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CRUDE OIL VALUATION REGULATIONS

Submitted by
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I would like to thank the Minerals Management Service (MMS) staff for this opportunity to provide comments on the proposed crude oil valuation regulations. My comments today will be brief because the Navajo Nation believes that the proposed oil regulation reflects the many hours of discussions, positions and comments that were provided by not only the Indian representatives that provided their input on the Indian Crude Oil Committee, but also the industry representatives who provided their expertise and knowledge during the rule development process.

The Navajo Nation is the largest producer of crude oil among the Indian Tribes. This year, we project that approximately 6.2 million barrels of crude oil will be produced on Navajo tribal land, mostly from the greater Aneth area. We therefore have a valid interest in how our non-renewable natural resources are valued for royalty purposes.

During the drafting of this proposed oil valuation regulation, it was always the Navajo Nation's intent to receive a reasonable fair value which is based upon the actual market value of its non-renewable resources. In its general description of the proposed rule, MMS provides the underlying reason for this proposed change, and that is, to place less reliance on oil posted prices, and to develop valuation rules that better reflect the market value of crude. We have determined through our audit efforts that most companies marketing crude oil produced on Navajo land through non-arms length sales, are basing the prices they receive on NYMEX index prices less a location differential, through exchange agreements. Since most of the oil produced is sweet, it is sold without an adjustment for quality, deemed 40 degrees. The companies are taking advantage of their respective refining locations and retail marketing outlets by exchanging their crude oil for similar crude in other geographical areas where it is advantageous to do so. The crude produced in the greater Aneth area does not go to a different refinery when its producers receive a value based upon a NYMEX price at Cushing, with a location differential at a market center in Midland, Texas. The crude is actually refined at either of two refineries located in New Mexico in close proximity of the Navajo reservation. Incidentally, the two refineries are owned by the same company. In the end, the Navajo Nation receives a royalty value based upon fictitious oil postings for the four corners area. The proposed rule will allow the Nation to receive a fair and reasonable value for its mineral resource.

It has now been over four years since the MMS formally announced its intention to reassess its valuation regulations in December 1995. Most of this delay was due to the moratorium which prevented the MMS from finalizing the oil valuation regulations for Federal leases. It is unclear to the Navajo Nation whether Congress intended the moratorium to apply to Indian oil valuation regulations, nonetheless, the moratorium was also extended to Indian leases and it has now been over two years since the proposed changes to the rules were first published for comment in the federal register. Any extension of the comment period and further unnecessary delay in the implementation of these regulations will only result a additional loss of revenue to the Navajo Nation due to royalty valuation which is based on posted prices established by the oil producers themselves. The Nation would like to see the proposed rule implemented as soon as possible.

The proposed rule also provides a valuation method to address the major portion analysis provisions contained in Indian leases. The proposed rule will bring certainty to the major portion analysis valuation requirements.

In conclusion, the proposed oil rule will provide a reasonable value to the Navajo Nation, while providing the industry, MMS and the Navajo Nation benefits through administrative cost savings, audit cost reductions, and litigation costs. The Navajo Nation will be submitting additional written comments by March 6, 2000. Thank you.