Jicarilla's producing oil and gas leases to maximize oil and gas revenue by requiring compliance with lease terms, federal and tribal laws, and regulations. See *Jicarilla Apache Tribe v. Supron Energy Corp.* ("Supron"), 728 F.2d 1555, 1565 (10th Cir.1984) (Seymour, J., concurring in part and dissenting in part), *adopted as majority opinion as modified en banc*, 782 F.2d 855 (10th Cir.1986), *supplemented*, 793 F.2d 1171 (10th Cir. 1986), *cert. denied*, 479 U.S. 970 (1986).

Maximizing revenue from the production of Jicarilla's valuable non-renewable oil and gas resources is critical for Jicarilla to provide essential governmental services to tribal members and others working, residing, or doing business on the Reservation.

### **Jicarilla and MMS/ONRR's Historically Successful Audit Efforts**

Jicarilla's Revenue & Taxation Department oversees the collection of royalties and taxes on production, *inter alia*, of Jicarilla oil and gas reserves. Through the Revenue & Taxation Department, Jicarilla has developed an extensive auditing program which has operated for many years in collaboration with the Office of Natural Resources Revenue ("ONRR") (formerly the Minerals Management Service ("MMS")). This team effort has, through its audit work, over the past 25 years, collected more than \$100,000,000 that was not collected in the initial MMS/ONRR payment process used by Jicarilla's oil and gas lease payors.

Together, the Jicarilla Revenue & Taxation Department and Oil & Gas Administration have provided powerful regulatory and auditing resources to achieve the goal of maximizing revenues while protecting Jicarilla's lands and valuable oil and gas reserves. Given the enormously important interest Jicarilla has in the valuation process, Jicarilla is pleased to provide the following comments on the proposed Indian oil valuation rule amendments.

### **The United States' Statutory and Fiduciary Trust Duties to Jicarilla and All Other Indian Mineral Lessors Govern ONRR's Rule Making**

The Jicarilla Apache Nation is the beneficial owner of the land and mineral estates within the boundaries of the Jicarilla Reservation established by Executive Order in 1887. The entire Reservation is held in trust by the United States for the beneficial use and enjoyment of Jicarilla and its People who are, collectively, the beneficial owners of the Reservation possessed of the authority, *inter alia*, to lease and develop its lands. See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 133-34 (1982) (providing an overview of the creation of the Nation's reservation and government); *see also* Revised Const. of the Jicarilla Apache Tribe (Jan. 9, 1969) (as amended); Exec. Order (Feb. 11, 1887), *reprinted in* Charles J. Kappler, 1 Indian Affairs:

Page 3  
August 18, 2014

Laws & Treaties 875 (Washington, DC: Government Printing Office, 1904) (establishing the Reservation); *Supron*, 728 F.2d at 1565.

The United States, and thus the Secretary, have well defined fiduciary trust duties to Jicarilla. See *Supron*, 728 F.2d at 1564. The United States unequivocally has fiduciary statutory and trust duties of the highest order to Jicarilla as well as other Indian mineral lessors which stem from, *inter alia*, the fact that the United States holds legal title to Indian lands and the mineral estate under those Indian lands. *Id.* The notable footnote often quoted from the United States Supreme Court decision in 1942, *Seminole Nation v. United States*, 316 U.S. 286 (1942), is well worth restating given the number of times the Supreme Court and numerous lower courts including the *Supron en banc* decision have cited it to define the fiduciary trust duty of the United States owed to Indian Tribes:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions . . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd.

*Seminole Nation* at 297 n.12 (emphasis added) (citing and quoting from Chief Judge (later Mr. Justice) Cardozo in *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928)). This was reemphasized and confirmed by Judge Seymour in the *Supron* opinion in quoting *Seminole Nation* stating that the Secretary's duty to be a ". . . moral obligation of the highest obligation and trust." *Supron*, 782 F.2d at 1563 (quoting *Seminole Nation*, 316 U.S. at 297).

### **The Indian Mineral Leasing Act of 1938**

Pursuant to this fiduciary trust responsibility and to more fully implement the societal, economic and political resuscitation of American Indian tribes and their members as intended by Congress when it enacted the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-479, in 1938 the Indian Mineral Leasing Act ("IMLA"), 25 U.S.C. §§ 396a-396g, governing mineral leasing of Indian lands was enacted. Congress and those who testified for the need of the IMLA thought "the present law [was] [in]adequate to give the Indians the greatest return from their property." S. Rep. No. 75-985 at 2 (1937); H.R. Rep. No. 75-1872 at 2 (1938). The stated purpose the IMLA was to (1) achieve uniformity in Indian mineral leasing laws; (2) revitalize Indian tribal governments; and, (3) promote economic development, by ensuring that Indian tribes receive the maximum benefit from mineral deposits on their lands through leasing. See S. Rep. No. 75-985 at 2-3; H.R. Rep. No. 75-1872 at 1-3. See also *Supron*, 728 F.2d at 1565, 1570-71.

Page 4  
August 18, 2014

In fact, the Secretary of Interior testified before Congress as to the purpose of the bill which was to become the IMLA when he stated: “. . . it is not believed that the present law is adequate to give the Indians the greatest return from their property.” S. Rep. No. 985 at 2; H. Rep. No. 1872 at 2 (emphasis added). This was also cited to by Judge Seymour in *Supron*, 782 F.2d at 1565.

Contrary to the initial position taken by the Department of Interior in the *Supron* litigation, Judge Seymour noted that “[s]ometime during the trial below Interior evidently adopted the position the lease and regulation terms authorized utilization of both methods of accounting (dual accounting) and that it has the discretion to require payment of royalties based on the method assuring the Tribe [Jicarilla] of the highest return.” *Supron*, 782 F.2d at 1566 (emphasis added).

All actions on behalf of the Indian mineral lessor by the federal government under the IMLA must adhere to this clear purpose.

Indeed, the Secretary has consistently emphasized the Department of Interior’s interpretation of the purpose of Congress and, in turn, the purpose of the Indian Mineral Lease provision for the valuation of natural gas in the Indian natural gas valuation regulations that went into effect on January 1, 2000 announced:

The Minerals Management Service (MMS) [now ONRR] is amending the valuation for royalty purposes of natural gas produced from Indian leases. These changes add alternative valuation methods to the existing regulations to ensure that Indian lessors receive maximum revenues from their mineral resources as required by the unique terms of Indian leases and MMS’s trust responsibility to the Indian lessor.

*See* 64 Fed. Reg.43506-28, 43506 (Aug. 10, 1999) (final rule) (to be codified at 30 C.F.R. pts. 202 and 206) (emphasis added). The Notice goes on to state under Section 1. Background:

MMS’s purposes in revising the current regulations regarding the valuation of gas production from Indian leases are: (1) To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of Interior’s (Secretary) trust responsibility and lease terms....

*Id.* (emphasis added). This is consistent with Indian mineral development leases authorized under the IMLA that contain a provision referred to as the “major portion requirement” that authorizes the Secretary of Interior to establish the minimum value for oil produced on Indian lands, 30 C.F.R. § 1206.54. *See also* BIA Standard Lease Form 5-157 at ¶3(c). The floor or minimum value must comply with the maximization requirement as required by law.

### **Department of Interior's Consistent Purpose Since 1938**

Since 1938 the Secretary of Interior has promulgated extensive regulations under the IMLA, which provide that the Secretary must act in the best economic interests of the tribes. *See, e.g.*, 25 C.F.R. pt. 211. Consistent with that, the Indian gas valuation regulations were enacted for the purpose of “ensur[ing] that Indian lessors receive maximum revenues from their mineral resources as required by . . . leases and MMS’ [now ONRR’s] trust responsibility[.]” 64 Fed. Reg. at 43506. Additionally, the federal government is required to maintain comprehensive records of price and production, and to determine royalties. 25 C.F.R. pt. 211.

It is important to note, and as mentioned above, that contrary to the long standing position to maximize revenue to the Indian mineral lessor, the initial position taken by the Department of Interior in the *Supron* litigation was to the contrary. However, as Judge Seymour noted in her scholarly opinion “[s]ometime during the trial below, Interior [changed its position to comport with its long held view and] evidently adopted the position that the lease and regulation terms authorized utilization of both methods of accounting (dual accounting), and that it has the discretion to require payment of royalties based on the method assuring the Tribe [Jicarilla] the highest return.” *Supron*, 782 F.2d at 1566 (emphasis added). Thus, in the context of promulgating Indian oil valuation regulations ONRR must minimally meet this standard and long held Secretarial position.

### **Specific Trust Duties Owed to the Nation and Indian Mineral Lessors**

Here or whenever ONRR takes action that affects Indian mineral lessors, ONRR is “charged . . . with moral obligations of the highest responsibility and trust [duties]. Its conduct . . . judged by the most exacting fiduciary standards.” *Seminole Nation*, 316 U.S. at 297. ONRR must also “manage Indian lands . . . to make them profitable for the Indians.” *Kenai Oil & Gas, Inc. v. Dep’t of the Interior*, 671 F.2d 383, 386 (10th Cir. 1982). This necessarily includes “a duty to maximize lease revenues.” *Kenai*, 671 F.2d at 386 (emphasis added). In carrying out its mandated duties, ONRR “must take the Indians’ best interests into account when making any decision involving leases on tribal lands[.]” *Id.* at 387 (emphasis added).

*Supron*, as noted above, is a case in which Jicarilla was the plaintiff and the Department of Interior (i.e., the United States) was one of the defendants. It emphatically confirms these very same legal obligations in the specific context of the IMLA, which govern ONRR’s actions here. Judge Seymour’s opinion, which became the *en banc* decision of the Tenth Circuit in 1986, makes it very clear that the Tenth Circuit was interpreting the Indian Mineral Leasing Act of 1938 and the leases issued under its authority, namely, the BIA Lease Form 5-157. As to Jicarilla *vis a vis* the United States, that case, and the issues decided therein, are *res judicata*. As to all other Indian lessors within the Tenth Circuit, that decision is binding legal precedent under the doctrine of *stare decisis*. As to all other Indian Tribes in the United States that opinion is controlling as its reasoning and legal conclusions have been expressly approved and adopted in numerous other cases as cited and explained below.

Page 6  
August 18, 2014

### **The Binding Specific Fiduciary Trust Obligations of the United States**

Judge Seymour's *Supron* decision expressly recognized "'the distinctive obligation of trust incumbent upon the Government' in its dealings with the Indian tribes[.]" per the United States Supreme Court's 1942 *Seminole Nation* decision, under which the Government "is held to a high standard of conduct." 728 F.2d at 1563 (quoting *Seminole Nation*, 316 U.S. at 296) (citation omitted). Judge Seymour specifically recognized that when acting as a fiduciary trustee for Indian beneficiaries "stricter standards apply to federal agencies when administering Indian programs[.]" *id.* at 1567, and the Secretary's "actions must not merely meet the minimal requirements of administrative law, but must also pass scrutiny under the more stringent standards demanded of a fiduciary." *Id.* at 1563.

Furthermore, with respect to specific duties under the IMLA, Judge Seymour stated that the purpose of Indian mineral leasing and the regulations thereunder was to "ensure that Indian tribes receive the maximum benefit from mineral deposits on their lands[.]" *id.* at 1565 (emphasis added), and the Department of Interior through the Secretary "must act in the best interests of the tribes." *Id.* The repeated reference in that opinion to maximizing revenue leaves no doubt that the Tenth Circuit was referring to money or revenue when it referred to maximizing benefit or acting in the Indians' best interest. "Benefit" and "best interest" in the context of Judge Seymour's opinion clearly mean only one thing when it involves the disposition of non-renewable mineral resources and that is money and its contextual synonym revenue. In issuing the Indian Oil Valuation Regulations the Secretary and ONRR are bound by the *Supron* decision and the Secretary's own stated purpose as to the valuation provisions of the same lease and the underlying 1938 law as quoted above.

### **Other Federal Circuit Courts of Appeals Have Agreed With the Tenth Circuit**

Since *Supron*, the Federal Circuit Court of Appeals expressly "agree[d] with the in [sic] banc Tenth Circuit in ... *Supron* ... that the United States is a general trustee with respect to Indian [oil and gas] leases ... ." *Pawnee v. United States*, 830 F.2d 187, 191 (Fed Cir. 1987). The Court of Federal Claims also held that "the legal standards applied by the Tenth Circuit courts and this court regarding breach of trust are the same." *Cheyenne-Arapaho v. United States*, 33 Fed. Cl. 464, 467 (1995). The Court of Federal Claims also specifically followed the point in *Kenai* that "[a]s a fiduciary for the Indians, the Secretary is responsible for overseeing the economic interests of Indian lessors, and has a duty to maximize lease revenue." *Id.* at 468 (quoting *Kenai*, 671 F.2d at 386) (additional citation omitted). *Cheyenne-Arapaho* also specifically applied the point in *Supron* that when the Secretary is required to act as a fiduciary, "his actions must not merely meet the minimal requirements of administrative law, but must also pass scrutiny under more stringent standards demanded of a fiduciary." *Id.* at 469 (quoting *Supron*, 728 F.2d at 1563) (additional citation omitted). Finally, the District of Columbia Circuit Court of Appeals also has followed and quoted *Supron* for the points that "'stricter standards apply to federal agencies when administering Indian programs'" and that "the Secretary 'cannot escape his role as trustee by donning the mantle of administrator . . .'" *Cobell v. Norton*, 240 F.3d 1081, 1099 (D.C. Cir. 2001) (quoting *Supron*, 728 F.2d at 1567); *see also id.* at 1104

Page 7  
August 18, 2014

(quoting *Supron*, 728 F.2d at 1563). ONRR cannot deviate from this fiduciary trust mandate in any of its actions that affect Indian mineral lessors.

**ONRR Is Charged By Law With The Duty to Maximize Revenue For Indian Lessors With Leases Issued Under Federal Indian Mineral Leasing Laws**

Specifically, ONRR has a duty to maximize revenue from mineral leasing and royalties as it expressly recognizes in its proposed action. Simply stated this means getting “the best possible price” for the Indian. *Gray v. Johnson*, 395 F.2d 533, 536 (10th Cir. 1968) (citing *Bailey v. Banister*, 200 F.2d 683, 685 (10th Cir. 1952)). It also requires ONRR to “apply whichever method resulted in the greatest income to the Tribe[,]” *Supron*, 728 F.2d at 1566, and “better promotes the Tribe’s interest.” *Id.* at 1567. ONRR’s trust responsibilities also require it to apply whichever accounting method [that] yields the Tribe the greatest royalties[,]” *Supron*, 728 F.2d at 1569, and if higher royalty payments and bonuses can be secured, the federal government has the duty to secure them. *Kenai*, 671 F.2d at 387.

**ONRR Has a Duty to Consider Indian Best Interests Monetarily and Obtain It**

As a general matter the duty to consider the Indian’s best interests refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is “in the best interest of the Indian mineral owner” to take a certain action (such as approval of a lease, permit, unitization or communization agreement), “the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.” 25 C.F.R. § 211.3 (definitions).

Within the Indian oil valuation rule context, however, Indian interests are narrowed to that of strictly monetary benefit. This means “faced with a decision for which there is more than one ‘reasonable’ choice as that term is used in administrative law, [ONRR] must choose the alternative that is in the best interests of the Indian tribe.” *Supron*, 728 F.2d at 1567. Since the purpose of the Indian oil valuation regulation must include the duty to maximize revenue from the production and disposition of oil, when faced with more than one reasonable alternative for valuation, the Secretary must choose that alternative that most benefits the Indian mineral owner monetarily. This is beyond rational, honest, intellectual debate. ONRR must take action that is in the best monetary interests of the Indian mineral lessor. Other considerations which would deviate from this purpose are not relevant nor should they be considered under clearly established legal requirements including the deference due to the Secretary’s long held interpretation of the 1938 IMLA.

Page 8  
August 18, 2014

**ONRR Has Discretion to Determine Value and Maximize Revenue to Indian Lessors  
But It Must Adhere To and Comply With Its Fiduciary Trust Duties**

The Secretary, hence ONRR, has “broad discretion to determine the value of production that will best protect the royalty interest of the lessor.” *Supron*, 728 F.2d at 1566 (citation omitted). ONRR has broad discretion but it is not unfettered; rather, it is directed. This is because ONRR’s discretion is limited by its fiduciary trust responsibilities as supervisor and administrator of Indian oil and gas leases. ONRR “must manage Indian lands so as to make them profitable to the Indians.” *Cheyenne-Arapaho v. United States*, 966 F.2d 583, 589 (10th Cir. 1992). This discretion must be exercised as a fiduciary trustee with the highest legal duty under the law consistent with the authorizing statute, applicable regulations, lease terms, and governing case law. Where ONRR has discretion, it must exercise it in the manner that most benefits the Indian lessor.

Among other responsibilities, ONRR “has the authority and responsibility to establish the reasonable value of production for royalty purposes, and possess considerable discretion in determining that value.” *Anadarko Petroleum Corp.*, 122 IBLA 141, 147-48 (1992). As explained in greater detail below, the Secretary’s Indian Gas Valuation Regulations that went into effect on January 1, 2000 expressly state the Secretary’s objectives of fulfilling his trust responsibility and maximizing the lessor tribe’s revenue under the same authorizing legislation, the same lease form, and the same lease paragraph that apply to Indian oil valuation.

In complying with these fiduciary trust duties, there is no “relevance [of] ‘industry practices’ [] to the Secretary’s interpretation of federal law.” *Supron*, 728 F.2d at 1566. Moreover, as pointed out above, the Secretary “cannot escape his role as trustee by donning the mantel of administrator[.]” *Id.* at 1567. This point must be underscored as it is to be expected that the oil and gas industry will likely provide comments for the purpose of decreasing revenues to the Indian mineral lessors by alluding to, *inter alia*, industry practices as has been the case in the past. Obviously any ONRR action to do so would be an abuse of discretion, contrary to law, and entirely unacceptable.

The fact that ONRR cannot escape its role as a fiduciary trustee is of particular importance. As applied here, specifically in the three areas where ONRR has requested comments regarding possible ONRR action, namely, how to address and determine the Location and Crude Type Differential (“LCTD”) when ONRR cannot calculate a differential but is required to do so; or, whether to eliminate transportation factors and whether to limit allowances that all could increase amounts due to the Indian mineral owner. *See* 79 Fed. Reg. 35102-21, 35106, 35108 (June 19, 2014). ONRR, as a fiduciary trustee to Indian lessors, must exercise its discretion, evaluate reasonable alternatives, and act in a manner that leads to the maximized monetary return to the Indian mineral owner. Only thus will the Secretary act in a manner consistent with law by assuring that the Indians’ best interests are provided for.

### **ONRR May Not Render Select Provisions of Indian Leases Meaningless**

Standard Lease Form 5-157 ¶ 3(c) mandates that the “major portion” provision requires the Secretary to determine, *inter alia*, the highest price paid or offered for the “major portion” of like or similar production contemporaneous in time from the field or area. *See* Department of Interior, Bureau of Indian Affairs, “Oil and Gas Mining Lease-Tribal Indian Lands,” Form 5-157 (July 1964) (emphasis added). An example of MMS’ recognition of this may be found in 1996 when MMS recognized that “median is not synonymous with major.” 61 Fed. Reg. 49894-917, 49899 (Sept. 23, 1996) (“the 25th percentile from the top [in the Indian gas context] was a reasonable safeguard for royalty payments . . .”) (emphasis added). Here ONRR must consider not only the highest oil prices at which Indian oil was sold in a particular field or area, but the proposed valuation rule must also consider the highest price that was offered or could have been achieved.

### **The Secretary’s Indian Oil Valuation Rule’s Purpose Must Be Expressly Articulated**

While the proposed rule does indeed provide that ONRR is mandated to establish regulations concerning Indian oil valuation based on its federal fiduciary trust responsibility to Indians, including the duty to maximize revenue for Indian tribes and Indian mineral owners, as well as consider their best interests, *see* 79 Fed. Reg. at 35103, the purpose of the proposed Indian oil valuation rule is not expressly and clearly articulated. Lest there be any misunderstanding, the Secretary, as was done in announcing the Indian gas valuation regulations and in the regulations themselves, must clearly and expressly articulate the purpose of the Indian oil valuation regulations.

Therefore, ONRR, bound by law as it is, should take this opportunity to make it unmistakably clear to all that the purpose of the Indian oil valuation rule is to establish federal regulations concerning Indian oil valuation based on its federal fiduciary trust responsibility, which include the duty to maximize revenue for Indian tribes and Indian mineral owners. The Secretary did exactly this when promulgating Indian natural gas valuation regulations and announcing his purposes, *inter alia*, to maximize the revenue to the Indian mineral lessor. *See* 64 Fed. Reg. at 43506. In making this announcement and in promulgating the gas valuation regulation the Secretary was again interpreting the same provision of the same lease form as is at issue here where oil is the focus instead of gas. *See, e.g.*, BIA Standard Oil and Gas Lease Form 5-157, ¶3(c). The same must be done in the Indian oil valuation rule context.

### **The Location and Crude Type Differential Used in the Index-based Formula Must Reflect the Highest Price Paid or Offered**

Data generated from Form ONRR-2014 that ONRR requires companies to submit to ONRR along with oil and gas lease royalty payments only provides ONRR with unaudited data of self-reported information. As ONRR knows from the Indian audit strategy originally conceived by MMS in response to the findings of the Linowes Commission, *see*, United States Department of the Interior, D.F. Linowes, Commission Chairman, “Report of the Commission

Page 10  
August 18, 2014

on Fiscal Accountability of the Nation's Energy Resources," (Jan. 1982) ("Linowes Report") (recommending verifying royalty payments "[e]ffective internal controls for the management of oil and gas royalties must include verification of the reports provided by companies on production, sales and royalties." *Id.* at 55).

The Linowes Report further concludes in its summary of recommendations on the verification of production and sales "[t]hat the Federal royalty managers adopt a program of increased systematic audits. In addition, provision must be made for audits triggered by flagged discrepancies between production reports and sales or royalty reports . . ." *Id.* at 244. The Linowes Commission itself was created due to the oil thefts that were discovered in Indian country oil and gas production notably at the Wind River Reservation in Wyoming. *See, e.g.*, Marjane Ambler, "Breaking the Iron Bonds: Indian Control of Energy Development" (Univ. of Kansas Press, 1990).

Producing companies on Indian lands routinely underpay the royalties that are properly due. When audits are done and additional sums of money are deemed due to the Indian lessor, ONRR should go back and revise its major portion calculation to correct the misinformation that is inherent in the pre-audit major portion determination. This directly relates to a fundamental problem that self-reported and unconfirmed and unaudited information reported on Form ONRR-2014 is fundamentally flawed. Yet this information is used to determine the LCTD. Therefore, ONRR must rely on audited and verified data to set LCTDs for the various Indian mineral owners in an effort to maximize the monetary interests and benefits of the Indian mineral owners as well as consult with the affected Indian mineral owners on this issue before setting LCTDs.

### **Conclusion**

ONRR must comply with its fiduciary trust statutorily mandated obligations of ensuring that the Indian mineral owners receive the maximum monetary benefit. In order to achieve this mandate that arises from Congressional enactments, regulations, case law, and the Secretary's own long standing and consistent interpretation of the Indian Mineral Leasing Act of 1938 as well as other statutes that govern Indian mineral leasing or development, the Secretary's Indian oil valuation regulations that are now being proposed must assure the maximum monetary return to the Indian mineral resource owner and lessor. Nothing less will meet the requirements of law.

Respectfully submitted,

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