

## Thrasher, Sandra Jo

---

**From:** Shirley, Perry  
**Sent:** Monday, March 20, 2000 5:23 PM  
**To:** RMP Comments  
**Subject:** Navajo Nation Comments

Rules and Publication Staff:

The following comments are submitted on behalf of the Navajo Nation. If you have any questions concerning the comments, please call me at (520) 871-6340.

Sincerely,

Perry Shirley, Assistant Director  
Minerals Department  
Navajo Nation



Navajo-Comments.doc

**March 19, 2000**

Delivered via e-mail to: RMP.comments@mms.gov

Minerals Management Service  
Royalty Management Program  
Rules and Publications Staff  
P.O. Box 25165, MS 3021  
Denver, Colorado 80225

Dear Rules and Publications Staff:

The Navajo Nation (Nation) submits the following comments on the supplementary proposed rule (65 Federal Register 403, January 05, 2000) for establishing value for royalty purposes for crude oil produced from Indian lands. The Navajo Nation is a large producer of crude oil among the Indian tribes with an annual production of approximately 6.2 million barrels of crude oil. The Nation is very much dependent on royalty revenues it receives from its mineral production. In fact, mineral royalty revenues account for approximately 75 percent of the Nation's general funds. These funds are used by the Nation to provide much needed services to Navajo people. As such, we have a valid interest in how our non-renewable natural resources are valued for royalty purposes.

The Federal Government must recognize its fiduciary trust responsibility owed to Indians in its regulations regarding the valuation of crude oil produced from Indian leases. The Federal Government's trust responsibility to Indian Nations arises from Indian treaties, Federal statutes, executive orders, legal decisions, and the historical relations between the United States and Indian nations.

It is unfortunate that the Indian crude oil proposed regulation rulemaking process was delayed for over 2 years. Since December 1995, when MMS formally announced its intention to reassess its crude oil valuation regulations, the Nation has been anticipating the finalizing of the proposed regulations. Over the past 2 years, language contained in various Department of Interior Supplemental Appropriations Bills has barred MMS from issuing any notice of final rulemaking with respect to the valuation of crude oil for royalty purposes on Federal leases. Although it is still not clear whether the language in the Appropriations Bill was intended to apply to the promulgation of valuation rules for Indian leases, the fact is, it has barred MMS from finalizing any crude oil valuation regulations, including valuation regulations for oil production on Indian lands. The promulgation of amended Indian crude oil regulations is overdue. It is quite apparent that crude oil prices posted by companies to value production for royalty purposes are not reflective of the real

market value of the crude oil. The Nation supports the proposed rule which determines royalty value using independent published spot prices as opposed to the current valuation regulation methodology that places reliance on company posted prices for determination of value for royalty purposes.

In its request for comments on the Supplementary proposed rules, MMS specifically requested comment concerning the following areas:

### **Use of Spot Prices vs. New York Mercantile Exchange Futures Prices**

The Nation will rely on MMS' belief that when the New York Mercantile Exchange (NYMEX) futures prices are properly adjusted for location and quality differences, the NYMEX futures prices will nearly duplicate the published spot prices. With this understanding, the proposed change to use spot prices versus NYMEX prices should be revenue neutral over time. Therefore, there should be no revenue impact to the Nation.

### **Use of Average of high Daily Spot Prices Rather Than Average of Five highest NYMEX Settle Prices**

The Nation believes the initial proposal (63 Fed. Reg. 7089, February 12, 1998) to apply the average of the five highest NYMEX settle prices to determine a value would be consistent with: 1) the major portion requirements contained in the Nation's leases (and/or where the Secretary of the Interior has the discretion to determine the value of lease substances for royalty purposes); and 2) the U.S. Government's trust responsibility to Indian beneficiaries. However, in the interest of bringing closure to the rulemaking process through the gain of any industry support, the change in the calculation of the average price from the five highest to the average of the high daily spot prices has its benefits. If the decision to either receive revenue determined in accordance with the current posted price based method, or the proposed index based spot price method, the Nation would opt for the latter.

### **Modifications to Major Portion Notification by MMS**

The Nation does not agree with the proposed change to eliminate the 120 day requirement for MMS to calculate major portion values. Should MMS decide to eliminate the 120 day requirement for calculation of major portion values, then perhaps it should also consider sending an official order for payment to the payors if additional royalties are due upon the completion of the major portion value calculations. MMS could compare its calculated major portion values against those values initially reported by the payors on Form MMS-2014 to determine whether royalties are due. This would give the lessors the added time benefit of underpaid royalties while enhancing the recovery of applicable late payment interest as interest would begin to accrue immediately upon receipt of the order(s).

### **Transportation Costs from Lease vs. Reservation Boundary**

While the Nation supports the transportation limitations in the initial proposed regulations (63 Fed. Reg. 7089, February 12, 1998), again, we feel that in the interest of finality in the rulemaking process, the proposed changes to permit transportation deductions from the lease or unit rather than the reservation boundary is amicable. However, we feel strongly that under no circumstances should transportation deductions exceed 50 percent of the value of the oil based on index pricing under proposed § 206.52(a) or gross proceeds as determined under 206.52(b). We support the added definition of aggregation point in the context of determining location/quality differentials.

### **Modifications to Proposed Form MMS-4416**

The Nation fully supports the data submittal requirements on Form MMS-4416. In past audits, the Nation's Minerals Audit Program has encountered resistance from companies that refine crude oil produced from the Navajo lands. This information was being sought primarily to determine quality and location differentials for crude that was disposed of through exchange agreements involving the refineries. The information submitted on the Form MMS-4416 is necessary for MMS to determine the crude oil market value and it will be useful in our compliance reviews. However, the Nation recommends that current language in the proposed rule concerning the requirement to submit the Form MMS-4416 be changed to clearly state that the submittal of the MMS Form-4416 is required. For example, under the Step-by-step Instructions for MMS Form-4416, it states that "you *should* fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands". This implies that the submittal of the form is on a voluntary basis. Since the Form MMS-4416 is an important part of the proposed regulations, its submittal must be enforced, and appropriate penalties applied if it is not submitted.

Contrary to the belief of some, we do not believe that the proposed rule is an economic detriment to the Navajo Nation. In fact, the proposed rule should alleviate many of the reporting and compliance problems encountered under the existing regulations which should benefit the Navajo Nation and Industry.

In conclusion, the proposed oil rule will provide a fair and reasonable value to the Nation, while providing the industry, MMS and the Nation benefits through audit cost reductions, administrative cost savings, and litigation cost savings. The proposed rule also provides a valuation method to address the major portion analysis provisions contained in Indian leases as well as provide certainty. The Navajo Nation respectfully requests that the MMS finalize and implement the proposed Indian crude oil rule as soon as possible after the closing of the extended comment period on March 20, 2000.

If you have any questions or need additional information, please contact Mr. Perry Shirley at (520) 871-6340.