

Bureau of Indian Affairs, Interior

§ 225.22

(b) Any individual Indian owning a beneficial or restricted interest in mineral resources may include those resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that inclusion of the resources is in the best interest of the individual Indian mineral owner.

§ 225.21 Negotiation procedures.

(a) An Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process. The Secretary shall provide advice, assistance, and information to the extent allowed by available resources.

(b) No particular form of minerals agreement is prescribed. In preparing the minerals agreement the Indian mineral owner shall, if applicable, address provisions including, but not limited to, the following:

(1) A general statement identifying the parties to the minerals agreement, the legal description of the lands, including, if applicable, rock intervals or thicknesses subject to the minerals agreement, and the purposes of the minerals agreement;

(2) A statement setting forth the duration of the minerals agreement;

(3) A statement providing indemnification to the Indian mineral owner(s) and the United States from all claims, liabilities and causes of action that may be made by persons not a party to the minerals agreement;

(4) Provisions setting forth the obligations of the contracting parties;

(5) Provisions describing the methods of disposition of production;

(6) Provisions outlining the method of payment and amount of compensation to be paid;

(7) Provisions establishing accounting and mineral valuation procedures;

(8) Provisions establishing operating and management procedures;

(9) Provisions establishing any limitations on assignment of interests, including any right of first refusal by the Indian mineral owner in the event of a proposed assignment;

(10) Bond requirements;

(11) Insurance requirements;

(12) Provisions establishing audit procedures;

(13) Provisions for resolving disputes;

(14) A force majeure provision;

(15) Provisions describing the rights of the parties to terminate or suspend the minerals agreement, and the procedures to be followed in the event of termination or suspension;

(16) Provisions describing the nature and schedule of the activities to be conducted by the parties;

(17) Provisions describing the proposed manner and time of performance of future abandonment, reclamation and restoration activities;

(18) Provisions for reporting production and sales;

(19) Provisions for unitizing or communitizing of lands included in a minerals agreement for the purpose of promoting conservation and efficient utilization of natural resources;

(20) Provisions for protection of the minerals agreement lands from drainage and/or unauthorized taking of mineral resources; and

(21) Provisions for record keeping.

(c) In order to avoid delays in obtaining approval, the Indian mineral owner is encouraged to confer with the Secretary prior to formally executing the minerals agreement, and seek advice as to whether the minerals agreement appears to satisfy the requirements of § 225.22, or whether additions or corrections may be required in order to obtain Secretarial approval.

(d) The executed minerals agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the minerals agreement, shall be forwarded by the tribal representative to the appropriate Superintendent, or in the absence of a Superintendent to the Area Director, for approval.

§ 225.22 Approval of minerals agreements.

(a) A minerals agreement submitted for approval pursuant to § 225.21(d) shall be approved or disapproved within:

(1) One hundred and eighty (180) days after submission, or

(2) Sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other

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requirement of Federal law, whichever is later.

(b) At least thirty (30) days prior to approval or disapproval of any minerals agreement, the affected Indian mineral owners shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove the minerals agreement.

(1) The written findings shall include an environmental study which meets the requirements of §225.24 and an economic assessment, as described in §225.23.

(2) The Secretary shall include in the written findings any recommendations for changes to the minerals agreement needed to qualify it for approval.

(3) The 30-day period shall commence to run as of the date the written findings are received by the Indian mineral owner.

(4) Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental study required by §225.24) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement; the financial return to the Indian parties thereto; the extent, nature, value or disposition of the mineral resources; or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian mineral owners. The letter containing the written findings should be headed with: PRIVILEGED PROPRIETARY INFORMATION OF THE (names of Indian mineral owners).

(c) A minerals agreement shall be approved if, at the Secretary's discretion, it is determined that the following conditions are met:

(1) The minerals agreement is in the best interest of the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impacts sufficient to outweigh its expected benefits to the Indian mineral owners; and,

(3) The minerals agreement complies with the requirements of this part and all other applicable regulations and the provisions of applicable Federal law.

(d) The determinations required by paragraph (c) of this section shall be based on the written findings required by paragraph (b) and paragraphs (b)(1) through (b)(4), inclusive, of this section. The question of "best interest" within the meaning of paragraph (c)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including, but not limited to, a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(e) If a Superintendent or Area Director believes that a minerals agreement should not be approved, a written statement of the reasons why the minerals agreement should not be approved shall be prepared and forwarded, together with the minerals agreement, the written findings required by paragraph (b) and subparagraphs (b)(1) through (b)(4), inclusive, of this section, and all other pertinent documents, to the Secretary for a decision with a copy to the affected Indian mineral owner.

(f) The Secretary shall review any minerals agreement referred with a recommendation that it be disapproved, and the Secretary's decision to disapprove a minerals agreement shall be deemed a final Federal agency action (25 U.S.C. 2103(d)).

§ 225.23 Economic assessments.

The Secretary shall prepare or cause to be prepared an economic assessment that shall address, among other things:

(a) Whether there are assurances in the minerals agreement that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on mineral resources is adequate; and

(c) Whether the minerals agreement is likely to provide the Indian mineral owner with a return on the production comparable to what the owner might otherwise obtain through competitive