Geothermal Leasing on Tribal Lands

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Division of Energy Minerals Development - DEMD -
Division of Energy and Mineral Development
PROGRAM FUNCTIONS

Trust Asset Management
- Management of Indian Resource Data (NIEMR)
- Resource Management - NIOGEMS
- Drainage & Diligence

Technical Services
- Mineral Assessment Funding Program
- Oil & Gas Exploration / Development
- Mineral Exploration / Development
- Renewable Energy Development
- Advise / Review IMDA Agreements
- Outreach / Training

Policy and Legislative
- National Energy Policy
- Legislative Review
- Congressional Correspondence
Division of Energy and Mineral Development (DEMD)
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Reports to the Director –
Office of Indian Energy and Economic Development – Washington, DC

Assistant Secretary – Indian Affairs
Washington, DC
- Staff located in Lakewood, CO
  - centrally located to tribes,
  - close to Federal agencies with trust responsibilities

- Responsibilities
  - Energy & Mineral Development
  - Business and Economic Development

- No regulatory function

- No line authority to the Tribes.
DEMD - Responsibilities

• Provide technical, engineering and economic advice to manage and develop energy and mineral resources

• Generate effective energy and mineral development strategies

• Assist Indian mineral owners during IMDA negotiations
DEMD - Responsibilities

• Provide interpretations for exploration and development of resources

• Manage & maintain existing Indian energy & mineral data
DEMD Role?

Trust Responsibility
The Indian Minerals Development Act (IMDA),
&
Federal Oil and Gas Royalty Management Act,

Mandate that energy & mineral information & economic data related to energy & mineral development on Indian Trust lands are proprietary.
Before 1982, energy and mineral development on Indian lands was governed by

- Act of 1909 (Allotted lands)
- Act of 1938 (Tribal lands)
Sec. 3. (a). Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production, sharing, services, managerial, lease, or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a “Mineral Agreement”) providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or non-energy mineral resources (hereinafter referred to as “mineral resources”) in which such Indian tribes own a beneficial or restricted interest, or providing for the sale or disposition of the production or products of such mineral resources.
IMDA

• The ‘82 Act eliminated any restrictions on terms

• All aspects of the agreement are open to negotiation except those that are set forth within the regulations

• Agreements cover exploration and development of energy or non-energy mineral resources
IMDA

• Under an IMDA, the United States is not liable for losses

• The Secretary has a trust responsibility to ensure that the rights of a tribe are protected.

• New agreements are IMDA agreements.
• Include DEMD during negotiations to reduce delays in obtaining approval.

• DEMD is not involved in negotiations without a direct request from the tribe.
Agency Responsibilities

- DEMD – Advisory
- BIA – Advisory / Approval
- BLM – Regulatory
- ONRR – Auditing
- OST – Distributes Monies
Prospecting Permit/Agreement

IMDA Lease

Activity

Industry

Tribe

BIA

BLM

ONRR

REQUESTS MINERAL ASSESSMENT

NEGOTIATES/EVALUATES & AGREES TO INTEREST

Provides Assessment

Recommends Prospecting Permit Agreement

Company Submits IMDA Lease

Economics Consult

Economics NEPA Approval

Comparable Sales NEPA Input

Royalty Evaluation

BIA Regional Director Approval

ONLY Assistant Director Of Indian Affairs Can Disapprove
25 CFR 225
Indian Mineral Development Act

IMDA PROCEDURE
IMDA PROCEDURE

• Negotiate terms
• Tribal Resolution / Tribal Approval
• BIA Approval
  – Superintendent
  – Due diligence review - DEMD
  – Regional Director approval
Lease Negotiation

DEMD Involvement

• Assistance requested by Tribe
• Assist Tribes during process
• Technical review
  • Geology / Geophysics
  • Engineering
  • Feasibility
Lease Negotiation

DEMD Involvement

- Determine Tribal Role
- Tribal goals
- Tribal financial position

- Finance
  - Guaranteed loans
  - Grants
Lease Negotiation

• Verify identity of Lessee

• Economic evaluation

• Comparable lease valuation
  • Bonus
  • Royalties
  • Rentals
  • Terms
Lease Negotiation

• Work commitment/time deadlines
  • Seismic
  • Temperature wells
• Exploration
• Drilling
Lease Negotiation

- Suggest alternatives
  - Tribal joint venture / working interest
  - Carried working interest
  - Back-in working interest
- Expedite review & approval process
Lease Approval

• All IMDAs
  • Must comply with NEPA
  • Must conform to all federal laws
  • On-going federal approvals
Conclusion

DEMD

Assist Tribes with advice
planning negotiations
IMDA

Suggested Contract Sections

• Parties Involved
• Duration of contract
• Indemnification
• Obligations
IMDA

Suggested Contract Sections

• Disposition of Electricity
• Method & amount of compensation
  • Point of sales
• Accounting & electricity value
• Operating & Management Procedures
IMDA

Suggested Contract Sections

• Limitations of Assignments, Incl. Right of 1st refusal

• Bond Requirements

• Insurance Requirements

• Audit Procedures
Suggested Contract Sections

• Resolving disputes
• Force majeure
• Rights to terminate or suspend
• Procedures to follow if terminated or suspended
• Limited waiver of sovereign immunity
IMDA

Suggested Contract Sections

• Nature & Schedule of activities

• Proposed manner & time of performance of abandonment, restoration, reclamation

• Reporting of production & sales

• Unitizing or communitizing lands
Suggested Contract Sections

- Protect Resource
- Record keeping – additional requirements
DEMDO

Questions?
DEMD

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Agencies Involved

• Bureau of Indian Affairs (BIA)
  
  - (A) Advertises and conducts lease sales (Allottees). Receives bonus monies and first year rentals and approves leases
  
  - (B) Maintains current mineral ownership records
Agencies Involved

- **Bureau of Indian Affairs (BIA)**
  - (C) Makes determination as to whether or not the issuing of lease, permit, or mineral agreement constitutes a significant environmental impact. Environmental Compliance
  - (D) Disseminates copies of approved Leases, Permits and Mineral Agreements to ONRR, BLM and Lessees
Agencies Involved

• Bureau of Indian Affairs (BIA)

  – (E) Approves assignments and rights-of-way. Approves any subsequent agreement changes

  – (F) Cancels leases, permits and minerals agreements for due cause
Agencies Involved

• Bureau of Indian Affairs (BIA)

  — (G) Approves and maintains files on required bonds & corporate information

  — (H) Approves reclamation & abandonment procedures in consultation with BLM
Agencies Involved

• **Bureau of Land Management (BLM)**

  - (A) Provides pre-sale comparable appraisal and post-sale evaluation of tracts
  - (B) Requires compliance with 43 CFR operational regulations and other instructions
Agencies Involved

- **Bureau of Land Management (BLM)**
  
  - (C) Issues “Application for Permit to Drill” (APD) and maintains other required submitted forms
  
  - (D) Monitors all production activities & potential violation of regulatory requirements
Agencies Involved

- **Bureau of Land Management (BLM)**
  - (E) Prepares environmental documents
  - (F) Enforces compliance of environmental requirements
Agencies Involved

- **Bureau of Land Management (BLM)**
  - (G) Can provide engineering and technical assistance as needed
  - (H) Determines the adequacy of bonding
Agencies Involved

• **Bureau of Land Management (BLM)**
  - (I) Identifies reservoir and due diligence issues, notifies BIA and recommends actions for remedy
  - (J) Conducts production verification
Office of Natural Resources Revenue (ONRR)

- (A) Accounts for monies and production on producing leases that will be distributed to Indian mineral owners

  • Collects and transfers monies to the appropriate agency

  • Reconciles production volumes with revenue received

  • Royalty accounting regulations - 30 CFR 200
Agencies Involved

Office of Natural Resources Revenue (ONRR)

– (C) Conducts audits and compliance reviews.
– (D) Publishes quarterly bankruptcy list.
– (E) Negotiates settlements for disputed royalties
Agencies Involved in Leasing

- (A) Distributes monies received from
  
  • ONRR
  
  • $$$ in the OST lockbox on permits
  
  • According to BIA instructions

• Office of the Special Trustee for American Indians (OST)
Agencies Involved

• Office of the Special Trustee for American Indians (OST)
  
  – (B) Records receipts and disbursements in the Trust Fund Accounting System (TFAS)
  
  – (C) Reports receipts to beneficiaries via an Explanation of Payments (EOP)