

# New CFR's Explained

<http://www.Osages-You-Need-To-Know.com>

August 3, 2015

Osage Minerals Councilman Galen Crum has assembled a PowerPoint presentation comparing some of the new CFR's to corresponding issues in the old CFR's. This is designed to be projected on a big screen, so it will look a little different on your computer screen, but it is easy to read, and moreover, it is easy to understand. Councilman Crum was a member of the Negotiated Rulemaking team from start to finish, so he has a thorough knowledge of both the new, and the old CFR's.

There are many more subjects covered by the new CFR's, but the ones addressed in this presentation seem to be the ones attracting the most interest. For the complete rendition of the new CFR's, use the following link:

[http://static.osagenews.org.s3.amazonaws.com/cms\\_page\\_media/43/CFRs-Negotiated%20Rules\\_FINAL2015.pdf](http://static.osagenews.org.s3.amazonaws.com/cms_page_media/43/CFRs-Negotiated%20Rules_FINAL2015.pdf)

# **25 CFR 226**

**Old vs. New**

## **Common Misconceptions**

# 226.10 Bonding

- **Allegation:** The new rule endows the Superintendent with new power to increase the amount of bond required.
- **Facts:** The old rule provided the Superintendent with the ability to increase bonding as he or she saw fit.
- The new rule imposes several restrictions on when and how much a bond can be increased

# Old bond increase wording of old 25 CFR 226.6

- (d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it proper.

# New Rule Bond wording

## 226.10

- a) The Superintendent may require an increase in the amount of any bond in appropriate circumstances, including, but not limited to, a history of previous violations, uncollected royalties due, or when the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the Superintendent.
- (b) The increase in bond amount may be to any level specified by the Superintendent, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

# New rule 226.14

**Allegation:** This new rule gives the Superintendent new power to order further development that is “Arbitrary and Capricious”.

**Fact:** The Superintendent has had the power to order further development for the very same reasons since 1978.

# **Current (old) rule**

## **226.9 in place since 1978**

*Provided,* That the Superintendent, in his discretion, may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development.

# New rule wording

## 226.14

- ....the Superintendent in his/her discretion may order further development of any leased acreage or a specific horizon in any lease term if, in his/her opinion, a prudent lessee would conduct further development.
- A prudent lessee will diligently develop the minerals underlying the leasehold.
- The Osage Minerals Council has the right to request a determination of whether there is diligent development by the Superintendent as to any lease and may submit any materials or analysis to support its request.



# New rule 226.14

- **Allegation:** This rule gives the BIA new powers to terminate leases for not producing in paying quantities.
- **Fact:** The Superintendent has had the power to determine if a lease has terminated for lack of production since 1978, with no set time frame or structure to grant additional time for need.

# Old (current) rule wording

## 226.11

- The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production.

# New rule wording

## 226.14

- .....a lease that does not produce in paying quantities for 120 consecutive calendar days is thereby terminated by operation of law, effective immediately. The Superintendent will notify the lessee of such termination.
- (1) The Superintendent has the authority before termination to approve in writing a temporary suspension of operations tolling the 120-day period for a specified number of days, due to force majeure, other hardship, or other extenuating circumstance.
- Continued.....

# New rule 226.14 continued

- (2) Any request for a temporary suspension of operations must be made in writing to the Superintendent at least 20 calendar days prior to the expiration of the 120-day period in which the lease has not produced in paying quantities.
- (3) The Superintendent, for good cause, may extend in writing, the time of any temporary suspension of operations.
- (4) The Superintendent must provide a copy of any decision under this paragraph (e) to the Osage Minerals Council at the same time it is delivered to the lessee.

# New rule 226.53 a & b

- **Allegation:** That this rule for the disposition of property left on a lease terminated for cause, creates a new and unfair taking of personal property.
- **Fact:** Again the language of the new rule and the old are identical and have been in place for at least 25 years

# Old (current) CFR 226.29

- **(b) Upon cancellation of lease.** When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

# **New CFR**

## **226.53**

- **(b) Upon termination of lease for cause.**  
When there has been a termination for cause, the lessor is entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

# CFR 226.19

## using NYMEX monthly average

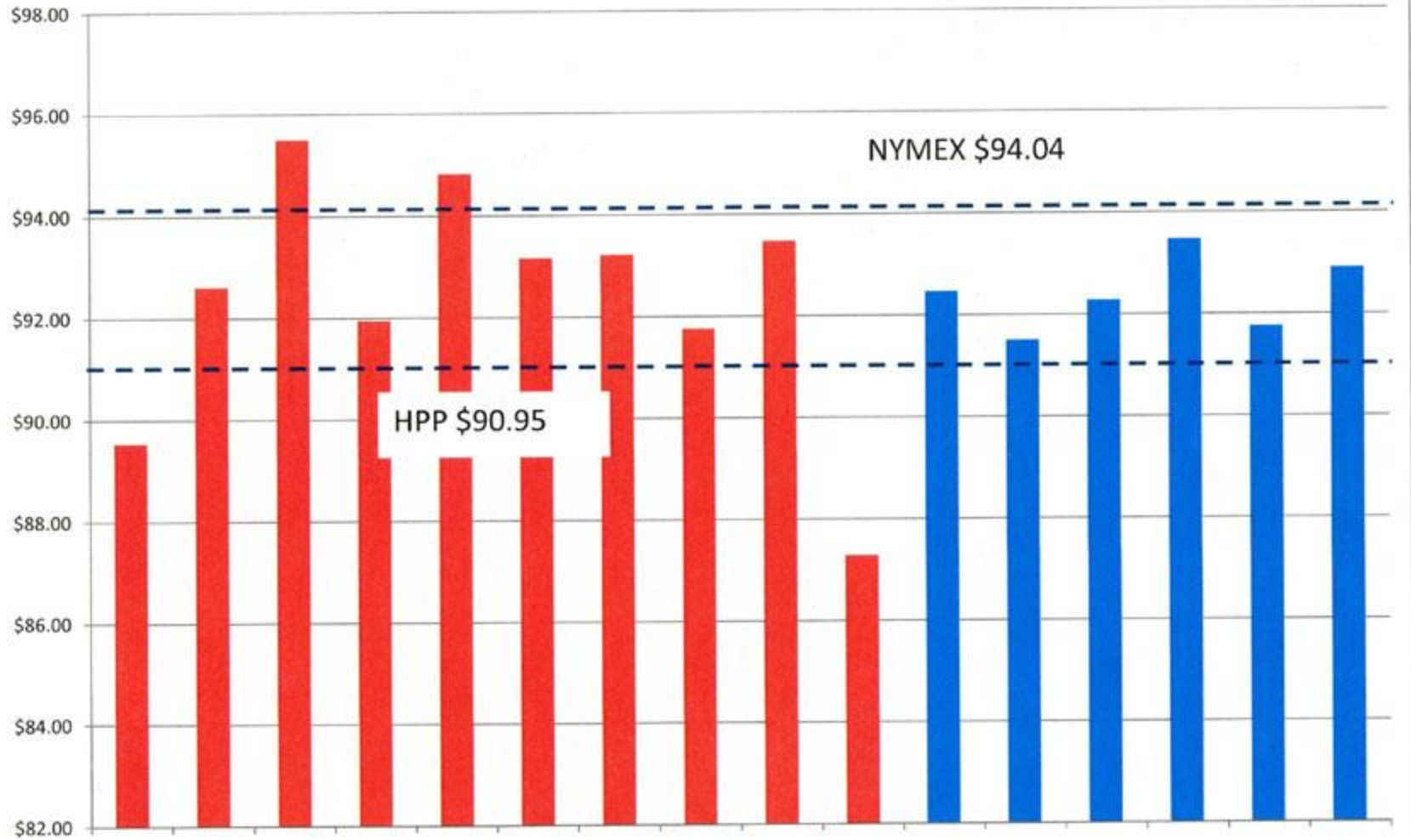
- **Allegation:** That using the Cushing NYMEX monthly average price as the index for Osage oil royalty, is unfair and unattainable by producers.
- **Fact:** Analysis of BIA oil sales data shows that between 35% and 45% of Osage oil sells at a price higher than the NYMEX monthly average.



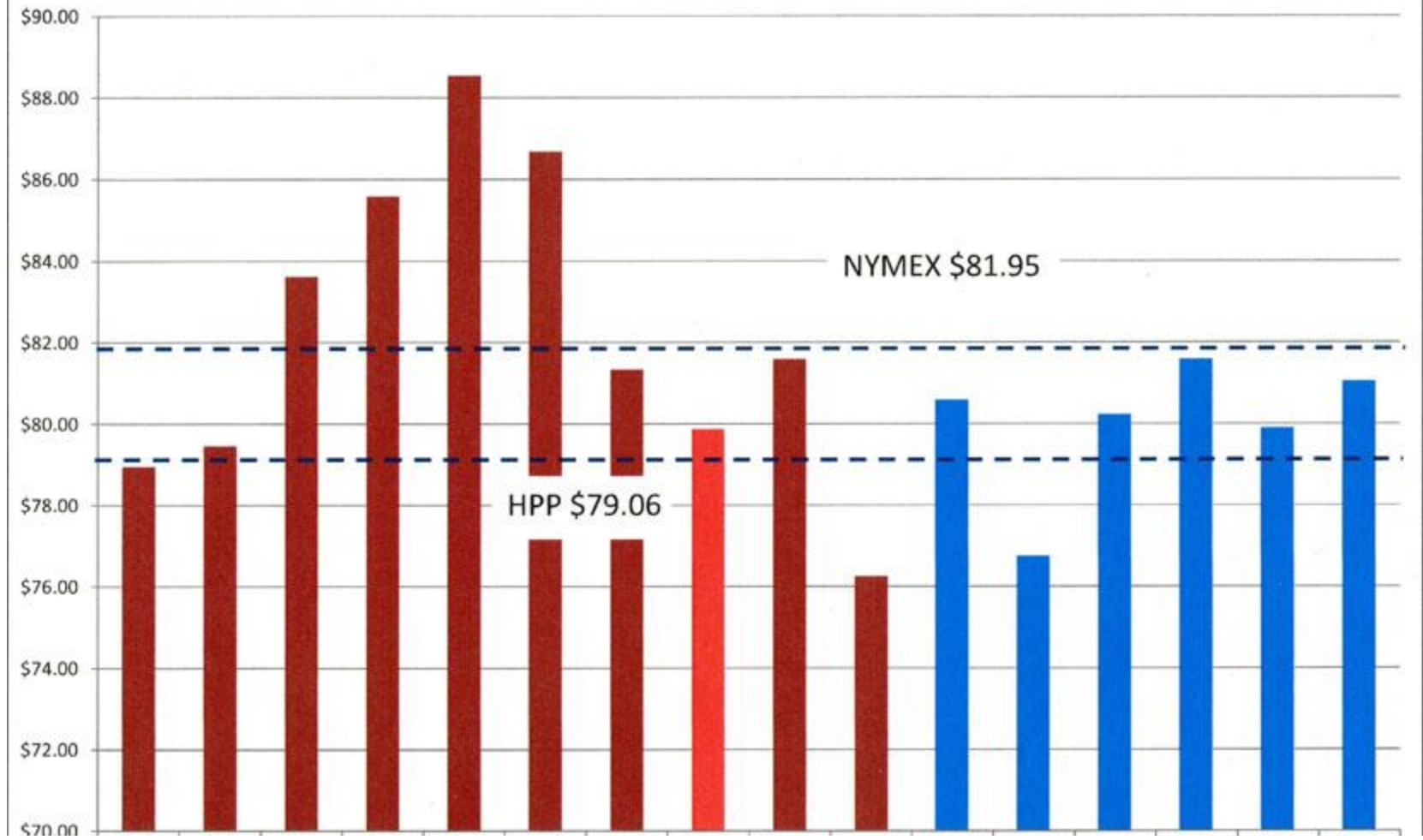
# Results of study of Osage oil sales data conducted during the Neg/Reg process

- May 2012 the total oil volume sold was 402,291 barrels. 140,699 barrels of oil (35%) was sold at a price above the NYMEX price of \$94.04 per barrel.
- June 2012 the total oil volume sold was 374,757 barrels. 138,581 barrels of oil (37%) was sold at a price above the NYMEX price of \$81.95 per barrel.
- July 2012 the total oil volume sold was 369,758 barrels. 166,391 barrels of oil (45%) was sold at a price above the NYMEX price of \$87.56 per barrel.
- August 2012 the total oil volume sold was 342,391 barrels. 120,629 barrels of oil (35%) was sold at a price greater than the NYMEX price of \$93.66 per barrel.

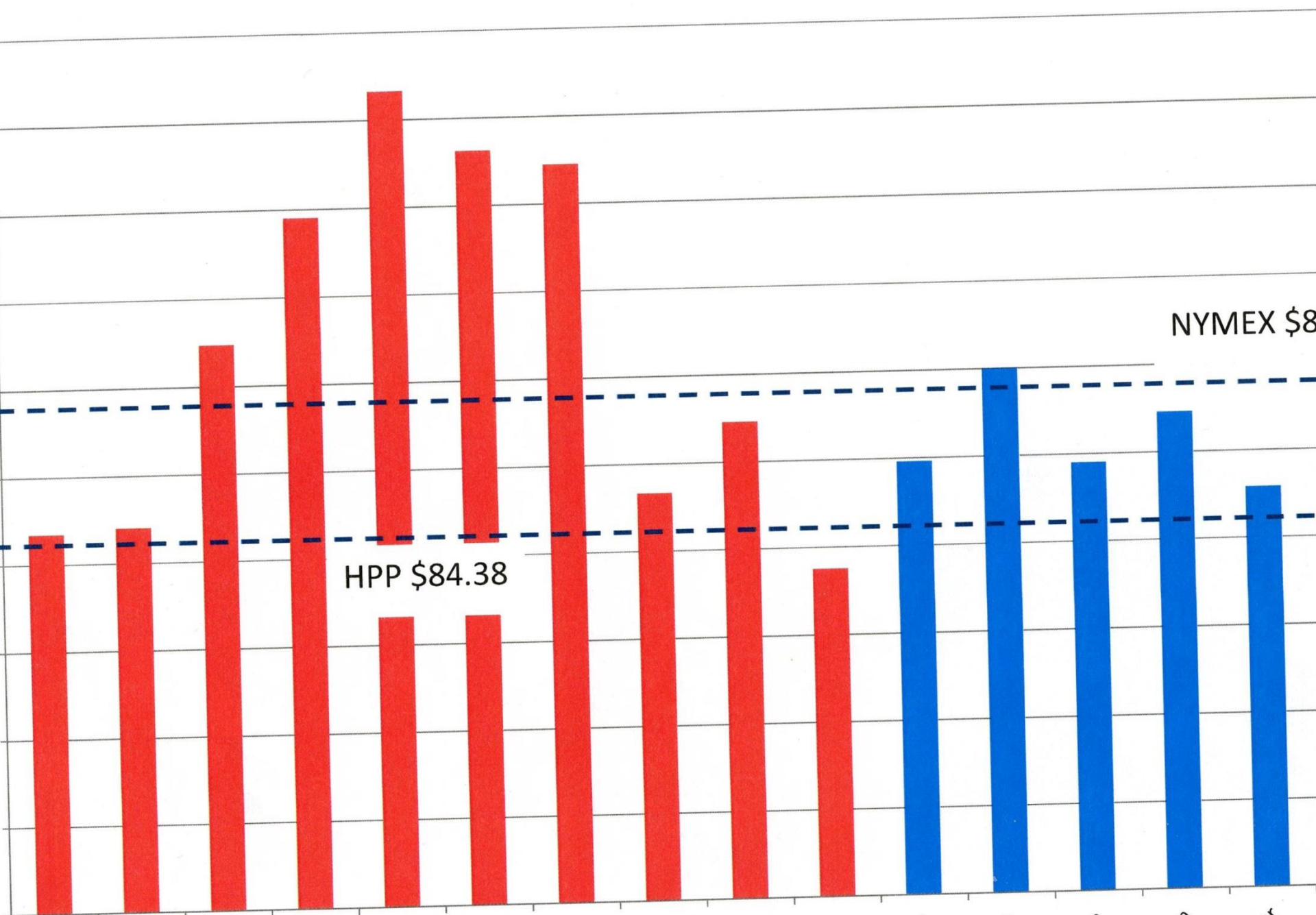
# May 2012



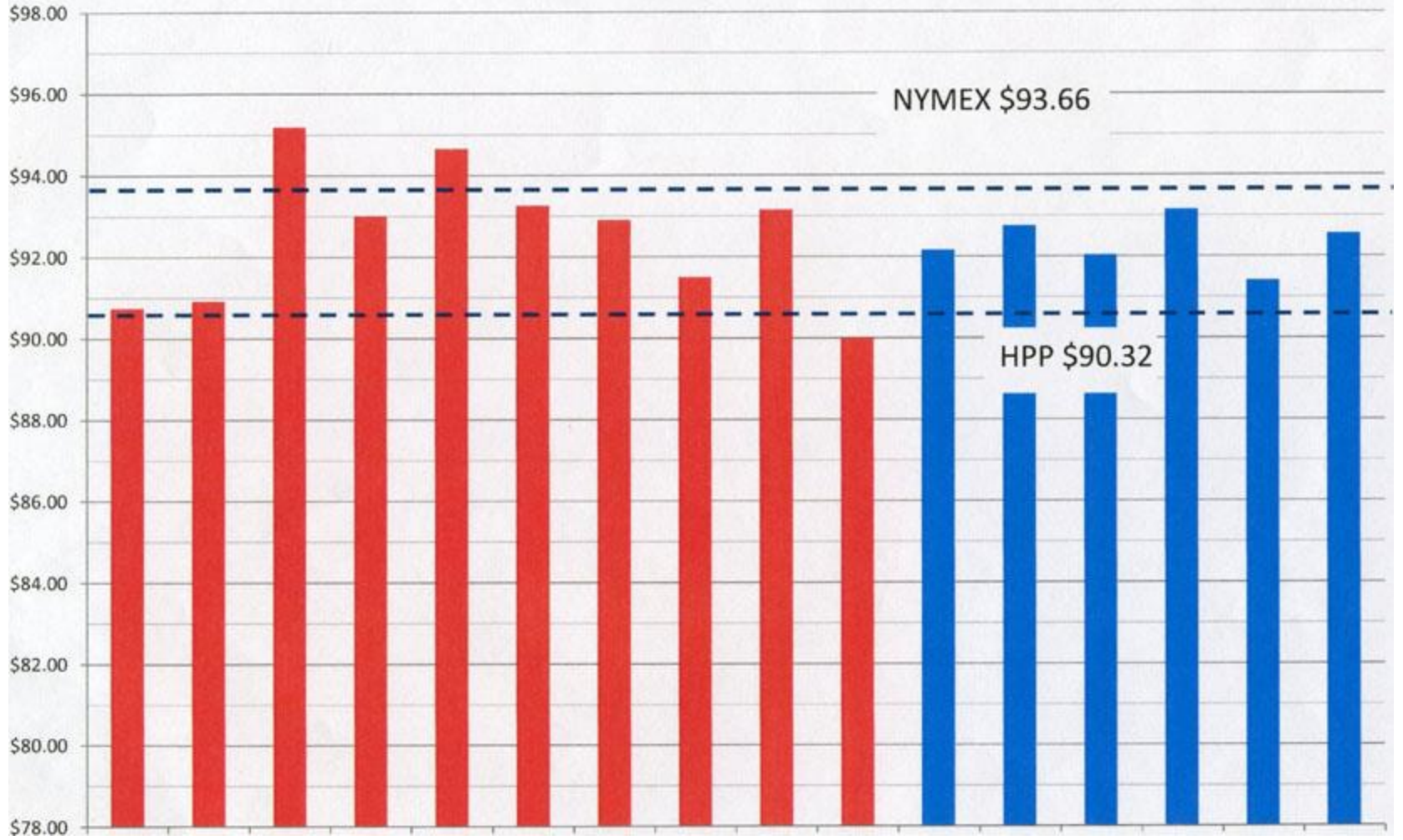
# June 2012



July 2012



# August 2012



# Mandate to replace HPP for royalty floor pricing

- Prior to 1994, and the introduction of HPP, the floor price for Osage oil royalty was “The highest price paid or offered in the region”.
- During the Trust case litigation the Federal Judge found that HPP was an unfair and unacceptable method of pricing Osage royalty.

# Four criteria were set for a replacement to HPP

- (1) It was appropriate for oil sold in Osage County,
- (2) It accurately reflected the oil market in Oklahoma,
- (3) was widely published,
- (4) independent.
- **NYMEX was the only benchmark that met all four criteria.**