

The Midnight Rider

The EPA and Tribal Self-Determination

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Abstract: This article analyzes the EPA's relationship with Native Americans, which has been neglected by historians. It seems like the EPA, a federal agency born during the self-determination era, would be open to new approaches in federal Native American policy, but this was not the case in 2005. Republican senator James Inhof of Oklahoma added a rider to an otherwise benign transportation bill making it illegal for tribes residing within Oklahoma to operate environmental protection programs without first negotiating with the state government of Oklahoma. The rider eroded the federal trust relationship and infringed on Native self-determination. Oklahoma's tribes and Native American leaders from around the nation worked to get the new law overturned, but the EPA decided to help tribes work within the confines of the new law. Despite the EPA's stance on the law, the tribes continued to challenge it as they had in the past when hurt by paternalistic federal policy.

Keywords: self-determination, Environmental Protection Agency, Osage Nation, trust relationship, Oklahoma, underground injection, treatment as a state

On August 10, 2005, President George W. Bush signed a dubious law for Indian Country, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), with Republican senator James Inhofe's ominous Midnight Rider, section 10211, attached to it. The Midnight Rider forced Oklahoma's tribes to make deals with officials from the state of Oklahoma for primary control (primacy) of oil waste injection, usurping the power of the United States Environmental Protection Agency (EPA) to make decisions on primacy as outlined in the 1986 amendment to the Safe Drinking Water Act.¹ Tribal leaders in

Oklahoma, such as those of the Osage Nation, and around the United States expected EPA officials to at least protest the Midnight Rider, yet EPA Region 6 officials only assisted the tribal governments of Oklahoma in navigating the Midnight Rider.² By doing so, EPA Region 6 officials chose to challenge tribal self-determination (also known as sovereignty), which could be fulfilled in limited form through primacy, since tribes still had to abide by EPA-approved scientific principles, although throughout the self-determination era (1970 to the present) the EPA hierarchy has claimed that it respects tribal self-determination. Tribal self-determination is the ability to operate tribal programs without outside interference.³

What most historians, scholars, and EPA officials have failed to clearly articulate is that the EPA, through implementation of policies and procedures, interprets federal law, sometimes to the detriment of Native nations. When dealing with tribes, EPA officials must interpret the Clean Water Act (CWA 1972), the Safe Drinking Water Act (SDWA 1974), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA 1980), also known as Superfund. EPA officials set the scientific parameters by which tribes must agree. In the case of the Midnight Rider, EPA Region 6 officials decided how it would help Oklahoma's tribal governments operate within the scope of a federal law that limited tribal self-determination instead of working to overturn a law that limited tribal self-determination, which is what Native American leaders called on EPA officials to do.

The self-determination era promised to be the era in which Native American nations could at last forge their own futures. The EPA, which began operations on December 2, 1970, at the dawn of the self-determination era, became one of the primary federal agencies to partner with tribes and respect tribal self-determination.⁴ For instance, in 1983 the EPA's Indian Work Group stated that "it would recognize tribal governments as the primary parties for policy formulation and implementation on Indian lands, consistent with agency standards and regulations. The Agency is prepared to work directly with Indian Tribal Governments on a one-to-one basis, rather than as subdivisions of other governments."⁵ Furthermore, in 2010 former EPA administrator Lisa Jackson created the Office of International and Tribal Affairs to ensure that "we approach our relationship with the sovereign tribal nations within our own country in the same way we approach our relationship

with sovereign nations beyond US borders.”⁶ There is a small but growing collection of literature about Native American nations and environmental resource protection, but scholars have generally taken for granted that the EPA has recognized tribal self-determination, often portraying the agency as an intermediary between federally recognized tribes and public entities.⁷

It is important to note that the EPA is a large agency with employees at several different levels in various parts of the United States. As documented in this case study, problems occur at various levels and in different sections of the United States. This case study references specific EPA officials when possible.

THE ROOTS OF OIL PRODUCTION IN OSAGE COUNTRY

The history of oil production in Osage Country is complicated. There are issues of full-blood and half-blood factions of Osages that have been dealt with by historians.⁸ This section will inform the reader on the basics of why the Osages take part in underground waste injection in the modern era, thus connecting the Osages to the EPA, since underground waste injection comes under the regulation of the Safe Drinking Water Act, but for the sake of clarity this section will not broach the subject of the history of Osage tribal factions and other mechanisms inside Osage tribal government.

In 1891 the federal government allowed Native nations that owned reservations to lease the land for drilling for the first time but also imposed a ten-year limit to the contracts approved by tribal councils. Commissioner of Indian Affairs Daniel Browning deemed tribal councils incompetent and unable to protect themselves from dishonest oilmen.⁹ Henry Foster of Independence, Kansas, asked the Bureau of Indian Affairs for the exclusive right to test and produce oil on the Osage Nation Reservation, and the Osage National Council approved the controversial lease by a narrow margin, seven votes to six votes, on March 14, 1896. The lease granted Foster exploration rights on 1.5 million acres. The secretary of the interior approved the Foster lease just after Henry Foster died, so Henry’s brother, Edwin Foster, took on the project. The lease required Foster to pay the Osages 10 percent on oil production and \$50 on each producing gas well every year, but he could use all the surface resources he needed, such as timber, stone, water, and wood.¹⁰

Congress soon created a system of wealth distribution for the Osages as the tribe began earning handsome profits from oil production. Congress allotted the entire Osage Nation Reservation in 1906 under the Osage Allotment Act. Congressional provisions stated that no Osage born after July 1, 1907, was to receive an allotment, and all Osages maintained a headright for minerals, meaning that they received payments from leases to non-Osage entities that produced oil on Osage land. The federal government allotted the reservation three times into sections of 160 acres and then divided the remaining land among the Osages.¹¹ Oil exploration and production took off and changed Osage Country.

By 1947 and through much controversy, the secretary of the interior authorized the Osage Tribal Council to determine the bonus value of land leased for oil, gas, and mining purposes, ultimately leading to the selling of millions of acres of Osage land.¹² The interior secretary approved revised leases on the Osage Nation Reservation beginning on November 14, 1949, to allow for blanket leases (large leases) as a response to wells that were not producing, creating greater incentive for oil companies to continue to produce oil on the reservation. Blanket leases allowed fewer oil companies into the fields, so there was less competition; therefore, the companies already in the field would feel secure in investing in expensive machinery. The interior secretary allowed twenty-two separate projects, ranging from 320 to 23,240 acres. In the 1950s secondary oil recovery (using chemicals or gas) led to daily oil figures tripling, which meant more oil companies wanted long-term contracts. The interior secretary met this need in 1964 and allowed indefinite contracts. Companies could invest in machinery and be secure in the fact that their long-term work in the field would eventually pay for the machinery. The Osages bore the entire cost of the maintenance of the oil reserve, although management duty still fell to the BIA.¹³

THE OSAGE NATION, THE EPA, AND THE MIDNIGHT RIDER

Oil producers bring brine to the surface that is saltier than sea water and often has toxic metals and radioactive substances. During the early twentieth century, many scientists and oil producers believed that crude oil and brine spilled on topsoil would evaporate, oxidize, disperse, or be eaten by microorganisms. That was clearly not the case. By the latter half of the twentieth century, private companies had developed waste

injection technology that allowed the Osage Nation Energy and Natural Resources (ENR) Department to protect its underground water from waste. Waste injection wells, still used today, protect both subsurface and surface water from brine and a variety of other materials harmful to humans, plants, and animals. All oil-and-gas-producing states now require that the brine be injected into the same rock formation or a similar formation from where it originated.¹⁴

The Osage Nation ENR Department and EPA Region 6 officials began working together on underground waste injection in 1980.¹⁵ At the time, the Osage Nation owned more oil and gas acreage than any tribe in the United States at 995,707.17 acres, so there was plenty of waste from oil operations with the potential to pollute underground sources of drinking water, which necessitated an underground injection control system to deposit the waste into safe rock formations underground.¹⁶ EPA Region 6 officials utilized Osage employees to build the program. Three Osage employees reported to two EPA Region 6 officials for several years. The Osage Nation ENR Department and the local EPA Region 6 office even occupied the same building in Pawhuska, Oklahoma.¹⁷

The Safe Drinking Water Act requires the EPA to oversee underground waste injection programs on Native American reservations and in states to prevent oil waste spills. For example, EPA officials look at each injection well on a case-by-case basis and set requirements for waste injection pressures based upon subsurface rock formations. High well pressures sometimes fracture subsurface rock formations, which endangers drinking water sources. The EPA also requires well operators to maintain financial resources to ensure the plugging of old injection wells.¹⁸

In 2005 Diane Daniels, director of the Osage Nation ENR Department, completed both the federal treatment as a state (TAS) application and the federal primacy application according to the requirements of the Safe Drinking Water Act, which would have given EPA Region 6 officials the ability to recognize Osage primacy over oil waste injection on the reservation. When the federal government approves a TAS application, a tribe has the ability to operate an environmental program independent of the federal government, much like a state, as long as the tribe follows federal law and the science of the EPA. States and tribes have to prove they will regulate waste disposal with the same strict standards of the EPA. For example, EPA Region 6 officials require that all wells on

the Osage Nation Reservation pass the mechanical integrity test, illustrating that each well has no significant leaks.¹⁹ The Osage Nation ENR Department, in conjunction with EPA Region 6, was already enforcing EPA regulations; thus, the achievement of primacy (and the furthering of self-determination) over injection practices on the reservations was a natural step in 2005.

The local representative of EPA's Region 6 told Diane Daniels to wait until both applications were completed and to submit them together in accordance with the Safe Drinking Water Act. While her office was completing the applications, President Bush signed the Midnight Rider into law.²⁰ Daniels now had to make a deal with Oklahoma government officials before her department could be awarded primacy. Such a deal infringed on the limited tribal self-determination achieved by primacy.²¹

THE REACTIONS OF TRIBAL LEADERS TO THE MIDNIGHT RIDER

Tribal leaders in Oklahoma and across the nation were alarmed at the federal infringement of tribal self-determination with the passage of the Midnight Rider, especially in regard to the unexpected method in which the Midnight Rider passed Congress. Jeannine Hale, administrator of environmental programs for the Cherokee Nation, was one of the first tribal officials to notice the Midnight Rider. On Friday, July 29, 2005, she emailed tribal leaders around the country and appealed to them to read the highway bill, because Inhofe had added a horrible provision.²² Tribal leaders did not respond soon enough to her call to action, but the problem quickly became a concern for them.

On August 2, 2005, A. David Lester, executive director of the Council of Energy Resource Tribes (CERT), sent an email to tribal leaders stating that he believed they were entering an era in which Native Americans were about to lose the political and social gains of the self-determination era. To Lester, the Midnight Rider represented the goals of legislators who did recognize tribal self-determination during the self-determination era, which covered the last thirty years of federal tribal relations.²³

Three days later, James G. Sappier, chief of the Penobscot Nation and chairman of the National Tribal Environmental Council, wrote a letter to President George W. Bush urging him to veto H.R. 3. Sappier claimed the Midnight Rider was an affront to tribal self-determination in Oklahoma

since it removed the ability of tribes to regulate environmental quality on their own lands. He also argued that since Inhofe added the provision at the last minute, the bill undermined honest discussion in the Senate. He asked President Bush to veto the bill.²⁴ As stated above, President Bush signed H.R. 3 into law.

The repercussions were felt throughout the community of Native American environmental leaders. Robert Gomez, director of the Taos Pueblo Environmental Office, posted online that Inhofe's inclusion of the rider in a transportation bill clearly was not a legitimate part of the congressional process.²⁵ It is important to note that the passage of the Midnight Rider did not mark a circumvention of the congressional process, since Congress voted on it, but Inhofe wrote the Midnight Rider into the bill the night before the House vote, certainly circumventing any discussion of the topic. David Conrad of the National Tribal Environmental Council wrote to Diane Daniels that even the governor of Oklahoma was unaware of the provision, further illustrating that the measure came into play at the last second.²⁶

On September 7, 2005, Robert Wilson, treasurer of the 33rd Business Committee of the Cheyenne and Arapaho Tribes of Oklahoma, asked seven groups and representatives of the federal government to overturn the Midnight Rider, including Arizona senator John McCain, a Republican who sat on the Senate Indian Affairs Committee. Wilson wrote that the Cheyenne and Arapaho tribes of Oklahoma had worked closely with Senator Inhofe, who was chair of the Senate Environment and Public Works Committee, and Chairman Young of the House Transportation and Infrastructure Committee. The tribes were surprised when the rider was added at the last opportunity, because there was no time for comment. Wilson argued that it was accepted federal environmental law for tribes to receive TAS status.²⁷ He was correct, since the Safe Drinking Water Act was amended in 1986 to allow TAS status.²⁸ The new provision infringed on this ability and further limited tribes by allowing state law to reign on Native American reservations. Thus, according to Wilson, the rider attacked tribal self-determination and went against centuries of precedent.²⁹ The Midnight Rider, indeed, went against the intentions of the self-determination era. Wilson did not receive a response, as senators and congressmen proved unwilling to challenge Inhofe, a senior senator.³⁰ The EPA proceeded to work within the provisions of the Midnight Rider instead of lobbying against the provision.³¹

In December 2005 Oklahoma announced its intention to operate environmental programs on Native American land located within state boundaries. Immediately, tribal leaders tried to talk with EPA officials, but there was little EPA officials would do.³² Sappier argued that it would be better for EPA officials to sit down with Oklahoma's tribes and representatives of the state of Oklahoma and talk things out, expressing that the tribes should be considered equals with the EPA and Oklahoma.³³ In other words, Sappier believed that the EPA had the responsibility to respect tribal self-determination, even with the passage of the Midnight Rider.

Sappier and other tribal leaders went forward with their plan to meet with EPA officials. On Friday, January 6, 2006, Deborah Ponder, deputy director of the Office of Environmental Justice and Tribal Affairs for the EPA, wrote to Native American representatives that Ann Klee, counsel for the EPA, would be available for a meeting on Monday, January 9, but any outcome of a meeting with Klee would not affect the EPA's decision to not challenge the rider.³⁴ David Conrad also conceded that the EPA would not fight the rider.³⁵ Jeannine Hale told other leaders that tribes could not depend on the EPA and should continue to seek repeal of the rider through negotiations and other means.³⁶

By the end of 2006, no tribe had achieved a deal for primacy with the state of Oklahoma.³⁷ In February 2007 Richard Greene, the EPA Region 6 director, sent a letter to tribal environmental leaders in Oklahoma about how to gain primacy under the Midnight Rider. First, he would consider whether primacy agreements between the state and tribes were appropriate. However, he would be unable to approve any agreement not in accord with existing environmental laws. In addition, a public hearing would be announced in local newspapers, and if there was significant interest, a public hearing would be conducted. He advised that evidence of an agreement with Oklahoma should be submitted alongside the tribal application for TAS eligibility.³⁸ Green chose to work with tribes in Oklahoma on the basis of the Midnight Rider, which limited the ability of officials from EPA Region 6 to recognize tribal self-determination.³⁹

The Osage Nation drafted a resolution against the rider for presentation at the meeting of United Indian Nations on April 16, 2007.⁴⁰ The resolution stated that tribes still retained governmental jurisdiction on their land, despite the Midnight Rider.⁴¹ On Friday, June

1, 2007, Jeannine Hale requested a meeting between EPA officials and all the tribes of Oklahoma, hoping to convince EPA officials to circumvent the rider. At that point, EPA Region 6 had not received comments from Oklahoma's Native nations asking for interpretations of the rider.⁴² Only the Citizen Potawatomes and the Quapaws were negotiating agreements with Oklahoma over their environmental programs by August 2007, but no agreements had been finalized.⁴³ On August 7, 2007, Hale met with EPA general counsel Roger Martella to discuss the Midnight Rider and the EPA's policies on how to implement it, but ultimately the EPA's response did not change.⁴⁴ EPA officials had decided to help tribes work within the framework of the Midnight Rider.

Tribal leaders fought for repeal of the Midnight Rider when it came up for renewal in 2009. Osage principal chief Jim Gray sent a letter to Congress asking for repeal, stating that the Midnight Rider attacked tribal self-determination in Oklahoma by taking away tribal rights to administer environmental programs. He also wrote that the rider raised concerns for all Native Americans because of its attack on self-determination. Furthermore, he argued, the rider changed how Congress interacted with tribes, which was already a delicate relationship. The rider also kept the EPA from fulfilling its duty to tribal nations.⁴⁵ Gray's letter did not sway the members of the United States Senate Committee on Indian Affairs to vote to overturn the Midnight Rider.⁴⁶

Debra Lekanof of the Swinomish Tribe traveled to Washington, DC, in 2009 to explain to EPA officials the Indian Environmental Act, which several Native American leaders wrote with the hope of negating the Midnight Rider. The National Tribal Caucus supported the effort, believing it was a necessary first step toward repeal of the rider. Lekanof met with the National Tribal Operations Committee (NTOC), which was set up in 1994 by EPA senior officials to facilitate stronger partnerships with tribes. The NTOC was comprised of nineteen tribal leaders and the EPA's senior leadership committee, including the head of the EPA, Lisa Jackson. During the meeting, Lekanof told the NTOC that the Indian Environmental Act would reaffirm the EPA's trust relationship. Jackson informed Lekanof that as a part of her commitment to recognize tribes as sovereign nations, the American Indian Environmental Office was moving from the Office of Water to the Office of International Affairs.⁴⁷ However, the Indian Environmental Act did not pass,

and Congress voted to extend the SAFETEA-LU for eighteen months on July 31, 2009. The extension closed a federal budget shortfall by transferring \$7 million from the General Treasury Fund to the Highway Fund.⁴⁸

CONCLUSION

The Midnight Rider essentially negated the 1986 amendment to the Safe Drinking Water Act, which allows for tribal primacy of underground waste injection within the borders of Oklahoma. The Midnight Rider challenged the ability of EPA Region 6 officials to continue their close relationship with tribal nations. The rider forced the tribes of Oklahoma to make deals with Oklahoma officials before tribes could apply for primacy with the EPA. Even with this devastating provision, tribal leaders in Oklahoma and around the United States tried to convince the EPA, Congress, and the president to overturn the Midnight Rider.

The EPA has the responsibility to uphold the environmental laws of the United States, such as the Safe Drinking Water Act, but the EPA hierarchy has also pledged appreciation for Native American self-determination. The evidence presented in this case study shows that the EPA did not always respect tribal self-determination during the self-determination era. As the EPA moves forward, it must work to maintain a positive working relationship with tribal nations, because tribal nations are well positioned to help the EPA with its primary mission.

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NOTES

1. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1937, § 10211, “Environmental Programs,” pt. B, “Treatment as State” (2005) (the Midnight Rider), <https://www.gpo.gov/fdsys/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>; Safe Drinking Water Act, 42 U.S.C. § 300 et seq. (1986) <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap6A-subchapXII.pdf>.

2. EPA Region 6 covers Oklahoma, Texas, New Mexico, Arkansas, and Louisiana. “EPA Region 6,” <https://www.epa.gov/aboutepa/epa-region-6-south-central>.

3. Dina Gilio-Whitaker, "Indian Self-Determination and Sovereignty," *Indian County Today*, <http://indiancountrytodaymedianetwork.com/opinion/indian-self-determination-and-sovereignty-147025>. Gilio-Whitaker provides a convincing argument that the term "sovereignty" is not appropriate to refer to tribal self-determination, as sovereignty refers to the ability of European states with hierarchical structures to rule their nations.

4. EPA, "The Guardian: Origins of the EPA," spring 1992, <http://www2.epa.gov/aboutepa/guardian-origins-epa>.

5. LaDonna Harris, Stephen M. Sachs, and Barbara Morris, "Honoring Indian Nations' Sovereignty: Building Government to Government Relations between Tribal Governments and Federal, State, and Local Governments," in *Re-creating the Circle: The Renewal of American Indian Self-Determination*, ed. LaDonna Harris, Stephen M. Sachs, and Barbara Morris (Albuquerque: University of New Mexico Press, 2011), 125–26.

6. Dave Ryan, "EPA Announces the New Office of International and Tribal Affairs," <http://yosemite.epa.gov/opa/admpress.nsf/df3c84313061411f8525740a0057efe1/59b590ea7955e143852576e8006137f7!opendocument>.

7. The leading scholarship on the subject comes from anthropologist Darren Ranco, "Environmental Risk and Politics in Eastern Maine: The Penobscot Nation and the Environmental Protection Agency" (PhD diss., Harvard University, 2000), which details the proceedings in the late 1990s between the Penobscots of Maine and the EPA to set dioxin standards for the Penobscot River. Ranco argued that the EPA had the authority to recognize tribal determination but chose when to do so.

Former EPA official Dan McGovern framed the EPA as a benign middleman. McGovern's *The Campo Indian Landfill War: The Fight for Gold in California's Garbage* (Norman: University of Oklahoma Press, 1995) detailed the attempts by the Campos of San Diego County in the early 1990s to build a waste dump east of San Diego. McGovern, a former administrator with the EPA's Region 9 (Pacific Region), concluded that both sides of the issue should have compromised over the right of the Campos to build a waste dump on their land next to the San Diego suburbs. McGovern cast the EPA as an arbitrator in a discussion between two parties of equal status, which was charitable of McGovern but still did not recognize the tribes' desire for self-determination. McGovern was correct to illustrate, although not intentionally, that the EPA did not recognize the long history of the Campos' authority over the disposition of their homelands. McGovern was seemingly not aware of tribal self-determination, which was the major flaw of his study, along with the unacknowledged fact that the EPA has often chosen sides.

Environmental political scientist and historian Daniel McCool and journalist Marjane Ambler have missed the important role that the EPA has played in tribal resource development. Daniel McCool, *Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water* (Tucson: University of Arizona Press,

1987), argued that iron triangles negatively affected tribal water rights. An “iron triangle” is the political science term for relationships among federal departments, congressional committees, and constituents that benefit all three entities. Iron triangles do not recognize the rights of the tribes to be at the decision-making table. According to McCool, the BIA was willing to defer to state laws during the early twentieth century. It was a conflict of interest for Congress to recognize tribal rights to water because doing so would interfere with federal and state irrigation projects. Yet tribes still pressed for their water rights. McCool illustrated how Congress has often not abided by Supreme Court decisions, similar to the Osage experience with the EPA, but McCool failed to include the EPA as further illustration of the ways Congress and the EPA did not respect tribal governance over tribal land and water during the self-determination era.

Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), looks at how tribes took control of their natural resources during the self-determination era instead of waiting for the federal government to act on their behalf. Among several examples, Ambler detailed the establishment of the Navajo Environmental Protection Agency, which worked alongside the EPA to regulate energy development on the reservation. Ambler included the EPA as a partner with tribes that worked within the guidelines that Congress set forth for tribes. A similar discussion of cooperation between the EPA and tribes came from Harris, Sachs, and Morris, “Honoring Indian Nations’ Sovereignty.” They explained the EPA’s efforts through its Indian Work Group in 1983 to recognize tribes as independent nations that could be partners with the EPA to protect the environment. Further, through the provision in the Water Quality Act of 1987 to treat tribes like states for purposes of setting water quality standards, the EPA had become a model of how the federal government should act toward tribes.

8. See John Joseph Mathews, *The Osages: Children of the Middle Waters* (Norman: University of Oklahoma Press, 1961), 772–73; Terry P. Wilson, *The Underground Reservation: Osage Oil* (Lincoln: University of Nebraska Press, 1985), 100–101; Craig Miner, *The Corporation and the Indian: Tribal Sovereignty in Indian Territory, 1865–1907* (Norman: University of Oklahoma Press, 1989), 165–67.

9. Act of February 28, 1891, 25 U.S.C. § 397 (1891).

10. Miner, *The Corporation*, 165–66; Wilson, *The Underground Reservation*, 100–101; Donald Fixico, *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (Boulder: University Press of Colorado, 1998), 30.

11. Osage Allotment Act, 34 Stat. 539.

12. *Hearing on H.R. 3323, Before the Subcommittee on Indian Affairs of the Committee of Public Lands, House of Representatives*, 80th Cong. 1–2 (July 3, 1947) (statement of William Zimmerman Jr., Assistant Commissioner, Bureau of Indian Affairs).

13. *Hearing on H.R. 10204, Before the Committee on Interior and Insular Affairs*,

House of Representatives, 88th Cong. 1–3 (August 12, 1964) (statement of James Edmondson, Senator, Oklahoma).

14. A. Gene Collins, “Oil and Gas Wells: Potential Polluters of the Environment?,” *Journal (Water Pollution Control Federation)* 42, no. 12 (December 1971): 2387.

15. Diane Daniels, director of Osage Nation Environmental and Natural Resources Department, interview with the author, February 5, 2010.

16. Fixico, *The Invasion of Indian Country*, appendix C, 224. The other major oil-and-gas-producing tribes at the time were the Shoshone and Arapaho Tribes of Wyoming, which owned 545,108.84 acres; the Uintah and Ouray Tribes of Utah, which owned 385,685.36 acres; and the Mandan, Hidatsa, and Arikara Tribes of North Dakota, which owned a consolidated 352,691 acres.

17. Daniels interview, February 5, 2010.

18. Underground Injection Control, 40 C.F.R. Parts 124, 144, 146, and 147.

19. Underground Injection Control, 40 C.F.R. § 147.2912, 2902.

20. Daniels interview, February 5, 2010.

21. The Midnight Rider also challenged the Supreme Court’s decision in *Chevron v. Natural Resource Defense Council* (1984), which gave the EPA the discretion to interpret environmental law. *Chevron U.S.A. Inc. v. Natural Resource Defense Council*, 467 U.S. 837 (1984).

22. Jeannine Hale, administrator, Environmental Programs, Cherokee Nation, email to Diane Daniels, director of the Osage Nation Environmental and Natural Resources Department, July 29, 2005. Diane Daniels forwarded this email to the author. From here on, emails forwarded to the author from Daniels are referred to as Daniels emails.

23. A. David Lester, executive director of CERT, email to David Conrad, NTEC, August 2, 2005, Daniels emails.

24. James G. Sappier, chief of the Penobscot Nation and chairman of the National Tribal Environmental Council, to George W. Bush, president of the United States, August 5, 2005, Daniels emails.

25. Robert Gomez, director, Taos Pueblo Environmental Office, “Secret Legislation Removes Oklahoma Tribal Sovereignty to Regulate Environment,” post on indigenouswatersnetwork@yahoo.com, Friday, August 5, 2005. I received the post through email from Diane Daniels, February 16, 2010.

26. David Conrad, National Tribal Environmental Council, email to Diane Daniels, August 11, 2005, Daniels emails.

27. Robert Wilson, treasurer, 33rd Business Committee, Cheyenne and Arapaho Tribes of Oklahoma, to Tex Hall, National Congress of American Indians, September 7, 2005, Daniels emails; Wilson to Byron Dorgan, vice chairman, Senate Indian Affairs Committee, September 7, 2005, Daniels emails; Wilson to John McCain, chairman, Senate Indian Affairs Committee, September 7, 2005, Daniels emails; Wilson to Dale Kildee, cochair, Indian Caucus, US House, September 7, 2005, Daniels emails; Wilson to Nick Rahall, ranking member, Resource Committee,

US House, September 7, 2005, Daniels emails; Wilson to J. D. Hayworth, cochair, Indian Caucus, US House, September 7, 2005, Daniels emails; Richard Pombo, chair, Resource Committee, US House, September 7, 2005, Daniels emails.

28. Underground Injection Control, 40 C.F.R. Parts 124, 144, 146, and 147.

29. Wilson to Hall, September 7, 2005.

30. Daniels interview, February 5, 2010. In 2005 Inhofe was the majority leader of the Senate's Environment and Public Works Committee. He made protecting big oil corporations in the state of Oklahoma a top priority. In 2007 Inhofe received more than \$1 million in contributions from the oil and gas industry. For the 2010 federal budget, Inhofe requested \$1 million for a compressed natural gas station for the city of Norman. Illustrating a lack of belief in oversight, Inhofe was well noted for being a global warming denier, calling it the "greatest hoax ever perpetrated on the American people," and, not surprisingly, the natural gas industry does plenty to pollute the air. Ultimately, by allowing Oklahoma to judge primacy, not the EPA, Inhofe was doing what he could to reduce oversight and thus penalty fees in the oil fields. See Jim Myers, "Inhofe on '08 Campaign: Dems Are Gunning for Me: Recent Fund-raising Letters Have Targeted the Oklahoma Republican and His Views on Global Warming," *Tulsa World*, April 5, 2007; Elizabeth Shogren, "Inhofe Offers Parting Shot on Global Warming," *National Public Radio*, Washington, DC, December 7, 2006, <http://search.ebscohost.com.er.lib.k-state.edu/>; Kevin Williams, interview by Molly Messick, "Rural Wyoming County's Air Quality Worse Than L.A.," *Morning Edition*, NPR, April 5, 2011.

31. Timothy Cama, "EPA Accused of Improper Lobbying for Water Rule," *The Hill*, May 19, 2015, <http://thehill.com/policy/energy-environment/242472-epa-accused-of-improper-lobbying-for-water-rule>. The EPA has been known to lobby for causes and to stand up for itself, as have other agencies.

32. Jonathan B. Hook, director, Office of Environmental Justice and Tribal Affairs US EPA Region 6, email to Diane Daniels, December 28, 2005, Daniels emails; Jeannine Hale, email to Jonathan Hook, December 28, 2005, Daniels emails; David Conrad, email to Diane Daniels, December 28, 2005, Daniels emails.

33. James Sappier, email to Diane Daniels, December 30, 2005, Daniels emails.

34. Deborah Ponder, deputy director, Office of Environmental Justice and Tribal Affairs, US EPA, email to EPA Region 6 Indian leaders, January 6, 2006, Daniels emails.

35. David Conrad, email to Diane Daniels, February 17, 2006, Daniels emails; David Conrad, email to Diane Daniels, February 21, 2006, Daniels emails.

36. Jeannine Hale, email to Diane Daniels, February 23, 2006, Daniels emails.

37. Ben J. Harrison, deputy regional counsel, EPA Region 6, email to Hale, June 1, 2007, Daniels emails.

38. Richard E. Greene, US EPA Region 6 director, general draft letter to Oklahoma tribes and the state of Oklahoma, February 12, 2007, Daniels emails.

39. Diane Daniels, interview with the author, February 10, 2010.

40. Jeannine Hale, email to all Indian Environmental leaders, April 13, 2007, Daniels emails.
41. Diane Daniels, "United Indian Nations Resolution Regarding 'SAFETEA-LU' Rider," Daniels emails.
42. Jeannine Hale, email to Diane Daniels, April 13, 2007, Daniels emails.
43. Ben J. Harrison, deputy regional counsel, US EPA Region 6, email to Jeannine Hale, June 1, 2007, Daniels emails.
44. Diane Daniels, email to Jim Gray, principal chief of the Osage Nation, Hepsi Barnett, chief of staff for the Osage Nation Executive Branch, and David Conrad, July 16, 2007, Daniels emails; Eve Boss, EPA, email to Diane Daniels and other tribal leaders, September 14, 2007, Daniels emails.
45. Jim R. Gray, letter to Denise Desiderio, detailee for the majority, US Senate Committee on Indian Affairs, May 11, 2009, Daniels emails.
46. NCAI, mass email to members, April 23, 2009, Daniels emails.
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