The Enemy Within???

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I've been thinking that things have been a little too quiet for our own good lately, but I would have never dreamed that it was as potentially disastrous as what I am about to tell you about.

Devon Energy has an approximately 58,000 acre concession on the west side of the Mineral Estate, formerly known as the Spyglass "South Bend Concession." They have been diligently evaluating and developing their holdings for a couple of years now, and have drilled some very good wells. They staked several new locations and applied for permits to drill more wells elsewhere within the concession earlier this year. The surface owner for these wells is Martha Donelson, an Osage lady, who is also a Shareholder. This ranch has had other wells drilled in the past. Before Fannie Donelson (Martha's mother) passed away, Devon paid the Donalsons $75,000 for commencement money and a part of the anticipated damages. The agreement was that Martha was to also sign off on the deal. The money was accepted, but Martha never signed. Fannie Donelson has since passed away, and now Martha Donelson has hired attorney Gentner Drummond to file a class action law suit to not only stop further oil and gas activity on her ranch, but, if successful, it would effectively STOP all drilling and production activity in the entire county until certain long standing EPA rules, which have been ignored by everyone for over 10 years now, are adhered to.

The BIA seems to now be doing everything possible to clean up the many messes they have here in the Osage, but this problem began over 10 years ago, when the Superintendent, and then subsequent Superintendent(s) totally ignored new National Environmental Protection Agency (NEPA) regulations concerning environmental analysis requirements. If this had been started in a timely manner, it would surely have been behind us by now.

I am told that the new BIA Superintendent had planned to start getting all the Producers into compliance, but when Ms. Donelson and Gentner Drummond filed this new amended class action lawsuit against the BIA and all of our Producers, as you will see, it leaves the BIA very few options.

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Getting into compliance quickly will be virtually impossible. It will certainly slow down the large Producers, and it will be difficult and expensive for the smaller Producers. We could even lose a lot of our stripper leases, because of the expense involved. Adding fuel to the fire, I am told that Drummond has issued a letter to all landowners asking that they lock all gates and not allow any oil related activity to happen on their property until the law suit is resolved.

This is a very serious matter. I have attached a copy of the lawsuit for your information. You will have to make up your own mind just exactly who is responsible and what should be done now.

Ray McClain, Osage Mineral Estate Beneficiary

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

[1] MARTHA DONELSON and [2] JOHN FRIEND, ON BEHALF OF THEMSELVES AND ON BEHALF OF ALL SIMILARLY SITUATED PERSONS **Plaintiffs,** **vs.** **[1] UNITED STATES OF AMERICA; DEPARTMENT OF INTERIOR; BUREAU OF INDIAN AFFAIRS; [2] DEVON ENERGY PRODUCTION COMPANY, L.P., [3] CHAPARRAL ENERGY, LLC; [4] ENCANA OIL & GAS (USA), INC.; [5] PERFORMANCE ENERGY RESOURCES, LLC; [6] CEJA CORPORATION; [7] CEP MID-CONTINENT, LLC; [8] LINN ENERGY HOLDINGS, LLC; [9] SULLIVAN & COMPANY, LLC; [10] CARDINAL RIVER ENERGY, LP; [11] REVARD OIL & GAS PROPERTIES, INC.; [12] BLACK LAVA RESOURCES, LLC; [13] B & G OIL COMPANY; [14] ORION EXPLORATION, LLC; [15] NADEL AND GUSSMAN, LLC; [16] LAMMAMCO DRILLING, LLC; [17] CLEAR MOUNTAIN PRODUCTION, LLC; [18] SHORT OIL, LLC; [19] WELLCO ENERGY, INC.; [20] RAM ENERGY RESOURCES, INC.; [21] MARCO OIL COMPANY, LLC; [22] BGI RESOURCES, LLC; [23] HALCON RESOURCES CORPORATION; [24] THE LINK OIL COMPANY; [25] OSAGE ENERGY RESOURCES, LLC; [26] TOOMEY OIL COMPANY, INC.; [27] KAISER-FRANCIS ANADARKO, LLC; [28] HELMER OIL CORP; [29] SPYGLASS ENERGY GROUP, LLC; AND ALL OTHER LESSES AND OPERATORS AND OPERATORS WHO HAVE OBTAINED A CONCESSION AGREEMENT, LEASE OR DRILLING PERMIT APPROVED BY THE BIA IN OSAGE COUNTY IN VIOLATION OF NEPA,** **Defendants.**	**Case No. 14-CV-316-JHP-TLW** **JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT [Dkt. No. 2]

Plaintiffs, Martha Donelson and John Friend, by and through their attorneys, Drummond Law, PLLC, on behalf of themselves and on behalf of all similarly situated persons, and for their claims against Defendants, state and allege as follows:

INTRODUCTION

1. This lawsuit was originally filed as an action by Plaintiff, Martha Donelson, against the Bureau of Indian Affairs ("BIA") and Devon Energy Production Company, L.P. ("Devon"), seeking declaratory and injunctive relief for the failure of the BIA to comply with the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the resulting trespass by Devon as a result thereof. By this First Amended Complaint, this action is being converted into a class action by Plaintiff and Putative Class Representative, Martha Donelson, together with newly named Plaintiff, John Friend, and Putative Class Representatives (collectively, "Plaintiffs" or "Putative Class Representatives"), and other similarly situated Osage County land owners and surface lessees (collectively, the "Putative Plaintiff Class Members").

2. This Class Action lawsuit is brought by the named Plaintiffs and Putative Class Representatives, individually and on behalf of the Putative Class Members, against the BIA and against all Defendants and Putative Defense Class Members conducting or preparing to conduct oil and gas well related and oil and gas related facility operations within the boundaries of the Class Area (specifically described below). The Defendants and Putative Defense Class Members include Devon, Chaparral Energy, LLC, Encana Oil & Gas (USA), Inc., Performance Energy Resources, Ceja Corporation, CEP Mid-Continent, LLC, Linn Energy, LLC, Sullivan & Company, LLC. Cardinal River Energy, LP, Revard Oil & Gas Properties, Inc., Black Lava

Resources, LLC, B & G Oil Company, Orion Exploration, LLC, Nadel & Gussman, LLC, Lammaco Drilling, LLC, Clear Mountain Production LLC, Short Oil, LLC, Wellco Energy, Inc., Ram Energy Resources, Inc., Marco Oil Company, LLC, BGI Resources, LLC, Halcon Resources Corporation, The Link Oil Company, Osage Energy Resources, LLC, Toomey Oil Company, Inc., Kaiser-Francis Anadarko, LLC, Helmer Oil Corp., and Spyglass Energy Group, LLC, ("Defendants" or "Putative Defendant Representatives"), and all other oil and gas operators and lessees (specifically defined below) who have, prior to the filing of this First Amended Complaint, obtained concession agreements, leases and/or drilling permits approved by the BIA in violation of 25 CFR § 226(c) and NEPA ("Putative Defense Class Members"). "Oil and gas operators and lessees" includes all individuals and business entities engaged in drilling, completion, and operation of conventional oil and gas wells, horizontally drilled oil and gas wells, injection wells and waste fluid disposal wells, and oil and gas related facilities.

3. For their claims against the BIA, Plaintiffs and the Putative Plaintiff Class Members, pursuant to Fed.R.Civ.P 57, seek a declaratory judgment from this Court finding that certain concession agreements, oil and gas mining leases and drilling permits approved by the Osage Agency of the BIA are void because the Osage Agency has wholly failed to satisfy (or even undertake) the site-specific NEPA analysis requirements prior to approving the lease, concession agreements, and applications for permit to drill sought by the oil and gas operator members of the Putative Defense Class named in this matter.

4. Plaintiffs and the Putative Plaintiff Class Members seek injunctive relief, pursuant to Fed.R.Civ.P 65, ordering the BIA to expel or otherwise prohibit Defendants and Putative Defense Class Members from: (a) entering onto Plaintiffs' and the Putative Class Members' property until Defendants and Defendant Class Members have obtained a valid lease and

satisfied the other conditions precedent necessary for access to the property, or (b) commencing drilling operations until they have obtained a valid drilling permit.

5. Defendants and Putative Defense Class Members have, within the boundaries of the Class Area (specifically described below), engaged in exploration, drilling, completion, production, enhanced recovery, and transportation related oil and gas activities on Plaintiffs' and Putative Plaintiff Class Members' respective properties without valid leases, valid drilling permits, surface owner authorization and requisite NEPA documentation.

6. For their claims against the Defendants and Putative Defense Class Members, Plaintiffs and the Putative Plaintiff Class Members seek to recover for injuries suffered by the Plaintiffs and the Putative Plaintiff Class Members as a direct and proximate result of Defendants' and Putative Defense Class Members' trespass, nuisance, negligence, and unjust enrichment.

7. Plaintiffs and the Putative Plaintiff Class Members seek injunctive relief, pursuant to Fed.R.Civ.P 65, prohibiting Defendants and Putative Defense Class Members from entering onto Plaintiffs' and the Putative Class Members' Class Area property until: (a) all NEPA prerequisites to issuance of an oil and gas lease in the Class Area have been satisfied, and (b) the Defendants and Putative Defense Class Members have obtained a valid oil and gas lease from the BIA. Plaintiffs and Putative Class Members further seek prohibitory injunctive relief preventing Defendants and Putative Defense Class Members from: (i) moving onsite to stake or create a drill site; (ii) moving equipment, drilling or workover rigs, and other equipment and personnel onsite in preparation to commence drilling operations; (iii) commencing drilling operations; (iv) undertaking any well completion activities; and, (v) laying, unearthing,

redirecting, gathering lines associated with producing wells without the prerequisite mandatory NEPA documentation and issued drilling permits.

PARTIES

8. Plaintiff, Martha Donelson ("Donelson"), is the owner of surface land in the Class Area, comprising approximately 2,000 acres located near Burbank, Osage County, Oklahoma (the "Donelson Property"). The Donelson Property is the subject of various BIA oil and gas mining leases approved by the BIA. Pursuant to the BIA, oil and gas mining leases and drilling permits, numerous wells have been drilled and continue to be operated on the Donelson Property.

9. Plaintiff, John Friend ("Friend"), is the owner of surface land in the Class Area, located near Hominy, Oklahoma (the "Friend Property"). The Friend Property is the subject of various BIA oil and gas mining leases approved by the BIA. Pursuant to the BIA oil and gas mining leases and drilling permits, numerous wells have been drilled and continue to be operated on the Friend Property.

10. Putative Class Members include all surface owners and surface lessees of land located in the Class Area as of the date of filing of this First Amended Complaint, whose property is subject to an oil and gas mining lease, concession agreement or drilling permit and upon which Defendants and Putative Defense Class Members have either commenced, threatened to commence or have completed drilling and completion operations. Excluded from membership in the Plaintiffs' Putative Class are any individual or business entity who or which owns or leases surface of land located within the Class Area and is engaged in oil and gas exploration, drilling, completion, production, and transportation within the boundaries of Osage County.

11. The United States of America, through the Department of Interior, is named as a Defendant as a result of its action, inactions and failure to carry out its non-discretionary duties by and through its agency, the BIA, regarding real property located in Osage County, State of Oklahoma and appertaining or adjacent to the Osage Mineral Reservation.

12. Defendant, Devon Energy Production Company, L.P. ("Devon"), is a limited partnership organized and existing under the laws of the State of Oklahoma with its principal place of business in Oklahoma City, Oklahoma. Devon is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

13. Defendant, Chaparral Energy, LLC ("Chaparral"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Chaparral is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

14. Defendant, Encana Oil & Gas (USA), Inc. ("Encana"), is a foreign corporation organized and existing under the laws of the State of Delaware. Ecana is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

15. Defendant, Performance Energy Resources, LLC ("Performance"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Performance is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

16. Defendant, Ceja Corporation ("Ceja"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. Ceja is an owner of oil and gas wells, and

engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

17. Defendant, CEP Mid-Continent, LLC ("CEP"), is a foreign limited liability company organized and existing under the laws of the State of Delaware. CEP is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

18. Defendant, Linn Energy Holdings, LLC ("Linn"), is a foreign limited liability company organized and existing under the laws of the State of Delaware. Linn is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

19. Defendant, Sullivan & Company, LLC ("Sullivan"), is a domestic limited liability company organized and existing under the laws of the State of Oklahoma. Sullivan is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

20. Defendant, Cardinal River Energy, LP ("Cardinal River"), is a domestic limited partnership organized and existing under the laws of the State of Oklahoma. Cardinal River is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

21. Defendant, Revard Oil & Gas Properties, Inc. ("Revard"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. Revard is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

22. Defendant, Black Lava Resources, LLC ("Black Lava"), is a foreign limited liability company organized and existing under the laws of the State of Texas. Black Lava is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

23. Defendant, B & G Oil, Company ("B & G"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. B & G is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

24. Defendant, Orion Exploration, LLC ("Orion"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Orion is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

25. Defendant, Nadel and Gussman, LLC ("Nadel and Gussman"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Nadel & Gussman is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

26. Defendant, Lammaco Drilling, LLC ("Lammaco"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Lammaco is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

27. Defendant, Clear Mountain Production, LLC ("Clear Mountain"), is a limited liability company organized and existing under the laws of the State of Delaware. Clear

Mountain is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

28. Defendant, Short Oil, LLC ("Short"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Short is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

29. Defendant, Wellco Energy, Inc. ("Wellco"), is a corporation organized and existing under the laws of the State of Oklahoma. Wellco is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

30. Defendant, Ram Energy Resources, Inc. ("Ram"), is a foreign corporation organized and existing under the laws of the State of Delaware. Ram Energy is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

31. Defendant, Marco Oil Company, LLC ("Marco"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Marco is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

32. Defendant, BGI Resources, LLC ("BGI"), is a foreign limited liability company organized and existing under the laws of the State of California. BGI is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

33. Defendant, Halcon Resources Corporation ("Halcon"), is a foreign corporation organized and existing under the laws of the State of Delaware. Halcon is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

34. Defendant, The Link Oil Company ("Link Oil"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. Link Oil is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

35. Defendant, Osage Energy Resources, LLC ("Osage Energy"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Osage Energy is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

36. Defendant, Toomey Oil Company, Inc. ("Toomey Oil"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. Toomey Oil is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

37. Defendant, Kaiser-Francis Anadarko, LLC ("Kaiser-Francis"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Kaiser-Francis is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

38. Defendant, Helmer Oil Corp. ("Helmer Oil"), is a domestic corporation organized and existing under the laws of the State of Oklahoma. Helmer Oil is an owner of oil and gas

wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

39. Defendant, Spyglass Energy Group, LLC ("Spyglass"), is a limited liability company organized and existing under the laws of the State of Oklahoma. Spyglass is an owner of oil and gas wells, and engages in drilling, completion, production and operation of oil, gas and disposal wells located in Osage County, Oklahoma.

CLASS AREA

40. The Putative Class Area is, for purposes of this First Amended Complaint, described as, and limited to, those lands located within the boundaries of Osage County, Oklahoma (the "Class Area").

JURISDICTION AND VENUE

41. This action seeks declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, seeking a ruling invalidating the BIA's approval of leases, concession agreements and drilling permits granted to Defendants and Putative Defense Class Members. This Court has jurisdiction under 28 U.S.C. § 1346 because the United States of America is a defendant.

42. This Court further has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction). Plaintiffs challenge final agency action by the BIA and are pursuing their claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, and NEPA, 42 U.S.C. § 4321 *et seq.*

43. This Court has supplemental jurisdiction over the state law claims for trespass, nuisance, negligence and unjust enrichment under 28 U.S.C. § 1367(a).

44. This action involves real property located within Osage County, Oklahoma. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1319(f)(1).

HISTORICAL BACKGROUND

45. In 1883, the Osage Indians purchased from the Cherokee Nation the land that would become Osage County.

46. In October 1896, Edwin B. Foster discovered oil in the Osage Reservation. Foster leased the entire county, and in 1902 he formed the Indian Territory Illuminating Oil Co.

47. In 1906, Congress passed the Osage Allotment Act ("Act"), 34 Stat. 539, in part for the purpose of dividing the land in the Osage Reservation among the members of the Osage Tribe. The Act established a subsurface mineral estate trust, held by the United States, on behalf of the Osage Tribe. The Secretary of the Interior is directed to manage oil and gas extraction leases, with the royalties earned from the leases reserved to the Osage Tribe.

48. The Osage Nation Mineral Estate underlies approximately 1,475,000 surface acres of land that comprises the Putative Class Area in this litigation.

49. In 1916, the Department of the Interior broke up Foster's blanket lease and opened the area for lease auction.

50. In 1929, the Act was amended, establishing a mandatory administrative procedure for surface owners or lessees of Osage Reservation lands in order to address claims under the Act for damages caused by oil or gas extraction on the Osage Reservation.

STATUTORY AND REGULATORY FRAMEWORK

25 CFR, Part 226

51. Federal regulations regarding the management and handling of oil and gas drilling in Osage County are promulgated in 25 CFR, Part 226.

52. Under the authority delegated by 25 CFR 226.2, 209 DM 8, 230 DM 1.3 IAM 4.1 and the Muskogee Area Addendum 9901 to 3 IAM 4 issued June 22, 1999, the Superintendent for the Osage Agency of the BIA is authorized, *inter alia*, to approve leases for oil and gas drilling within Osage County.

53. 25 CFR § 226.2(c) provides that "[e]ach oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact *prior* to its approval by the Superintendent." (emphasis added.)

54. 25 CFR § 226.16 requires that the Superintendent approve a drilling permit prior to commencement of any operations.

NEPA

55. The National Environmental Protection Act ("NEPA") was enacted on January 1, 1970, and directs all federal agencies to assess the environmental impact of proposed "major federal actions" that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). Approving leases and Applications for Drilling Permits constitute "major federal action" that must be approved by the BIA in accordance with NEPA mandates.

56. Congress enacted NEPA to, among other things, "encourage productive and enjoyable harmony between man and his environment" and to promote government efforts "that will prevent or eliminate damage to the environment." 42 U.S.C. § 4321.

57. NEPA requires all federal agencies, including the BIA, to take a "hard look" at the environmental consequences of proposed federal actions. 42 U.S.C. § 4332(C)(i)-(ii). In doing so, an agency must identify and disclose to the public the impacts of a proposed action on the environment. 40 C.F.R. § 1502.1. NEPA's disclosure goals are two-fold: (a) to ensure that

the agency has carefully and fully contemplated the environmental effects of its action, and (b) to ensure that the public has sufficient information to challenge the agency's action.

58. The Council on Environmental Quality ("CEQ") promulgated uniform regulations implementing NEPA that are binding on all federal agencies. 42 U.S.C. § 4342, 40 C.F.R. §1500 et seq.

59. NEPA and its regulations prohibit agencies from making any irreversible or irretrievable commitment of resources before its NEPA analysis is completed and requires "all agencies of the Federal government" to prepare an environmental impact statement ("EIS") before authorizing any "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1).

60. To determine whether an action requires an EIS as required by NEPA, an action agency may prepare an Environmental Assessment ("EA"). 40 C.F.R. § 1501.4(b). If the agency decides that an EIS is not needed, it must undertake a thorough environmental analysis and supply a convincing statement of reasons that explains why a project's impacts are not significant.

61. NEPA requires that an agency ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements, and identify the methodology and scientific sources relied upon for the agency's conclusions. 40 C.F.R. § 1502.24. The information released in any NEPA analysis must be high quality and must be sufficient to allow the public to question the agency's rationale and understand the agency's decision-making process. 40 C.F.R. § 1500.1(b).

62. To make a determination of non-significance, NEPA documents must consider the direct, indirect, and cumulative environmental impacts of a proposed action. 40 C.F.R. §

1508.8. Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable. 40 C.F.R. § 1508.8(b). Both types of impacts include "effects on natural resources and on the components, structures, and functioning of affected ecosystems." 40 C.F.R. § 1508.8. Cumulative impact results when the "incremental impact of the action [is] added to other past, present, and reasonably foreseeable future actions" undertaken by any person or agency. 40 C.F.R. § 1508.7.

63. If an action "may" have a significant impact on the environment, NEPA requires the agency to prepare an environmental impact statement ("EIS"). 40 C.F.R. § 1508.18; 42 U.S.C.§ 4332(C). Where the impacts of a project are not significant, or the agency is uncertain about their significance, it can prepare a shorter analysis called an environmental assessment ("EA"). 40 C.F.R. §§ 1501.3, 1508.9.

64. The NEPA regulations require the agency to consider ten "significance factors" in determining whether a federal action may have a significant impact, thus requiring an EIS. 40 C.F.R. § 1508.27. Among other factors, the agency must consider the beneficial and adverse impacts of the project, the effect on public health and safety, unique characteristics of the geographic area, the degree to which possible effects are highly controversial, uncertain, or involve unique or unknown risks, cumulatively significant effects, and whether the proposed action will violate any laws or standards of environmental protection. *Id.* If the agency's action may be environmentally significant according to any of the criteria, the agency must prepare an EIS. *Id.*

65. The agency implementing the project, not the public, has the burden of demonstrating that significant adverse effects will not occur as a result of the proposed project. 40 C.F.R. § 1508.13.

66. After completion of an EIS, NEPA also requires that it be supplemented when important new information arises, or changes are made to the agency's project. A supplemental EIS must be prepared when:

> (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
> (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9(c)(1).

67. For an agency's decision to be considered reasonable, the record of decision and finding of no significant impact must contain sufficient evidence and analysis to show the agency's decision is reasonably supported by the facts. The agency must show a rational connection between the facts found and the decision rendered. If the agency fails to consider important aspects of the problem in its EA, its decision is arbitrary and capricious.

The Administrative Procedure Act

68. The APA confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. § 702.

69. Because NEPA does not include a citizen suit provision, the NEPA claims in this case are brought under the APA. The APA allows persons and organizations to appeal final agency actions to the federal courts. 5 U.S.C. §§ 702, 704. The APA declares that a court shall hold unlawful and set aside agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

70. "Whether federal conduct constitutes final agency action within the meaning of the APA is a legal question." *Colorado Farm Bureau Fed'n v. United States Forest Service*, 220 F.3d 1171, 1173 (10th Cir. 2000).

> As a general matter, two conditions must be satisfied for agency action to be "final": First, the action must mark the consummation of the agency's decision making process, ... it must not be of a merely tentative interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow."

Pennaco Energy, Inc. v. U.S. Dept. of the Interior, 377 F.3rd 1147, 1155 (10th Cir. 2004); *Bennett v Spear*, 520 U.S. 154, 177-78, (1997).

71. The approval by the Superintendent of leases, concession agreements and drilling permits is "final agency action" and subject to judicial review by the United States District Court.

OPERATIVE FACTS

Osage Agency's Compliance with NEPA

72. On May 4, 1977, Judge H. Dale Cook of the United States Court for the Northern District of Oklahoma ordered the BIA to produce an environmental assessment for the oil and gas leasing program in Osage County.

73. In May 1979, the Area Director for the BIA, Thomas Ellison, approved the Environmental Assessment for the Oil and Gas Leasing Program of the Osage Indian Tribe, Osage County, Oklahoma ("1979 EA").

74. Upon information and belief, the 1979 EA is the only environment assessment prepared for oil and gas leasing or drilling performed since that date. There have been environmental studies prepared for other activities requiring the Superintendent's approval, such

as for proposed wind farms and pipelines, but none has been prepared for oil and gas leasing and drilling.

75. Since the 1979 EA was prepared, there have been significant changes in the drilling technology that were not considered in the 1979 EA. For example, at the time of the 1979 EA, drilling in Osage County was primarily accomplished through shallow vertical wells. Although hydraulic fracturing existed, it was uncommon and the 1979 EA made only a passing reference to it. Furthermore, nowhere in the 1979 EA is there any mention of horizontal drilling.

76. Since the 1979 EA was prepared, there have been significant changes in the relevant environmental laws and regulations. For example, at the time of the 1979 EA, air and water quality standards differed from the standards today. In addition, the American Burying Beetle was not yet deemed an endangered species.

Osage Leasing Process

77. The Osage Minerals Council ("OMC") is the elected governing body for the mineral affairs of the Osage Mineral Estate. The Osage Nation Constitution vests the OMC with the power to administer and develop the Osage Mineral Estate.

78. Leases are obtained at auctions conducted by the OMC. The tracts for lease are nominated by prospective lessees.

79. The OMC holds six lease auctions per year. The OMC and the successful bidder enter into a standard oil and gas mining lease, which is submitted to the Osage Agency for review by the BIA. The lease is not valid until approved by the Superintendent.

80. In accordance with 40 C.F.R. § 1506.5(b), it shall be the responsibility of the applicant (Lessees, including his, her or its contractor) to conduct and complete all environmental reviews for proposed actions requiring federal approval. Environmental reviews

must be written in accordance with Title 43, C.F.R. Part 46, Implementation of the National Environmental Policy Act of 1969 for the Department of the Interior, and 59 Indian Affairs Manual 3-H, the BIA NEPA Guidebook (2012), or must fall under the Department of the Interior's approved categorical exclusion list.

81. Once an EA is submitted to the BIA, the Superintendent is required to review the EA and make a finding whether the proposed activity will have a significant impact on the environment. If the there is a Finding of No Significant Impact ("FONSI"), an EIS will not be required and the Superintendent may approve the lease If there is a finding of significant impact, an EIS will be required.

82. Upon information and belief, the BIA, through the Osage Agency, has not prepared any EAs prior to approval of oil and gas leases or required that the operators prepare an EA to enable the BIA to satisfy its obligations pursuant to NEPA.

83. Accordingly, the Superintendent approved the leases without assessing or evaluating the environmental impact of the lease prior to approval as required by 25 CFR § 226.2(c).

84. The approval of leases without satisfying the BIA's obligations under the federal regulations or NEPA renders the oil and gas leases void *ab initio*.

85. When leases are assigned, the assignments must be approved by the Superintendent.

86. Assignment of leases are categorically excluded under the federal regulations. However, because the oil and gas leases that were assigned were void for failure to comply with NEPA or other environmental regulations, the assignments are also void *ab initio*.

Concession Agreements

87. The OMC has in certain instances entered into concession agreements with certain operators. Concession agreements grant to the operator a large area over which the operator has the sole right to lease and drill upon provided certain conditions are met.

88. The OMC has entered into concession agreements with Orion, Spyglass, Devon and Chaparral, among others.

89. Upon information and belief, the BIA, through the Osage Agency, has not prepared any EAs prior to approval of the concession agreements or required that the operator prepare an EA to enable the BIA to satisfy its obligations pursuant to NEPA.

90. Accordingly, the Superintendent approved the concession agreements without assessing or evaluating the environmental impact of the concession agreement prior to approval as required by 25 CFR § 226.2(c).

91. The approval of concession agreements without satisfying the BIA's obligations under the federal regulations or NEPA renders the Leases void *ab initio*.

92. When concession agreements are assigned, the assignments must be approved by the Superintendent.

93. Because the concession agreements that were assigned were void for failure to comply with NEPA or other environmental regulations, the assignments of the concession agreements are also void *ab initio*.

Applications for Permit to Drill in Osage County

94. In order to disturb the surface of the leasehold, the lessees must submit an Application for Permit to Drill ("APD") to the Osage Agency.

95. According to the BIA's Fluid Mineral Estate Handbook, prior to submission of the APD, completed environmental review documents must be submitted to the Osage Agency as

the environmental review is a mandatory component of the permit application package. This requirement applies to the BIA permit approvals including, but not limited to, drilling, plugging, deepening, plugging back, conversion, casing alternation, and/or formation treatment.

96. According to the Handbook, the completed APD package consists of:

a. APD;

b. Surface Use Plan of Operations;

c. Drilling Plan;

d. A well plat certified by a registered surveyor;

e. Evidence of bond coverage;

f. Operator certification in accordance with the requirements of Onshore Order No. 1;

g. Original or electronic signature; and

h. Other information required by order, notice, or regulation

97. As part of the APD process, there must be an on-site inspection of the staked location with BIA, tribe, lessee, engineering surveyor, dirt contractor(s), archaeologist, paleontologist and/or environmental protection specialists. The on-site inspection is conducted after survey staking so the exact location of surface disturbance is known.

98. The Superintendent is to prepare a report of findings and compile other documentation required to support the permit approval or disapproval. This report may be prepared by BIA or a third-party contractor.

99. Site-specific environmental documentation required for APD approval includes NEPA requirements, archaeological studies, paleontological studies, and biological assessment including endangered species reporting.

100. Upon information and belief, the BIA, through the Osage Agency, has not prepared any EAs prior to approval of the drilling permits or required that the operator prepare an EA to enable the BIA to satisfy its obligations pursuant to NEPA.

101. Moreover, the BIA has haphazardly required archaeological and cultural surveys or compliance with the Endangered Species Act with respect to the American Burying beetle.

102. Accordingly, the Superintendent approved the drilling permits without assessing or evaluating the environmental impact of the lease prior to approval as required by 25 CFR § 226.2(c).

103. The approval of drilling permits without satisfying the BIA's obligations under the federal regulations or NEPA renders the Leases void *ab initio*.

Oil and Gas Drilling Activity in Osage County

104. The Class Area has approximately 19,500 active wells, of which approximately 14,500 are producing wells and the remaining are service wells, such as for salt water disposal and injection.

105. From Fiscal Year 2009 to Fiscal year 2012, there were 1401 APDs that were processed for an average of approximately 350 APDs per year.

106. In the last quarter of 2013, there were 1,186,830.19 gross barrels of oil and tank bottoms produced.

107. The total revenue from oil and gas production for the last quarter of 2013 was $20,813,753.12 which includes $18,648,572.78 for oil and $1,943,591.93 for gas.

FIRST CLAIM FOR DECLARATORY JUDGMENT: LEASES

108. Plaintiffs incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

109. A valid case and controversy exists that is sufficient for this Court to declare the rights and remedies of the parties regarding whether the oil and gas leases and assignment of the leases approved by the BIA are valid.

110. Plaintiffs and Putative Plaintiff Class Members have the requisite standing to request this declaration in that the leases and assignment of leases affect real property owned by Plaintiffs and Putative Plaintiff Class Members.

111. This controversy is ripe for determination at this time because Defendants and Putative Defense Class Members have either commenced, threatened to commence or have completed drilling operations on Plaintiffs and Putative Plaintiff Class Members Property.

112. The BIA's unlawful acts and practices in approving the leases and assignment of leases without satisfying the BIA's obligations under the federal regulations or NEPA violate the rights of Plaintiffs and Putative Plaintiff Class Members.

113. Plaintiffs and Putative Plaintiff Class Members requests that this Court enter declaratory judgment that for every lease approved by the Osage Agency Superintendent in the absence of compliance with the federal regulations and/or NEPA said lease was improperly approved, and that those Leases are void *ab initio.*

114. Plaintiffs and Putative Plaintiff Class Members further request that this Court enter declaratory judgment that every assignment of lease approved by the Osage Agency Superintendent in the absence of compliance with the federal regulations and/or NEPA was improperly approved and further that those assignments are void *ab initio.*

SECOND CLAIM FOR DECLARATORY JUDGMENT: CONCESSION AGREEMENTS

115. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

116. A valid case and controversy exists that is sufficient for this Court to declare the rights and remedies of the parties regarding whether the concession agreements in the Class Area are valid.

117. Plaintiffs and Putative Plaintiff Class Members have the requisite standing to request this declaration in that the leases and drilling permits affect real property owned by Plaintiffs and Putative Plaintiff Class Members.

118. This controversy is ripe for determination at this time because Defendants and Putative Defense Class Members have either commenced, threatened to commence or have completed drilling operations on Plaintiffs' and Putative Plaintiff Class Members' property.

119. Plaintiffs and Putative Plaintiff Class Members requests that this Court enter declaratory judgment that every concession agreement approved by the Osage Agency Superintendent in the absence of compliance with the federal regulations and/or NEPA was improperly approved, and that those Leases are void *ab initio.*

120. Plaintiffs and Putative Plaintiff Class Members further requests that this Court enter declaratory judgment every assignment of concession agreement that was approved by the Osage Agency Superintendent in the absence of compliance with the federal regulations and/or NEPA was improperly approved and further that those assignments are void *ab initio.*

THIRD CLAIM FOR DECLARATORY JUDGMENT: DRILLING PERMITS

121. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

122. A valid case and controversy exists that is sufficient for this Court to declare the rights and remedies of the parties regarding whether the APDs approved by the BIA are valid.

123. Plaintiffs and Putative Plaintiff Class Members have the requisite standing to request this declaration in that the drilling permits affect real property owned by Plaintiffs and Putative Plaintiff Class Members.

124. This controversy is ripe for determination at this time because Defendants and Putative Defense Class Members have either commenced, threatened to commence or have completed drilling operations on Plaintiffs' and Putative Plaintiff Class Members' property.

125. The BIA's unlawful acts and practices in approving the APDs without satisfying the BIA's obligations under the federal regulations or NEPA violate the rights of Plaintiffs and Putative Plaintiff Class Members.

126. Plaintiffs and Putative Plaintiff Class Members requests that this Court enter declaratory judgment that every APD approved by the Osage Agency Superintendent in the absence of compliance with the federal regulations and/or NEPA said APD was improperly approved and that those drilling permits are void *ab initio.*

FOURTH CLAIM FOR AGAINST DEFENDANTS AND PUTATIVE DEFENSE CLASS MEMBERS: TRESPASS

127. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

128. Defendants and Putative Defense Class Members assert a right to access Plaintiffs' and Putative Plaintiff Class Members' Property pursuant to the federal regulations set forth in 25 CFR, Part 226.

129. Defendants and Putative Defense Class Members claim that the right to access Plaintiffs' and Putative Plaintiff Class Members' Property derives from the leases approved by the BIA.

130. Defendants and Putative Defense Class Members claim that the right to drill upon real property in the Class Area is derived from drilling permits approved by the BIA.

131. The leases are void because the Superintendent did not have authority to approve the leases or drilling permits without first complying with 25 CFR 226.2(c) and NEPA.

132. The drilling permits are void because the Superintendent did not have authority to approve the APD's without first complying with 25 CFR 226.2(c) and NEPA.

133. Because the leases and drilling permits are void, Defendants and Putative Defense Class Members entry upon Plaintiffs and Putative Plaintiff Class Members Property without permission from Plaintiffs and Putative Plaintiff Class Members constitutes common law trespass.

134. Plaintiffs and Putative Plaintiff Class Members are entitled to recover damages for injury to their property and to injunctive relief enjoining Defendants and Putative Defense Class Members from entry upon their land without valid oil and gas leases and drilling permits.

FIFTH CLAIM AGAINST DEFENDANTS AND PUTATIVE DEFENSE CLASS MEMBERS: PUBLIC AND PRIVATE NUISANCE

135. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

136. The Defendants' and Putative Defense Class Members' operation of oil and gas wells, salt water disposal wells, injection wells and the like, unreasonably interfered, and continues to interfere, with the safe use and enjoyment of the real property owned by the Plaintiffs and the Putative Plaintiff Class Members and thus disturbs the peaceful, quiet and undisturbed use and enjoyment of such property by Plaintiffs and Putative Plaintiff Class Members.

137. Defendants' and Putative Defense Class Members' past and continuing conduct and activities adversely affects the use, enjoyment and value of Plaintiffs' property, and the Putative Class Members' property, constituting a private and public nuisance.

138. Defendants' and Putative Defense Class Members' actions have further caused nuisance as such actions have resulted in Plaintiffs' property and the Putative Class Members' property being inundated with foreign substances which has been permitted to escape onto and into the land, surface water, groundwater, atmosphere and ambient air of the Plaintiffs, Putative Class Members and Class Area.

SIXTH CLAIM AGAINST DEFENDANTS AND PUTATIVE DEFENSE CLASS MEMBERS: NEGLIGENCE

139. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

140. Defendants and the Putative Defense Class Members owed a duty of care to the Plaintiffs and the Putative Plaintiff Class Members to not interfere with their use and enjoyment of their property in the absence of valid leases and drilling permits.

141. Defendants and Putative Defense Class Members, including their agents and/or employees, knew, or in the exercise of reasonable care, should have known that the leases and drilling permits were not valid.

142. Defendants and Putative Defense Class Members, including their agents and/or employees, knew or in the exercise of reasonable care should have known that harm caused to the Plaintiffs and the Putative Class Members and their properties was a foreseeable and inevitable consequence of conducting drilling operations without valid leases or drilling permits.

143. Defendants' and Putative Defense Class Members' acts and/or omissions mentioned herein were the direct and proximate cause of the damages sustained by the Plaintiffs and Putative Class Members' properties and businesses.

144. Some or all of the acts and/or omissions of the Defendants and Putative Defense Class Members were grossly, recklessly and wantonly negligent and were done with utter disregard for the consequences to the Plaintiffs and the Putative Plaintiff Class Members, and therefore, the Plaintiffs and Putative Plaintiff Class members are entitled to an award of punitive damages.

SEVENTH CLIAM AGAINST DEFENDANTS AND PUTATIVE DEFENSE CLASS MEMBERS: UNJUST ENRICHMENT

145. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

146. Defendants and Putative Defense Class Members have been greatly enriched by their acts and omissions in conducting drilling operations upon the lands of the Plaintiffs and the Putative Plaintiff Class Members without valid rights and authority to do so.

147. Defendants and Putative Defense Class members have engaged in the injurious activities for profit and have knowingly and intentionally derived substantial pecuniary benefits at the expense of the Plaintiffs and the Putative Class Members. Defendants have benefited and continue to benefit from their wrongful conduct.

148. Defendants and Putative Defense Class Members lack any legal justification for their past and present conduct trespassing upon the Plaintiffs' property and the property of the Putative Class Members.

149. Under the circumstances described herein, it would be inequitable for Defendants and Putative Defense Class Members to retain the benefits of their actions and omissions without paying the value thereof to Plaintiffs and the Putative Class Members.

150. No other remedy at law can adequately compensate Plaintiffs and the Putative Class Members for the damages occasioned by the choices of Defendants and Putative Defense Class Members to trespass upon on the property of Plaintiffs and the Putative Class Members in order to save the expense of complying with NEPA.

151. By reason of Defendants' and Putative Defense Class Members' unjust conduct, the Plaintiffs and Putative Class Members are entitled to recover damages against Defendants, including, but not limited to, the disgorgement of profits realized by the unjust enrichment.

CLASS ACTION

Plaintiff Class

152. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

153. The Plaintiffs bring this action for themselves and on behalf of the Putative Class Members consisting of owners of real property within Osage County, Oklahoma, whose property has been the subject of a concession agreement, lease and/or drilling permit approved by the Osage Agency of the BIA without compliance with NEPA.

154. This civil action is an appropriate case to be brought and prosecuted as a class action by Plaintiffs against Defendants pursuant to Federal Rule of Civil Procedure 23(a). The Plaintiffs are members of the class that they seek to represent.

155. The class is so numerous that joinder of all members is impracticable. It is believed that there are in excess of (2,000) two-thousand landowners in the Class Area whose

property has had drilling activities conducted upon it prior to compliance with NEPA and other environmental regulations.

156. There are questions of law and fact which are common to the class including, but not limited to:

a. Whether the BIA has approved leases affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

b. Whether the BIA has approved concession agreements affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

c. Whether the BIA has approved drilling permits affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

d. Whether Defendants' and Putative Defense Class Members' activities caused a trespass upon the land of the Putative Plaintiff Class Members;

e. Whether Defendants' and Putative Defense Class Members' activities constitute a nuisance;

f. Whether Defendants' and Putative Defense Class Members' activities were negligently performed; and

g. Whether Defendants and Putative Defense Class Members were unjustly enriched as a result of their wrongful conduct and activity.

157. The claims of the representative parties are typical of the Putative Class Members because the action arises from the same common wrongs against the members of the class.

158. The Defendants and Putative Defense Class Members have acted on grounds generally applicable to the class making appropriate injunctive relief with respect to the class as a whole.

159. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members because preliminary, overarching issues common to all class members predominate over the individual issues.

160. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because: (a) class certification is a more efficient way to handle the case, (b) the class is manageable and (c) class certification will avoid multiplicity of individual actions.

161. The named Plaintiffs will fairly and adequately represent and protect the interests of the class.

162. The Plaintiffs do not anticipate any difficulty in the management of this litigation as a class action.

Defendant Class

163. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

164. This action seeks certification of a Defendant Class pursuant to Federal Rule of Civil Procedure 23(a). The named Defendants (excluding the BIA) are members of the class that Plaintiffs seek to certify.

165. The Defense Class is so numerous that joinder of all members is impracticable. It is believed that there are in excess one-hundred (100) lessee and operators who have held leases and concession agreements in the Class Area and who have commenced, threatened to commence or have completed drilling operations in the Class Area.

166. There are questions of law and fact which are common to the Defense class including, but not limited to:

a. Whether the BIA has approved leases affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

b. Whether the BIA has approved concession agreements affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

c. Whether the BIA has approved drilling permits affecting land owned by Putative Plaintiff Class Members without complying with NEPA;

d. Whether Defendants' and Putative Defense Class Members' activities caused a trespass upon the land of the Putative Plaintiff Class Members;

e. Whether Defendants' and Putative Defense Class Members' activities constitute a nuisance;

f. Whether Defendants' and Putative Defense Class Members' activities were negligently performed; and

i. Whether Defendants and Putative Defense Class Members were unjustly enriched as a result of their wrongful conduct and activity.

167. The defenses of the representative parties are typical of the Putative Defense Class Members because the action arises from the same type of activities conducted by the members of the class.

168. The Defendants and Putative Defense Class Members have acted on grounds generally applicable to the class making appropriate injunctive relief with respect to the class as a whole.

169. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members because preliminary, overarching issues common to all class members predominate over the individual issues.

170. A Defendant class action is appropriate because the prosecution of separate actions against individual members of the Defense class would create the risk of inconsistent or varying adjudications with respect to the individual members of the class, which would establish incompatible standards of conduct for the parties opposing the class and/or adjudications with respect to individual members of the Defense class and would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

171. The named Defendants will fairly and adequately represent and protect the interests of the Putative Defense Class.

172. The Plaintiffs do not anticipate any difficulty in the management of this litigation as a class action.

DAMAGES TO CLASS

173. Plaintiffs and Putative Plaintiff Class Members incorporate herein by reference each of the paragraphs contained above as if herein repeated and fully set forth.

174. As a direct and proximate result of the unlawful, improper actions and/or omissions by the Defendants and Putative Defense Class Members, the Plaintiffs and Putative Class Members have suffered the following issues and damages:

a. Loss of use and enjoyment of their property;

b. Contamination of the soil;

c. Contamination of their surface water;

d. Contamination of their groundwater;

e. Contamination of their air and atmosphere;

f. Diminution in value of their property; and

g. Plaintiffs and the Putative Class Members should recover compensation for Defendants' unjust enrichment including disgorgement of profits.

PRAYER FOR RELIEF

Plaintiffs, Martha Donelson and John Friend, seek relief on behalf of themselves and all Putative Plaintiff Class Members against the Defendants and Putative Defense Class Members as follows:

A. Enter declaratory judgment that the BIA improperly approved oil and gas leases without satisfying the BIA's obligations under the federal regulations or NEPA, and that the subject leases and assignments of the leases are void *ab initio.*

B. Enter declaratory judgment that the BIA improperly approved concession agreements without satisfying the BIA's obligations under the federal regulations or NEPA, and that the subject concession agreements are void *ab initio.*

C. Enter declaratory judgment that the BIA improperly approved drilling permits for the wells without satisfying the BIA's obligations under the federal regulations or NEPA, and that those drilling permits are void *ab initio.*

D. Enter an order declaring that BIA's unlawful acts and practices in approving the concession agreements, leases and drilling permits without satisfying the BIA's obligations under the federal regulations or NEPA violate the rights of Plaintiffs and the Putative Class Members.

E. Enter an Order requiring that the BIA expel or otherwise prohibit Defendants and Putative Defense Class Members from: (1) entering onto Plaintiffs and the Putative Class Members Property until each has obtained a valid oil and gas lease and satisfied the other conditions precedent necessary for access to the property owned or leased by the Plaintiffs and

Putative Plaintiff Class Members, or (2) commencing drilling operations until Defendants and Putative Defense Class Members have obtained a valid drilling permit.

F. Enter an Order for certification for each class as requested;

G. Enter judgment for compensatory damages for all Plaintiffs and Putative Plaintiff Class Members in an amount commensurate with the damages as set forth above;

H. Enter judgment for punitive damages for all Plaintiffs and Putative Plaintiff Class Members in an amount commensurate with the damages as set forth above;

I. Enter a Preliminary Injunction prohibiting Defendants and Putative Defense Class Members from: (1) entering onto Plaintiffs and the Putative Plaintiff Class Members Property until each has obtained a valid oil and gas lease and satisfied the other conditions precedent necessary for access to the Property or (2) commencing drilling operations until each has obtained a valid drilling permit.

J. Award Plaintiffs and the Putative Plaintiff Class Members reasonable costs, litigation expenses and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, 12 Okla.Stat. § 940, and all other applicable authorities and such other and further relief as the Court deems equitable, proper and just.

Respectfully submitted,

/s/Donald A. Lepp

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