LEASING OF QUAPAW MINERAL LANDS

By A. M. Gibson

A considerable portion of Oklahoma's natural resource abundance is situated on lands assigned to the various Indian tribes. Grazing, hay, field-crop, and timber lands, as well as coal, petroleum, and lead-zinc bearing areas have occurred on several tribal reservations and allotments. Only sporadic and clandestine use had been made of this restricted natural bounty until the public domain supply of agricultural, timber, and mineral lands waned. This attracted national attention to Oklahoma's Indian lands, and incessant pressure by promoters and special interest groups gradually won out as restrictions on use were lifted. Official experience had shown, however, that if opened to exploitation, the use of these lands must be regulated so as to protect tribal and individual member rights.

The Bureau of Indian Affairs of the United States Department of the Interior has been delegated the major responsibility for regulating the use of Indian lands. Out of years of dealing with the evident problems that accompany the use of Indian lands, a series of regulations have evolved with each land use system, be it grazing, petroleum, coal, or lead and zinc, developing a sort of special code.

While public pressure has brought about availability for exploitation, it has been tempered by protective regulations. Each land area opened has had a somewhat different policy depending upon the use adopted. Farm, hay, and grazing land necessarily had a different set of regulations than coal or oil bearing land. One of the most complex and interesting land use systems has evolved out of the utilization of lead and zinc properties situated on Quapaw lands in Ottawa County, Oklahoma. As a geological region, this section of Oklahoma is the southwestern anchor of the fabulously wealthy Tri-State District. Ottawa County shares the district with Jasper and Newton counties in southwestern Missouri, and Cherokee County in southeastern Kansas. The district, first opened in the Missouri sector around 1850, extended into Kansas in 1876, and reached northeastern
Oklahoma on a limited basis in 1891 with the discovery of lead ore at Peoria, Indian Territory. From 1900 to 1950, the Tri-State District has been the world's leading producer of lead and zinc ore, and for the last thirty-three years of this production epoch, Oklahoma mines made the greatest contribution. ¹

Mining operators from the Missouri-Kansas section of the district were largely responsible for developing the Indian Territory mines. Ottawa County ores were discovered by Tri-State prospectors. The methods of mining, milling, smelting, and marketing found so effective in the northern section of the district were applied to the new field. Acclimated land use and tenure practices, however, presented a different problem. The historic free-hold and lease tenure of the older portions of the district could not be applied to the new field. The mineral was located on Quapaw Indian lands, and exploitation was held up until an adjustment was made to this new condition. Local Indian agents could authorize the negotiation of leases, but it was charged by promoters that mining operations were curtailed because of the uncertainty of lease tenure and the hostility of Indian agents toward non-Indian leaseholders.²

The basic problem facing the mining operators was to work out conditions for a secure first lease since fee simple tenure was impossible. Once a first lease could be established, then the old pattern of Tri-State District land use systems could be applied. This briefly, meant that a land and royalty company negotiated the first lease with the landowner at as low a royalty percentage as possible, seldom if ever above ten percent, and generally three to eight percent. Then the land company would sub-lease the mineral lands in various sized plots, 200 feet square up to a section, for a royalty of from fifteen to thirty percent. This had the effect of pyramiding royalty payments and cutting the operational margin of ore profits.³

The uncertainty of developing Quapaw lead and zinc properties was gradually lifted by various congressional and administrative actions. In keeping with the general Indian policy of Allotments in Severalty, the Quapaw Reservation was allotted to bona fide tribemen in 1893, and approved by Congress in 1895. Each member received 240 acres. While the use of these lands by non-Indians was restricted, a law of 1897 authorized agency approved leases of allotments for farming, grazing, and mining. This condition had existed before, but now an added requirement placed final approval and administration of all leases negotiated directly under the Secretary of the Interior.

Under Department of the Interior supervision, Tri-State mine operators were able to develop a total of 7,000 acres of mineralized land by 1930. These Quapaw holding yielded by this date more than two-thirds of the Tri-State District's lead and zinc concentrates. The leases on Quapaw lands generally were approved for a period of ten years or as long as mineral was found in paying quantities. As a protective measure, the Interior Department has maintained, through its Bureau of Indian Affairs, an agent to supervise and protect the Indian's mining interests. Often leases have been auctioned by the local Indian agent, so as to obtain a bonus for the Indian landowner in addition to his regular royalty. Probably the biggest sum ever received for the use of a Quapaw mineral tract was $105,000 paid by the Kansas Explorations Company in 1926 to John Quapaw for the use of six acres of his allotment.

It should be noted that only about one-sixth of the

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4 United States Statutes at Large XXVIII (Washington, 1895), p. 907.
5 Ibid., XXX (Washington, 1899) p. 72.
7 Ibid. Also see C. F. Williams, “The Leasing System,” American Mining Congress and American Institute of Mining and Metallurgical Engineers Convention Booklet (September 28, 1931), p. 10.
Quapaws hold land in the mineral area. The tribal population in 1954 was approximately 600, and of these, only 100 received lead and zinc royalty payments. In the past, some members have built up royalty credits as high as $75,000, others ranging from $35,000 to $45,000. In 1923, the Secretary of the Interior invested these royalty credits in United States Treasury Notes bearing four and one-half percent interest and ordered them held in trust. As the output of the region has gradually decreased through the years, due to exhaustion of richer deposits and the entry into marginal ore mining, so have royalty payments to Quapaws diminished. In more recent years, the local agency at Miami, Oklahoma, or the Area Office at Muskogee has collected royalties for the Indians from the mine operators and has paid out the money to the Indian landowners. In some cases, the agent has paid an allowance rather than the full amount. It should be noted that the Quapaws hold their allotted lands in fee simple, so royalty payments go to individual members rather than to the tribe as a whole.

Additional safeguards to protect the Quapaws from exploitation include the appointment of a Bureau of Mines engineer to work in liaison with the agent. The mining engineer helps to supervise the leasing as well as the prospecting, mining, and milling of mineral from Indian lands. Other protective features include the fabrication of an aerial mosaic map of the Quapaw mineral producing area. The Army Air Corps in 1927 aerially photographed the region to aid in administering Quapaw mineral lands. The photographs were assembled, reduced to scale, and annotated. Thereby, a complete identification could be made of all mineral leases, and the stage of development determined.

In spite of all these safeguards, there is abundant evidence to show that in some instances the Quapaws were

10 Interview with H. A. Andrews, Miami, Oklahoma, August 24, 1953.
12 Interview with Andrews.
13 Weidman, et. al., Miami-Pitcher District, p. 92.
exploited. As early as 1907, mine operators, organized through the Baxter Springs Mining Exchange, sought a relaxation of the leasing restrictions and general governmental control over Quapaw lands. A. L. Morford, veteran mining writer and newspaperman, revealed that "one of the men interested in the movement is former Governor Samuel Crawford, of Kansas, who now owns farm land near Baxter Springs. The former governor . . . has had much to do with Indian affairs and in shaping legislation for the small tribes of the territory."16

None of these pressure groups was successful immediately in getting the regulations removed. But the restricted period for the Quapaw lands was to expire in 1921, and several alternative plans for protecting the Indians were advanced. One of these provided for the appointment of a guardian for each Indian allottee. Since mine operators would have to deal with the guardian instead of the Indian agent, they were opposed to the proposed change. Undoubtedly, their opposition grew from the fear that a guardian would be more zealous in protecting the Indian's property rights than the Indian agent had been. In 1920, the *Engineering and Mining Journal* reported on this opposition:17

> It is probable that a bill to continue the restrictions so far as Quapaws are concerned, will be introduced in Congress with their (the operators) backing. The operators believe that it is much safer and satisfactory for them to continue to deal with Indian agents as at present than it would be for them to have to deal with the Indians themselves or their guardians appointed by the county commissioners of Ottawa County. Any special guardian would be imbued with making as good a showing as possible for their wards and might be unfair in the end to the operators.

Congress met the expiration deadline by simply extending the jurisdiction of the Department of the Interior much as it had been before.18 This seemed to usher in a new era of exploitation, for the facts show that the operators

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17 A. L. Morford Journal Entries for December, 1907, Galena, Kansas, p. 41.
19 *United States Statutes at Large*, XLI (Washington, 1922), pp. 1225-1248.
were aided in that leases negotiated during the early 1920's were more in the interests of the operators and less for the Quapaws. Secretary of the Interior Albert Fall, notorious for the Teapot Dome lease, also figured prominently. By the law of 1921, the Secretary of the Interior was given authority to remove restrictions and permit the outright sale of Quapaw lands if the owner were adjudged competent. The Engineering and Mining Journal reported that Paul Ewert, representing the mining operators, negotiated the sale of a mineral tract when the Department of the Interior adjudged the owner competent in 1922. Shortly, it was discovered that Ewert was an employee of the United States Department of Justice. Thereupon, the Quapaws sought, unsuccessfully, to have the transaction set aside claiming that Ewert was disqualified because of his official connection with the government.  

During the same year, Indian attorneys attempted to gain a five percent royalty increase. The operators countered by seeking a reduction from ten to seven and one-half percent. A Department of the Interior hearing was conducted at Miami, after which the Secretary of the Interior approved the leases at ten percent over protests of the Quapaws.  

These actions raised a storm of protest among groups concerned with Indian welfare. In 1923, the Indian Rights Association attacked the way in which the Department of the Interior was handling Quapaw mineral lands, publishing an account entitled "Oklahoma's Poor Rich Indians." Two years later, ten Quapaws holding mineralized allotments filed suit in Federal District Court at Tulsa to recover $30,000,000 worth of lead and zinc concentrates taken from their lands since 1921. Their bill of complaints charged that "former Secretary of the Interior Albert Fall executed leases over the protests of the Indians, and on a lower basis than other offers at the time, and lower than estimates made by

20 "Mining News," Ibid., CXIII (June 3, 1922), p. 980.
the Department of the Interior as to what a fair price would be."  

Defendants included the Eagle Picher Company as well as Hunt, Commonwealth, Kelton, and White Bird Mining Companies as subsessee of Eagle Picher. A decision was handed down in 1928 in favor of defendants, thereby upholding former Secretary Fall's action.  

While these legal setbacks brought financial discomfort to Quapaw landowners of a temporary sort, permanent reduction in royalty income was in the offing for tribal members, due less to administrative and judicial decrees and more to the limitations of nature. By 1930, the rich lead and zinc ores, concentrated in heavy and readily accessible deposits, had been fairly well exhausted. As mine operators moved into the more marginal deposits, mining costs increased, profits decreased, and Quapaw royalties diminished proportionately. In many cases, mining operations were actually suspended. This condition produced another significant development in Quapaw Indian land use - the commingling agreement, whereby the ore from several leased tracts could be hoisted and milled at a central place.

Even though an ore body occurred close to the tract lines of several lessees, before commingling the mineral had to be mined, hoisted, and milled on the tract of its origin. Therefore, each tract whether 200 feet square, five acres, or forty acres, had to have at least one mill.  

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24 An essential phase of the mining process is milling. After the lead and zinc ores are extracted and hoisted to the ground level, they are transported to a building forming a part of the mine environs. This structure contains crushing and cleaning equipment which separates the ores, reduces them to uniform size, and prepares both lead and zinc for the smelting process. Until fairly recent times, each mine had its individual mill. Today, most mineral is transported to a central mill from peripheral mines for processing. See Appendix for explanation and diagram of commingling.
rich, the system worked fairly well. But as more marginal ores were tapped, individual hoisting and milling costs forced scores of mines to close. H. A. Andrews, Quapaw Indian Agent at this time and the author of commingling, reported that this new land use practice made possible a new mining era for the Tri-State District. In addition to prolonging the region’s productive life, Andrews added that commingling assured consistent—if somewhat lower—royalty payments to Quapaw landowners. This practice also furnished more reliable employment, and enabled companies to carry on in periods of metal price depression. Basically, commingling produced lower mining and milling costs, thereby enabling Tri-State operators to handle marginal ores and to compete favorably with newer, richer lead and zinc fields in the West.

Quapaw landowners benefit from the presence of lead and zinc minerals on their properties only when their lessees actively exploit the ore deposits. Mine operators carry on when mining costs are low enough and domestic market prices high enough to insure a profit. Commingling helped produce a constancy of operation on Quapaw lands until after 1945. Since that date even the stabilizing effect of commingling has been reduced, and Quapaw landowner interests have suffered proportionately. This condition has grown out of the National Government’s policy of encouraging backward countries to develop their resources, and assuring a market for products by permitting imports of raw materials into the United States free of tariff restrictions. In the case of lead and zinc, Peruvian and Mexican Mining interests have been guaranteed six cents a pound above the prevailing United States’ market price for lead and zinc concentrates. This policy has had far reaching repercussions in the domestic lead and zinc producing fields, and especially in the Tri-State District because of its low grade ore. Since Quapaw Indian lands comprise the most productive segment of the

25 Interview with Andrews.
district, tribal royalty interests have suffered proportionately.

During 1956, out of a total of 172 restricted Quapaw tracts involving 16,054 acres, thirty-one mineral leases were actively exploited. The Eagle Picher Mining Company, largest district operator, controlled sixteen of these and paid out to Quapaw landowners $252,508. The largest royalty received by an owner of restricted Quapaw lands was $56,000; the smallest royalty $2.69. These funds are currently administered by the Area Director of the Muskogee Area Office for Indian Affairs, who, since 1949, also has had the authority to approve all leases. By the law of 1921 only the Secretary of the Interior could do this. An uncertain future has forced virtual abandonment of Quapaw Indian lands for mining purposes in 1957. Throughout this year, the Oklahoma delegation in Congress has worked consistently for a new metals procurement policy by the National Government whereby domestic producers will receive preferential treatment.

Appendix

Diagram A shows the system of land use in effect before commingling was applied to Quapaw mineral lands. Even though the same ore body might appear on several leased tracts, the earlier practice required that each tract must have an independent shaft and mill. As long as the deposits were rich, this system did not work too badly, but as more marginal ores were reached, and the richer ores exhausted, many mining companies suspended operations because they could not handle the leaner ores profitably. Around 1930, H. A. Andrews, Indian Agent at Miami introduced a new system of land use called commingling, illustrated by Diagram B. Thereby a single hoisting shaft could be used in common by several companies exploiting the same deposit on their respective leases. Also, a central mill handles all crude ore and produces concentrates, further cutting the cost. Landowners sign these commingling agreements permitting ore from their properties to be hoisted from a central shaft, as well as allowing the ore to be mixed and milled centrally.

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28 Interview with Jack Daughtery, Muskogee, Oklahoma, September 4, 1956.