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Judge: BIA at fault in well dispute

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The Chaparral Energy well near the Prather's barn and home. Pictured Saturday. Photo by Rachel Anne Seymour/Bigheart Times

An Osage County judge issued an temporary restraining order Friday prohibiting Chaparral Energy from continuing drilling horizontal and disposal wells near Skiatook Lake because of sloppy administration by the Osage Agency of the Bureau of Indian Affairs – governmental oversights that Chaparral says in court pleadings will cost it at least \$34,285 a day it must pay its drilling contractors for idle time.

At issue: The BIA's casual, telephonic approval of drilling extensions and other permits without leaving a paper trail, are habits that leave surface owners with no outlet to appeal.

"This business of decisions over the phone is an impermissible process," Associate District Court Judge B. David Gambill said. "It creates an unappealable situation.

"They are escaping review over there at the Agency."

"They have to follow the rules like everyone else. And if they're not going to, I will restrain them."

Gambill partially veered from the arguments of lawyers in the case, which pits Melvina and Gayle Prather against Chaparral. The Prathers filed suit objecting to Chaparral and its contractors using their private road to access the well site – access to which they initially agreed before realizing that directional drilling created a logjam of trucks on their 55 scenic acres, surrounded on three sides by Skiatook Lake.

Chaparral witness, landman Marty ReneVilla testified that the BIA's field man, Ira Lookout, had orally granted the oil company permission to cut the Prather's fence and install a gate to access the site using the Prather's road. Gambill said that decision should have been put in writing, but also found two other violations of the Code of Federal Regulations, or CFRs, regarding well sites: That the well was impermissibly within 200 feet of the Prathers' barn, and that Chaparral's six-month drilling permit, issued and signed by Osage Agency Superintendent Melissa Currey on Jan. 4, 2011, had expired and was thus no longer valid.

"Once it expires, it expires," Gambill said. "In this case you have the burden to show you have a right to be there (on Prather property) and to do what you are doing. You haven't met that burden."

ReneVilla said that Chaparral had followed all the CFRs. He said that the drilling permit had been telephonically extended and that the fence cutting had been orally approved.

"The superintendent never issues letters on the specific issue of ingress and egress," ReneVilla said.

Gambill was not impressed, eliciting testimony that the Agency has not put such decisions to writing for the past several years.

“There’s a lot of things they’re not doing at the agency, including not paying attorneys in probate cases,” Gambill said. “They are required to reduce it to writing.”

The case comes at the time when the BIA and Currey are under fire in Osage County, and landowners are organizing to demand changes to the outdated CFRs to better protect the surface of their land from increased horizontal drilling. Horizontal wells, which extract more oil than vertical wells, require more and larger equipment to drill.

Mrs. Prather said she was completely in the dark about the size of the operation until it commenced.

“The amount of traffic was beyond belief,” she testified. “Just for the saltwater it was pretty much 24/7 and it’s going to be a lot more.

“They dozed more than five acres to clear the site. [We didn’t know] they were going to bulldoze their way into our property – literally. That’s not a metaphor.”

With increased directional drilling, complaints about the activity have increased. In a parallel development, increased oilfield activity has led to increased complaints about the BIA being ineptly run.

Currey has been on a temporary reassignment, away from the Osage Agency, since early January, prompting much speculation although the BIA has refused to comment on the matter. A new acting superintendent, Rhonda Loftin, has taken over the helm. Loftin has startled some operators with her prompt attention to their requests for permits and other matters.

Robert Jackman, a Tulsa petroleum geologist, lobbed criticism at the Agency in December in an interview with The Journal Record’s M. Scott Carter.

“It is a giant, giant mineral estate,” he told the newspaper. “There’s all sorts of oil and gas activity there but their BIA keeps dropping the ball.”

He described the Osage Agency as having chaotic bookkeeping. “They repeatedly lose records,” he told Carter. “They can’t find anything. And it takes them from 60 to 70 days to officially execute a drilling permit. It’s outrageous.”

In some cases, it can take even longer, said Nona Roach, an oil and gas accountant who has long been critical of Currey and the BIA. She had one client, Black Lava, that

spent 140 days getting a permit because of BIA dawdling. In another case, she complained that another client, Encana, had to vent [flare] gas into the air and shut down its horizontal well across from Alco in Pawhuska because the BIA hadn't gotten around to marking trucks to transport oil. Roach said the shutdown cost at least \$200,000, \$40,000 of which would have gone to Osage shareholders.

In the Journal Record article, Norman attorney Charles Davis echoed Jackman and Roach, describing the Osage Agency as "the gang that couldn't shoot straight."

"You have a place that is set up to manage a one-pump gas station trying to run a \$4 billion mineral estate," Jackman added in the Journal Record. "It just doesn't work."

In a separate interview with the Osage News tribal paper, Jackman said that the BIA, which doled out \$380 million to those who own shares of the Osage mineral estate in 2011 for mismanagement, has apparently not mended its ways or learned a lesson from that protracted litigation.

"The result of this grossly inferior management (of the minerals estate) is costing the Osage shareholder in two ways," he told the Osage News: "One, royalties are going uncollected because the BIA doesn't have a competent royalty compliance department. And two, with the old, inadequate, unqualified way this place has been run, the oil and gas industry cannot maximize the oil and gas resources."

"To allow this \$4 billion minerals estate to be managed by a BIA manager with only a high school education is terrible."

Chief John Red Eagle, however, is standing by Currey.

"We work very well with Melissa," he told the Minerals Council on Jan. 11, according to the Osage News. "She has the best knowledge of the Minerals Estate and she knows us."

"She has the support of the Chief's Office, of keeping her here."

At last Wednesday's Minerals Council meeting, Councilor Cynthia Boone introduced a resolution in support of Currey that was approved by a 5-1 vote with two abstentions. Only Chairman Galen Crum voted no, saying he was not voting against Currey but that he simply didn't believe the council should get involved in BIA personnel issues.

Councilor Myron Red Eagle, a brother of the chief's, was very supportive of her. "I don't think anybody could sit over there and do a better job than she's doing," he said. "She's Osage."

Councilor Sonny Abbott – who abstained in the voting, as did Andrew Yates – declared that he wasn't so sure and wanted more substantive evidence in support of Currey.

"I've heard she's a good little Osage girl from a good family. I've heard that – but that's no reason to put her over a four billion dollar mineral estate." Abbott interjected. "It takes more than a good little Osage girl to manage that."

Landowners organize

A group of Osage County landowners dedicated to changing federal laws regarding oil and gas production in Osage County will openly voice their concerns about at an open meeting this Friday.

The Osage County Cattlemen's Association and surface owners will present their concerns at the Osage Negotiated Rulemaking Committee on Friday from 1:30-5 p.m. at the Wah-Zha-Zhi Cultural Center in Pawhuska.

"Osage County has long been known to have insufficient regulations ... governing oil and gas production along with inadequate enforcement of these regulations, which have contributed to some of the worst oil and gas production practices in North America," OCCA president Jeff Henry said in an email.

Poor practices have led to widespread air, land, water and wildlife pollution, the group says, and that is threatening ranching and public health as well as degrading property values.

On Thursday, a group of surface owners met at the Osage Event Center in Tulsa with the Osage Minerals Council and Bureau of Indian Affairs officials, including BIA Director Mike Black.

By [Louise Red Corn](#)

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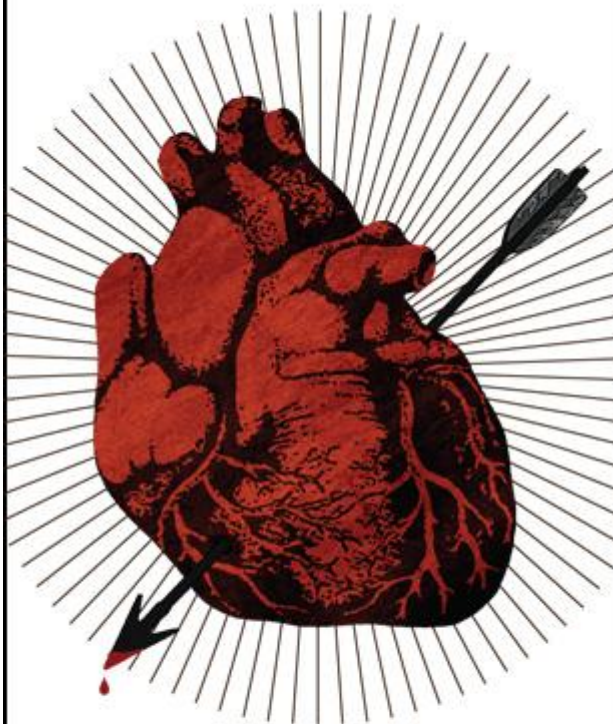

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