

Assistant Secretary – Indian Affairs  
Office of Indian Energy and Economic Development



**Division of Energy and Mineral Development**  
Denver, Colorado



Renewable Energy Development  
Negotiated Commercial Lease  
(25 CFR 162)

# Commercial/Business Leases

- Business Leases cover both ground leases (undeveloped land) and leases of developed land (together with any improvements) on Indian land, authorizing the development or use of the leased premises (162.400).

# Lease Preparation

- The rental must be consistent with the agreed upon conditions between the lessee(s) and lessor(s).
- The rental can be calculated as a percent of income, gross or net, or income as a Guaranteed Minimum Annual Rental (GMAR), with recommended adjustments every five years, or both.
- Seek additional guidance on the assessment of the lease proposal if submitted documents need technical or specialized assessment. If a complicated lease, assistance from other offices may be required.

# Lease Preparation

## Corporations

1. Articles of Incorporation
2. Statement of Officers to Execute Papers
3. Evidence of Authority to Sign
4. Financial Statement(s)
5. Certificate of Good Standing
6. Corporate Resolution
7. Credit Report (if foreign corp.) or State Filing Report.

# Lease Preparation

## Limited Liability Corporations or Joint Ventures

1. Articles of Organization or Certificate of Information
2. Operating Agreement
3. Evidence of Authority to Sign
4. Financial Statement(s) (will be common)

# Lease Preparation

## Individuals

1. Financial Statement(s)
2. Individual Credit Report

## Partnerships

1. Partnership Agreement
2. Evidence of Authority to Sign
3. Financial Statement(s)

Verify the lessee address against business documents or other proper identification.

# Recommendation and Appeal

- Designated line official reviews the lease package and decides to approve or deny the lease transaction.
- If approved, the approval signature and the date approved are documented; or if the lease is denied, the basis of that determination is documented.

# Lease Negotiation

- A lease cannot be entered in to more than 12 months prior to commencement of the term of the lease. The lease may not provide any preferential right to future leases nor provisions for renewal, except as otherwise provided in accordance with 25 CFR 162.604 (e).
- The parties that should attend this meeting include:
  - The landowner(s)/Beneficiary or designated representative
  - BIA/tribal personnel (Realty, Environmental, Land Operations, etc.)
  - Prospective lessee(s)

# Lease Negotiation

- A determination of fair annual rental/value must be provided to the landowner even if the lease consideration negotiated is less than the fair annual rental.
- Leases may be approved by the Secretary at less than the fair annual rental when a determination is made that it is in the best interest of the landowners.

# Lease Negotiation

- If the proposed lease is categorically excluded, no consultation is necessary. Send the categorical exclusion (cat.ex.) exception checklist to the regional environmental office for signature.
- See NEPA Handbook Chapter 3 for directions on completing the checklist.
- If there is no response within 10 business days, email the regional environmental office with copies to the Regional Director, the Realty Officer and Central Office Division of Environmental and Cultural Resources Management for status of the pending categorical exclusion.

# IMDA Negotiated Agreements

No particular lease form is prescribed. In preparing the lease, consideration should be given, but not limited to, the inclusion of the provisions under 25 CFR 225.21.

# Indian Mineral Development Act of 1982

(IMDA; 25 U.S.C. §§ 2101-2108)

- The 82 Act eliminated any restrictions as to form of agreement and left all aspects of the agreement open to negotiation.
- Currently, the trend is for all new agreements to be IMDA agreements.

# The IMDA Agreement Provides:

- Tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement.
- Agreement may be entered for the exploration, extraction, processing, or other development of oil, gas, uranium, coal, geothermal, or other energy or non-energy mineral resources.
- United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement:

Provided, that the Secretary shall continue to have a trust responsibility to ensure that the rights of a tribe or individual Indian are protected.

# Negotiation Procedures

- IMDA allows Tribes to negotiate the best deal.
- No restrictions except those that are set forth within the law.
- BIA personnel advised of negotiations and provide technical assistance to avoid delays in obtaining approval.
- BIA is not involved in the negotiations without a direct request from the tribe.

# Negotiation Procedures

- The Secretary's role in the IMDA agreement is that of approving or disapproving the agreement.
- No particular form of agreement is prescribed.
- Recommend the inclusion of provisions under 25 CFR 225 (Indian Mineral Development Act of 1982 Recommended Provisions).

# Review of Agreements

- The Secretary has 180 days to process a fully executed proposed agreement.
- The Secretary shall prepare an economic assessment:
  1. Assurances in the agreement that operations will be conducted with appropriate diligence.
  2. The production royalties or other form of return on the resource is in the Indian mineral owners best interest.
  3. The agreement is likely to provide the Indian mineral owner with a share of the return on the production equal to what the owner might otherwise obtain through competitive bidding.

# Review of Agreements

- The Secretary shall prepare an environmental assessment.
- No requirement to prepare any study regarding environmental, economics or cultural effects of the implementation of a mineral agreement apart from that which may be required under Section 102(2)(c), of the National Environmental Policy Act of 1969 (42 USC 4332 (2)(c)).

# Approval of Agreements

- The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement
- Delivered for approval to the Regional Director or Agency Superintendent, depending upon delegation of authority.
- The following guidelines govern the review:
  1. An executed mineral agreement submitted for approval shall be approved or disapproved within:
    - a) 180 days after submission or,
    - b) 60 days after compliance if required, with Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(c)) or any other requirement of Federal Law, whichever is later.

# Approval of Agreements

2. A written determination as to whether the agreement is in the best interest of the Indian mineral owners.  
Determination shall address:

- a) Potential economic return to the tribe.
- b) Social effects.
- c) Environmental effects.
- d) Cultural effects.
- e) Provisions for resolving disputes.

# Approval of Agreements

3. 30 days prior to formal approval or disapproval, the Indian mineral owners shall be provided with written determination.
  - a) Recommendations for changes to the agreement.
  - b) All information pertaining to the approval or disapproval of an agreement is held as privileged and propriety information (except for the environmental document).

# Approval of Agreements

4. Decision notice shall set forth whether the following conditions have been met:
  - a) The agreement is in the best interest of the Indian mineral owner.
  - b) The agreement does not have an adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owners.
  - c) The agreement complies with the requirements of this part and all other applicable regulations or provisions of applicable Federal Law.

# Approval of Agreements

5. The authority to disapprove of an agreement lies with the Secretary with delegation no further than the Assistant Secretary for Indian Affairs. A written statement of the reasons why the agreement should not be approved shall be prepared and forwarded together with the agreement, the written findings, and all other pertinent documents, to the Assistant Secretary- Indian Affairs with a copy to the affected Indian mineral owner.

# Recommended Provisions

- General statement identifying the parties to the agreement.
- Specific legal description of the lands involved.
- Purpose of the agreement.
- Duration of the agreement.
- Statement indemnifying the lessors and the United States from all claims, liabilities and causes of action that may arise from the agreement.
- Obligations of the contracting parties.
- Methods of disposition of production.
- Amount and method of compensation to be paid.

# Recommended Provisions

- Accounting procedures to be followed by the operator.
- Operating and management procedures to be followed.
- Operator's right of assignment.
- Bond requirements.
- Insurance requirements.
- Audit procedures.
- Dispute resolution.
- Force Majeure provision.
- Rights of the parties to terminate or suspend the agreement.

# Recommended Provisions

- Nature and schedule of the activities to be conducted.
- Future abandonment, reclamation and restoration activities.
- Reporting production and sales.
- Conservation and efficient utilization of natural resources.
- Record keeping requirements.
- Applicable Regulations.

# IMDA BENEFITS

## Tribal Sovereignty through the IMDA Process

- You decide what type of agreement fits your needs.
- You negotiate the terms of your agreement.

## IMDA Provides Confidentiality

- You negotiate from a position of strength.
- Other parties cannot undercut your agreement.
- You provide your partner with the same benefits.