



[4335-30]

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**30 CFR Parts 1206 and 1210**

[Docket No. ONRR-2014-0001; DS63642000 DR2PS0000.CH7000 167D0102R2]

**Amendments to Designated Areas**

**AGENCY:** Office of the Secretary, Office of Natural Resources Revenue (ONRR),  
Interior

**ACTION:** Final rule.

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**SUMMARY:** ONRR convened two technical conferences on November 20, 2015 to discuss amending the boundaries of four of the designated areas it uses to calculate the index-based major portion prices in its regulations. At the technical conferences, the participants discussed issues regarding the appropriate boundary line between the North Fort Berthold and South Fort Berthold Designated Areas and adding additional counties to one or both of the two designated areas in the Uintah and Ouray Reservation.

**DATES:** *Effective:* September 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Dawson, ONRR, telephone at (303) 231-3653, or email to [lisa.dawson@onrr.gov](mailto:lisa.dawson@onrr.gov).

**SUPPLEMENTARY INFORMATION:** With this final rule, ONRR amends the four designated areas to define them as follows:

1. North Fort Berthold—all lands within the Fort Berthold Reservation boundary north of the Missouri River, including the Turtle Mountain public domain lease lands north of the Missouri River that the Fort Berthold Agency of the Bureau of Indian Affairs (BIA) administers, with the dividing line of the Missouri River being the county lines that follow the Missouri River.
2. South Fort Berthold—all lands within the Fort Berthold Reservation boundary south of the Missouri River, including the Turtle Mountain public domain lease lands south of the Missouri River that the Fort Berthold Agency of the BIA administers, with the dividing line of the Missouri River being the county lines that follow the Missouri River.
3. Uintah & Ouray—Emery, Uintah, and Grand Counties.
4. Uintah & Ouray—Duchesne, Wasatch, and Carbon Counties.

Under the new Indian Oil Valuation Amendments to 30 CFR 1206.54 (80 FR 24794 dated May 1, 2015), ONRR uses designated areas to calculate index-based major portion prices for lessees to comply with the major portion provisions in their leases. Designated areas are those areas ONRR identifies as unique based on their location and the crude type produced from their respective Indian lands.

When ONRR proposed the new Indian Oil Valuation Amendments, it proposed sixteen initial designated areas. Generally, these designated areas were the Indian reservation boundaries. However, there were five designated areas which were not the reservation boundaries: Oklahoma; North Fort Berthold; South Fort Berthold; Uintah & Ouray; Uintah and Grand Counties; and Uintah and Ouray: Duchesne County.

Under the new Indian Oil Valuation Amendments, to modify or change an existing designated area, ONRR must convene a technical conference. In implementing the new Indian Oil Valuation Amendments, ONRR discovered two potential issues. First, the preamble describes the dividing line between the North Fort Berthold Designated Area and the South Fort Berthold Designated Area as the Little Missouri River. Second, ONRR found at least one producing Indian lease that is in Wasatch County in the Uintah and Ouray Reservation, which is outside of both of the designated areas listed in the Uintah and Ouray Reservation. ONRR also identified two other counties—Carbon and Emery Counties—in the Uintah and Ouray Reservation that were not in the listed designated areas that do not currently have Indian leases but could in the future.

To address these issues, ONRR held two technical conferences. ONRR published notice of the technical conferences in the *Federal Register* on October 29, 2015. 80 Fed. Reg. 66,417. The first technical conference was held in person on November 20, 2015, at 9:00 AM, Mountain Time in Denver, Colorado, at the Office of Natural Resources Revenue, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado 80226. The second technical conference was a teleconference on November 20, 2015, at 2:00 PM Mountain Time. Fifteen people attended the technical conferences, of which seven were from ONRR, three from Tribes, and five from industry.

ONRR also solicited comments on the proposed changes through November 30, 2015. On February 17, 2016, ONRR consulted with the Ute Indian Tribe on adding the Wasatch, Carbon, and Emery Counties to the two Uintah and Ouray Designated Areas.

Also, on March 4, 2016, ONRR consulted with representatives of the Three Affiliated Tribes on changing the boundary line between the North Fort Berthold and South Fort Berthold Designated Areas.

**Public Comments:** Generally, the parties attending the technical conference and consultations agreed with ONRR's proposal to modify the definition of the (1) Uintah and Ouray Designated Areas to include Wasatch, Carbon, and Emery Counties; and (2) North Fort Berthold and South Fort Berthold Designated Areas to use the Missouri River as the boundary line between the two designated areas rather than the Little Missouri River. ONRR received three additional comments: one from industry, one from an individual Indian mineral owner, and one from a Tribe.

*Public Comment:* The individual Indian mineral owner sent a comment stating he did not support dividing the Fort Berthold Reservation into two designated areas for five reasons: (1) the idea of selling price by field is an anachronism; (2) the price must be the highest in the world wherever that may be because industry uses the tax code, hedging, swaps, etc. in order to obtain the highest price; (3) this attempt to reduce price is a taking under Hodel because this regulation denies the beneficiary the difference between the market rate and major portion; (4) there is no basis for allowing a transportation deduction because typical carriers charge consumers for transportation rather than the mineral owner; and (5) North Dakota recovered millions because deductions were not in their leases and, likewise, Indian leases do not authorize this illegality.

*ONRR Response:* The technical conference was simply to discuss amending the Fort Berthold designated areas to use the Missouri River rather than the Little Missouri River

to divide the two designated areas. These comments apply to the Indian Oil Valuation Amendments as a whole and do not directly relate to the appropriate boundary for the two Fort Berthold designated areas. ONRR addressed comments similar to the one above in the preamble of the final rule, which can be found at 80 Fed. Reg. 24,794 (May 1, 2015).

*Public Comment:* The industry commenter suggested that ONRR take this opportunity to divide the Fort Berthold Reservation into three designated areas: The first designated area would include lands north of the Missouri River, the second would include the lands south of the Missouri River and north of the Little Missouri River, and the third would include the lands south of the Little Missouri River. The commenter believes the available transportation infrastructures support dividing the Fort Berthold Reservation into three designated areas because the lands north of the Little Missouri River have evolving pipeline facilities that can transport production from the lease, whereas leases south of the Little Missouri River do not have the same available infrastructure.

*ONRR Response:* Dividing the Fort Berthold into two designated areas was a compromise negotiated by the Indian Oil Negotiated Rulemaking Committee (Committee). Generally, industry advocated using specific fields as designated areas. Alternatively, Tribes and individual Indian mineral owners promoted a broader area. Ultimately, the Committee agreed to divide Fort Berthold into two designated areas as a compromise. To date, ONRR has found no reason to ignore the conclusions of the Committee.

The final rule and the preamble of the proposed rule specifically allow lessees/operators, Tribes, and Indian mineral owners to petition ONRR to convene a

technical conference to review, modify, or add designated areas where there is a significant change that affects the location and quality differentials. The rule has not yet been in effect for a period of time sufficient to demonstrate that there has been a significant change in the market on the Fort Berthold Reservation. Should the markets change in the future, the lessees/operators, Tribes, or individual Indian mineral owners can petition ONRR to change the designated areas in the future. The purpose of this technical conference was to change the boundary between the two Fort Berthold designated areas, not to add another designated area. Therefore, adding a designated area was outside the scope of this technical conference.

*Public Comment:* The Ute Indian Tribe indicated it would prefer to have Wasatch and Carbon Counties added to the Uintah & Ouray–Duchesne County Designated Area and Emery County added to the Uintah & Ouray–Grand and Uintah Counties Designated Area. The Tribe indicated the infrastructure on the Uintah & Ouray Reservation supported this configuration.

*ONRR Response:* ONRR agrees with this comment and has modified the definition of the two designated areas in the Uintah and Ouray Reservation by adding Wasatch and Carbon Counties to the Uintah & Ouray–Duchesne County Designated Area and Emery County the Uintah & Ouray–Grand and Uintah Counties Designated Area.

Date: June 28, 2016

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