

AUDIT REPORT

# OKLAHOMA CORPORATION COMMISSION — CONSUMER SERVICES DIVISION — MINERAL OWNERS ESCROW ACCOUNT DEPARTMENT

For the period January 1, 2013 through June 30, 2014



*Independently serving the citizens of  
Oklahoma by promoting the  
accountability and fiscal integrity of  
governmental funds.*



Oklahoma State  
Auditor & Inspector  
Gary A. Jones, CPA, CFE

**Audit Report of the  
Oklahoma Corporation Commission  
Consumer Services Division – Mineral Owners  
Escrow Account Department**

**For the Period  
January 1, 2013 through June 30, 2014**



## Objective & Scope

Our objective was to determine whether operations complied with significant laws and regulations, has adequate statutory authority and effective internal controls are in place related to the Oklahoma Corporation Commission's (OCC) handling of mineral owner escrow funds, including the ultimate transfer to OST's Unclaimed Property Program.

The scope of this audit includes the period January 1, 2013 through June 30, 2014.

This audit was performed in response to the OCC's request in accordance with 74 O.S. § 213.2.B.

# Oklahoma Corporation Commission Consumer Services Division– Mineral Owners Escrow Account Department

August 18, 2015

## Background

The Consumer Services Division, Mineral Owners Escrow Account (MOEA) department (transferred to the Finance division in September 2014) is responsible for keeping records of unknown or unlocated mineral owners and money owed as a result of oil and gas forced pooling orders. Funds collected are deposited into an interest bearing account at the Oklahoma State Treasurer's office (OST). The funds are held in escrow until the rightful receipt of monies is located or for a maximum of five years. Funds are then transferred to the OST Unclaimed Property Program.

## What We Found

It appears controls are not operating effectively related to the receipting process of MOEA funds, partially due to limited data fields in the current case management database.

- No complete listing of oil and gas pooling orders or 1081 reports is maintained, resulting in a lack of assurance that all funds received are being deposited.
- An independent reconciliation of MOEA funds received to actual deposits is not performed.

OCC did comply with 52 O.S. § 554(B)-(D) and 52 O.S. § 556, which require monthly transferring of funds held for five years to OST's Unclaimed Property division, reporting to OST within 90 days of receipt of funds, and quarterly reimbursement to OST for appropriate claims paid.

Although OCC has authority per 52 O.S. § 102 to levy fines should an operator not submit an annual 1081 report; we could not determine if the process for collecting those fines was operating effectively because no penalties were accessed during the audit period.

The Finance division must continue to improve its internal processes and coordinate with the contracted IronData- STAR system representatives to ensure significant processes are formalized and automated as appropriate.

GARY A. JONES, CPA, CFE  
OKLAHOMA STATE AUDITOR & INSPECTOR

## BACKGROUND

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According to **52 O.S. § 551 to 558 UNKNOWN OR UNLOCATED PROPERTY OWNERS**, the Oklahoma Corporation Commission (OCC) is required to establish a mineral owners escrow account (MOEA) tracking funds owed to the unknown or unlocated mineral owners who have been force pooled<sup>1</sup> by a Commission pooling order. In 1984 a Commission order promulgated rules<sup>2</sup> to protect the rightful recipients of monies accumulated as the result of a pooling order.

Operators who are directed to pay funds under a Commission pooling order, and cannot pay because the rightful recipient is unknown or cannot be located, must submit an annual financial (1081) report to the Commission. The report includes, but is not limited to, the name and last known address of the rightful recipients, the legal description of the property interest subject to the pooling order, and the date of the pooling order, and is accompanied by a check for bonus payments and any royalties the Operator has for rightful recipients of monies.

The OCC is the administrator of the MOEA and is not authorized to search for, nor ultimately identify or find, rightful recipients of monies. The MOEA department keeps records of funds owed to the rightful recipients as a result of oil and gas forced pooling orders. These funds are deposited into an interest bearing<sup>3</sup> account with the Oklahoma Office of State Treasurer (OST) minus a 10% administrative fee retained by OCC.

The funds are held in escrow until the rightful recipients are found or for a maximum of five years.<sup>4</sup> The funds are then transferred to the OST Unclaimed Property Fund. Claims against the MOEA are submitted to OST upon sufficient proof of ownership, resulting in payment to the rightful recipient or the rightful recipient's heirs.

The amount of money owed to the rightful recipients who cannot be located has grown in recent years as oil and gas activity increased across the state of Oklahoma.

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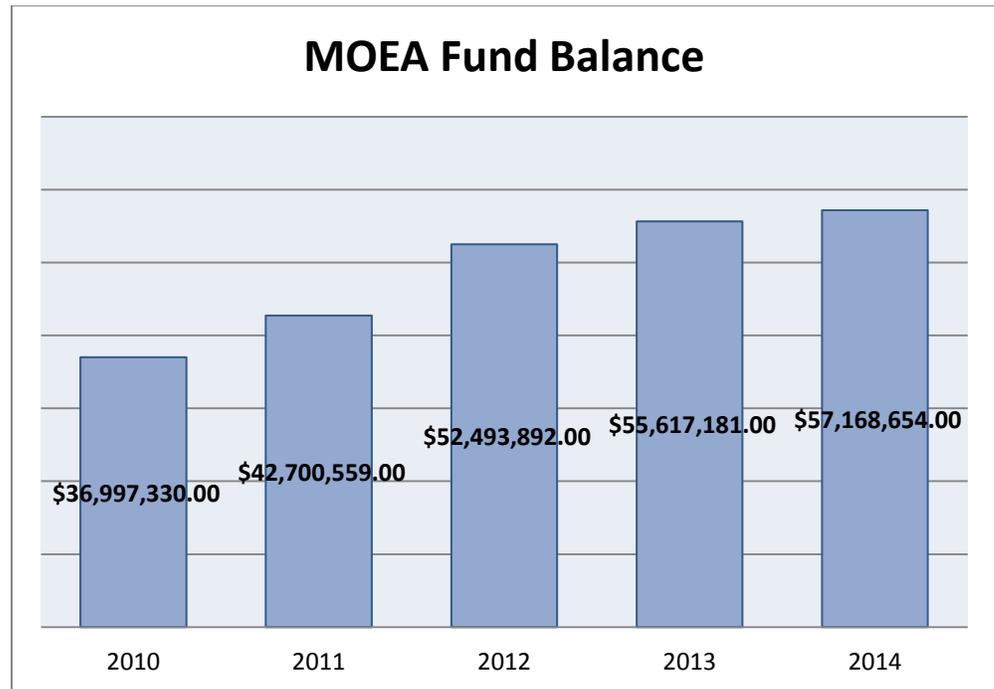
<sup>1</sup> Under state law, an oil and gas company (operator) can force owners in a unit who are unleased or undecided to make a decision. If the company has been unsuccessful in persuading all the owners to agree as to how to develop a unit, the company may apply to the Commission to have these owners or other oil and gas companies *force pooled* into one unit.

<sup>2</sup> The passing of Senate Bill 299 (1983) caused the Commission to issue Order No. 260734, which promulgated OCC rules 7-101 through 7-110.

<sup>3</sup> Interest earned must be apportioned by office of State Treasurer pursuant to **52 O.S. § 555**.

<sup>4</sup> According to **52 O.S. § 556** The State Treasurer shall retain custody of the Mineral Owner's Fund and annually on a date established by the Treasurer shall transfer to the Unclaimed Property Fund those monies which have been in escrow accounts and the Mineral Owner's Fund five years or more after the date of pooling. After that time, such monies shall be subject to the Uniform Unclaimed Property Act.

Total unclaimed bonus and royalty payments have risen from \$36,997,330 to \$57,168,654, an increase of 35% in a five-year period. The following table illustrates the MOEA cash balance<sup>5</sup> for fiscal years ending 2010, 2011, 2012, 2013, and 2014.



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<sup>5</sup> This information was obtained from OCC's Finance division. It is for informational purposes only and has not been audited.

## OBJECTIVES, SCOPE, AND METHODOLOGY

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<b>Objective</b>	The objective of this audit was to review OCC's handling of funds related to the MOEA, including the ultimate transfer to the OST Unclaimed Property Program, to determine whether effective internal controls are in place; operations complied with significant laws and regulations and OCC has adequate statutory authority.
<b>Scope</b>	Our audit was requested by OCC in accordance with <b>74 O.S. § 213. 2(B)</b> , which requires the State Auditor and Inspector to examine all books and accounts of all public entities specified by statute, upon receiving a written request to do so by the chief executive officer of the governmental entity or another authorized requestor. The scope of this audit included the operators' annual 1081 report, which includes the forced pooled rightful recipients' bonus and royalty payments, for the period January 1, 2013 through June 30, 2014.
<b>Methodology</b>	<p>We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusion based on our audit objective.</p> <p>In planning and conducting our audit we obtained an understanding of the MOEA and the process of how funds are collected and transferred. Our audit procedures included inquiries of MOEA management and staff; review of relevant state laws, Oklahoma Administrative Code, and Commission administrative procedures; and data reviewed from hard copy MOEA files, the Commission's imaging system, and the MOEA database.</p> <p>Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, errors or fraud may occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.</p>

## AUDIT RESULTS

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**Conclusion** OCC is not maintaining a comprehensive listing of oil and gas forced pooling orders or 1081 reports received; therefore, we could not determine whether all operators with pooling orders submitted an annual 1081 report to ensure compliance with **52 O.S. § 552(A) to (E)**.

Also, no independent reconciliation of MOEA funds received to actual deposits is performed.

The OCC's internal controls related to the receipting process for MOEA funds are not operating effectively.

The OCC did comply with **52 O.S. § 554(B) to (D)**, and **52 O.S. § 556**.

Although OCC has authority per **52 O.S. § 102** to levy fines should an operator not submit an annual 1081 report; we could not determine if the process for collecting those fines was operating effectively because no penalties were assessed during the audit period.

## FINDINGS AND RECOMMENDATIONS

*Documentation Not Adequately Maintained or Reconciled, and No Complete Listing of Pooling Orders*

The United States Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government (2014 Revision)*<sup>6</sup> provides that management should clearly document internal controls and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. To protect against fraud, errors, and professional misconduct, the internal control system should provide reasonable assurance that important documents are adequately retained.

In addition, according to **52 O.S. § 552(E)**, one year after the date of the pooling order, the operator shall submit the report of funds that have been held in escrow and shall transmit those funds to the Corporation Commission. This is accomplished with the 1081 report.

MOEA documentation is not all maintained collectively in one location: some documentation is scanned into the OCC Imaging System and some is retained in hard copy, with documents stored variously in a range of OCC network folders, within the imaging system, and in filing cabinets.

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<sup>6</sup> Although this publication addresses controls in the federal government, this criterion can be treated as best practices. The theory of controls applies uniformly to federal or state government.

Information from pooling orders and 1081 reports is received in hard copy and manually entered into multiple databases in order to track operator information and mineral owner royalties.

Because the MOEA division does not maintain a listing of all pooling orders, we were unable to determine whether all operators submitted annual 1081 reports. Without a listing of pooling orders, the division also cannot reconcile operator 1081 reports received to pooling orders; therefore, there is no assurance that all operators are submitting the required reports. This could result in operators retaining accumulated royalties, and rightful recipients of monies never having the opportunity to claim their funds because they are not listed on the MOEA or OST Unclaimed Property websites. In addition, by not maintaining a comprehensive listing of pooling orders, deposits cannot be reconciled to an independent source.

More generally, because reporting and payment information is stored in various locations and formats and not independently reconciled to a complete list of pooling orders, the risk exists that this information, and related accounting records and reports, are incomplete. Without an effective internal control system that provides for accurate and reliable records, and especially in a system that relies upon manual entry, errors or irregularities could occur and not be detected in a timely manner.

### **Recommendation**

Management should develop policies and procedures to ensure:

- All operators who have pooling orders submit annual 1081 reports. By implementing a reconciliation process between a complete listing of the pooling orders and the reports submitted, management could identify those that have not been submitted.
- Staff has clear directions for properly documenting, maintaining, and managing supporting information for MOEA financial data in a coordinated manner and in a transparent, accessible format. This is essential to ensuring the reconciliation recommended above is properly performed.
- An individual independent of the receipting process should conduct a monthly reconciliation of MOEA deposits to independent records.

During the installation of the STAR system by Iron Data, management should consider the possibility of mandating all required reports be filed electronically, to include specific data fields, which would allow

management to ensure completeness and accuracy of information received.

### **Views of Responsible Officials**

A process for tracking and maintaining pooling order information received through the court clerk's office will be developed. The Mineral Owners Escrow staff will develop a process for reconciling pooling orders to 1081 reports.

The Mineral Owners Escrow and OCC's court clerk staff will coordinate with Iron Data to request additional order identifiers within the new STARS system. Internal reporting will limit reliance on manual listings. Until this can be established, the process will have to be manual.

Finance staff will develop a monthly reconciliation of revenue received for items listed on 1081 reports. Staff, independent of Mineral Owners Escrow staff, will perform the reconciliation.

*Deposits Not Made  
in Accordance with  
52 O.S. § 554(A) or  
62 O.S. § 34.57(C)*

An effective internal control system provides for adequate safeguarding of assets. According to **62 O.S. § 34.57(C)** stipulates that receipts greater than \$100 be deposited on the same banking day as received; and each state agency that has custody of receipts of less than \$100 shall provide adequate safekeeping of such receipts, to be deposited when funds received equal \$100 or after held for five business days.

In addition, **52 O.S. § 554(A)**, the Corporation Commission shall, by the close of the second working day following the day on which the [mineral owners'] funds are received from operators, transmit the funds to the State Treasurer, who shall hold the funds in trust for the rightful recipients of monies in the Mineral Owner's Fund.

It is the Agency's stated practice to date stamp received on the back of the 1081 report and then date of deposit is imprinted by the cashier in the upper right hand corner of the report, which should provide documentation of the timeliness of deposits. However, based on a review of 1081 reports and corresponding funds deposited March 13, 2013 and May 28, 2014, we noted the following:

- One check stub was date stamped as received 2/11/13 but the corresponding 1081 report date stamped 3/13/13 as deposited.,
- Six checks did not have supporting documentation reflecting the date received, and

- Three checks had date received stamps on attached check stub, but not on the 1081 report (including the check discussed in the first bullet.

It appears checks are not being consistently date stamped on the 1081 report or deposited in a timely manner. Retaining funds at the agency for extended time periods increases risk of misappropriation and conflicts with the requirements of **62 O.S. § 34.57(C)**. In addition, checks are being retained on an employee's desk until delivered to the cashiers' cage. This could result in lost or misplaced checks.

Deposits were not made in accordance with **52 O.S. § 554(A)**.

### **Recommendation**

Management should deposit funds in accordance with **52 O.S. § 554(A)** and **62 O.S. § 34.57(C)**. In addition, checks should be properly safeguarded in a locked file cabinet with controlled access prior to being deposited. As 1081 reports and checks are received, a consistent process should be developed to ensure documents are uniformly date stamped when received.

### **Views of Responsible Officials**

With the agency's implementation of centralized processing, control of checks will be accomplished. However, full implementation is several months away. When fully implemented, MOEA staff will receive no checks. During the agency's current testing phase, Finance will be responsible for MOEA checks, document them, and send them on for processing. This will provide an additional control outside of the MOEA area.



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