



## THE JICARILLA APACHE NATION

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April 14, 2003

*Delivery By Electronic Mail [mrm.comments@mms.gov](mailto:mrm.comments@mms.gov)  
Fax (303.231.3385) and U.S. Mail*

Sharron L. Gebhardt, Regulatory Specialist  
Minerals Management Service  
Minerals Revenue Management  
P.O. Box 25165, MS 320B2  
Denver, CO 80225

**Re: Comments of the Jicarilla Apache Indian Nation on MMS Reopening of Public Comments on the Proposed Rule Regarding Valuation for Royalty Purposes of Crude Oil Produced From Indian Leases, 30 CFR Part 206, (68 FR 2086, February 12, 2003)**

Dear Ms. Gebhardt:

This letter constitutes the comments of the Jicarilla Apache Nation (“Jicarilla” or “Nation”) on the Minerals Management Service’s (MMS) published notices of proposed rulemaking regarding the value of crude oil produced from Indian leases. MMS originally proposed the rule on February 12, 1998 (63 FR 7089), published a supplementary proposed rule on January 5, 2000 (65 FR 403), and reopened the public comment period on February 12, 2003 (68 FR 7086). The Nation does not support MMS’s use of the notice and comment rulemaking process for Indian lease issues for the reasons stated below. However, since MMS is having a public comment period, the Nation is submitting comments on some of the issues raised by the rulemaking particularly with regard to the supplemental rule.

### **The Interests of the Jicarilla Apache Indian Nation in this Rulemaking**

The Jicarilla Apache Reservation is located in northwest New Mexico on the eastern edge of the San Juan Basin, which is the second largest gas field in the lower 48 states. Jicarilla is the



lessor and royalty owner of over 100 oil and gas mining leases issued in the early 1950s under the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396g (“IMLA”). Jicarilla depends on royalties from its oil and gas leases to fund its operating budget, which is used to provide essential government services to its members and other residents: revenues (including taxes) from oil and gas production comprise about 90% of the tribe’s operating budget, and are used for the police department, the tribal court, emergency ambulance services, and various community social services, including day care and care of the elderly, to list a few.

## Comments

1. **It is inappropriate for MMS to be engaging in notice and comment rulemaking for this rule—Indian leases are tribal proprietary matters, not matters of general public interest. Federal agencies are required to consult with tribal government officials when proposed regulations will have a substantial direct effect on one or more Indian tribes.**

The Jicarilla Apache Nation objects to MMS’s use of notice and comment rulemaking concerning changes to 30 CFR Part 206. Indian leases are not a matter of public interest but rather, they are tribal proprietary business matters which involve only the parties to the leases and the federal government as trustee. Also, section five of Executive Order 13175 on “Consultation and Coordination with Indian Tribal Governments,” (65 FR 67249, November 6, 2000), requires federal agencies to ensure meaningful and timely input by tribal officials in the development of regulatory policies. In publishing a rule, an agency must also separately identify in the notice of regulation, a summary tribal impact statement that describes the extent of consultation with tribal governments, the nature of their concerns, and how the concerns have or have not been addressed by the rule. Conducting a public notice and comment period and public workshops with regard to Indian lease rules is not consistent with the Executive Order.

2. **MMS should promulgate rule provisions to require full disclosure purchase/sales agreements in order to fully calculate royalties**

As a general matter, the Jicarilla Apache Nation supports the use of alternative valuation methods that better reflect market values in order to obtain the greatest economic return for Indian resources. However, MMS must also establish policies that require the MMS to carefully scrutinize all the pieces of lessee’s purchase/sales agreements, so that the consideration actually received is revealed for application of the appropriate pricing methodology.

3. **MMS Should Not Eliminate the 120 Day Provision For Calculating Major Portion Values**

The Jicarilla Apache Nation does not support eliminating the 120 day time requirement

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for MMS to calculate major portion values. Time limits help ensure that determinations are made in a timely fashion.

4. **The Jicarilla Apache Nation supports the usage of 75% for calculating major portion price**

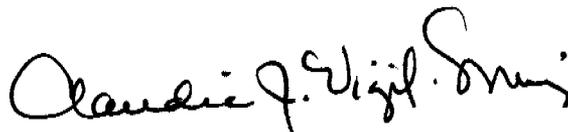
The Jicarilla Apache Nation supports the use of 75% for calculating the major portion price. This is consistent with the new Indian gas valuation rule.

5. **MMS Should Not Amend Its Proposed Rule to Extend Transportation Deductions**

MMS *should not* reverse its prior determination that it would not allow transportation deductions for transport within reservation boundaries. MMS has not sufficiently demonstrated why such a reversal is warranted. At a minimum, this proposal should go through a tribal consultation process so that MMS can learn from Indian tribal governments how this reversal of position will impact them. In addition, the MMS should not itemize transportation costs in either the federal or Indian lease rules without consulting with tribes on these items. There is no indication that such a list was ever discussed with tribes in any of the previous phases of the rulemaking.

If you have questions regarding these comments, please contact me at 505.759.3242.

Sincerely,

A handwritten signature in black ink that reads "Claudia Vigil-Muniz". The signature is written in a cursive, flowing style.

Claudia Vigil-Muniz,  
President