

Memorandum of Agreement
Between
Bureau of Indian Affairs,
Office of Self-Governance,
Office of Natural Resources Revenue,
And
Bureau of Land Management

This Memorandum of Agreement (MOA) is made and entered into by and between and among the Bureau of Indian Affairs (BIA), Office of Self-Governance (OSG), Office of Natural Resources Revenue (ONRR) and Bureau of Land Management (BLM), pursuant to the Economy Act, 31 U.S.C. § 1535.

I. Purpose

The Secretary of the Interior (Secretary) issued Order No. 3377, Contractibility of Federal Functions for Oil and Gas Development on Indian Lands on December 16, 2019, providing policy guidance on inherently Federal functions for purposes of Tribal energy resource agreements (TERAs) and specifically addressing inherently Federal oil and gas functions. The Department of the Interior (Department) is committed to maintaining the Federal Government's unique and continuing relationship with, and responsibility to, federally recognized Tribes and individual Indians through meaningful self-determination policies. To ensure that Tribes may avail themselves of the opportunities to express self-determination, the parties enter into this MOA to coordinate, plan, and implement an Indian Self-Determination and Education Assistance Act (ISDEAA), program within the BLM and ONRR.

II. Background

The ISDEAA, as amended, authorizes federally recognized Indian Tribes and eligible Tribal organizations (TO) to request to contract or compact with the Secretary to plan, conduct, and administer eligible programs, functions, services, and activities (PFSAs), or portions thereof, including construction programs. 25 U.S.C. § 5321(a). Eligible PFSAs include those that are administered by the Secretary for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which it is performed (25 U.S.C. § 5321(a)(1)(E)) and those that are of special geographic, historical, or cultural significance to the requesting Tribe (25 U.S.C. 5363(c)).

The Indian Tribal Energy Development and Self-Determination Act of 2005 (Act) authorizes Federally recognized Indian Tribes to apply for and enter into Tribal Energy Resource Agreements (TERA) with the Secretary. Upon the Secretary's approval of a TERA, a Tribe may enter into certain energy-related business agreements, leases, and grant rights-of-way for energy resource development, including oil and gas development, on Tribal lands without the review and approval of the Secretary. Tribes may also request an ISDEAA contract/compact to assume operation of activities normally carried out by the Secretary, except for inherently Federal functions.

Secretarial Order No. 3377 directed that BIA, BLM, and ONRR coordinate and share resources to ensure that Federal staff are educated on the requirements of TERAs and ISDEAA contracts/compacts, and are able to adequately provide technical assistance to Tribes requesting such agreements. To provide such technical assistance to Tribes, the Solicitor's Office completed its review of the functions and subfunctions outlined in the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures, dated September 28, 2013, and developed a list of "inherently Federal" functions related to fluid mineral development that are not available for inclusion in an approved TERA. *See Annex*

A (Contractible Federal Functions and Activities Related to Indian Oil and Gas Development) and Annex B (Inherent Federal Functions and Activities Related to Indian Oil and Gas Development).

Definitions for purposes of this MOA:

1. *Awarding Official* means a BIA-trained and certified official responsible for negotiating, awarding, and monitoring self-determination contracts.
2. *Awarding Official's Technical Representative* (AOTR) means program staff that provide programmatic and administrative support to the Awarding Official. An AOTR is appointed by the Awarding Official in a designation letter.
3. *Compact* means a self-governance compact under Title IV of ISDEAA.
4. *Contract* means a self-determination contract under Title I of ISDEAA.
5. *FA* means a funding agreement under ISDEAA. Funding agreements may be annual or multi-year.
6. *ISDEAA* means the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, as amended, codified at 25 U.S.C. § 5301 *et seq.*
7. *IESC* means the Indian Energy Service Center in Lakewood, CO established in 2016.
8. *Self-Governance Tribe* means a tribe or consortium of tribes that has been admitted to participate in the DOI Tribal Self-Governance Program under Title IV of the ISDEAA.
9. *Subordinate Awarding Official's Technical Representative* means program staff that provide programmatic and administrative support to the Awarding Official. An AOTR is appointed by the Awarding Official in a designation letter.
10. *TEDO* means Tribal Energy Development Organization.
11. *TERA* means Tribal Energy Resource Agreement under the Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. No. 109-58, codified at 25 U.S.C. § 3501-3504, and as amended in Pub. L. No. 115-325, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
12. *TERA Regulations* means the BIA regulations published at 25 C.F.R. Part 224 implementing the Indian Tribal Energy Development and Self-Determination Act of 2005.
13. *Title I* means Title I of ISDEAA, 25 U.S.C. §§ 5321-5332, authorizing the Secretary to enter into self-determination contracts with Federally recognized Indian Tribes and eligible Tribal organizations.
14. *Title IV* means Title IV of ISDEAA, 25 U.S.C. §§ 5361-5368, establishing the Tribal Self-Governance Program.

III. Responsibilities

The parties share mutual responsibilities to Federally recognized Indian Tribes and have expressed interests in partnering with Tribes to effect meaningful self-determination policies. The BIA and OSG have operated ISDEAA programs since 1975 and 1990, respectively and can therefore lend their expertise to agencies and offices seeking to establish ISDEAA programs. Moreover, due to the unique statutory and regulatory requirements under ISDEAA, the Department has an interest in ensuring that any non-BIA bureau seeking to establish an ISDEAA program receives comprehensive guidance and technical assistance from experienced bureaus and offices.

Accordingly, the parties agree to the following:

A. BIA will:

1. Recruit a Self-Determination Specialist, GS-1101-11/12/13 to serve as the Awarding Official stationed at the IESC to award and administer Title I self-determination contracts for oil and gas activities on Indian lands with the BIA, BLM and ONRR.
2. Within 30 days of the effective date of this MOA:
 - a. Designate a point-of-contact who can facilitate the provision of technical assistance to BLM and ONRR regarding ISDEAA Title I self-determination contracts.
 - b. Provide BLM and ONRR with the FY 2020 Self-Determination Training Course Catalog and assist BLM and ONRR staff in registering for upcoming courses.
3. Conduct at least two (2) ISDEAA trainings in FY2020 for BLM and ONRR staff only. Trainings may be in-person or by webinar based on BLM and ONRR preference and availability.

B. OSG will:

1. Within 30 days of the effective date of this MOA, designate a point-of-contact who can facilitate the provision of technical assistance to BLM and ONRR regarding ISDEAA Title IV self-governance funding agreements.
2. Provide at least one (1) ISDEAA Title IV Tribal Self-Governance Program training in FY2020 for BLM and ONRR staff only. Training may be in-person or by webinar based on BLM and ONRR preference and availability.

C. BLM will:

1. Within 90 days of the effective date of this MOA:
 - a. enter into an Intra-agency Agreement with BIA to utilize the services of a regional BIA Awarding Official with awarding authority for the BIA region where the approved TERA is located.
 - b. Establish an ISDEAA review committee charged with identifying and resolving any regulatory or administrative challenges hindering the implementation and administration of ISDEAA contracts and self-governance funding agreements by BLM and direct the ISDEAA review committee to develop a best practices handbook that may be used to reference how to complete actions, process awards, apply past experiences, and provide overall guidance to carry-out program responsibilities
2. Provide necessary staff to serve as an Awarding Official's Technical Representative and Subordinate Awarding Official's Technical Representative (SAOTR).
3. Ensure BLM staff attend ISDEAA trainings offered by BIA and OSG.

D. ONRR will:

1. Within 90 days of the effective date of this MOA, enter into an Intra-agency Agreement with BIA to utilize the services of a regional BIA Awarding Official with awarding authority for the BIA region where the approved TERA is located.
2. Provide necessary staff to serve as an Awarding Official's Technical Representative and Subordinate Awarding Official's Technical Representative (SAOTR).
3. Ensure ONRR staff attend ISDEAA trainings offered by BIA and OSG.

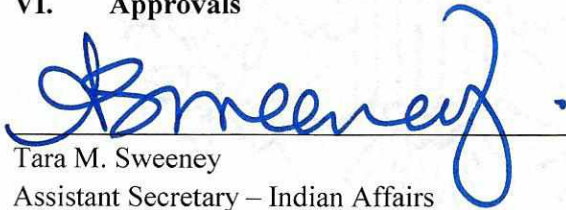
IV. Costs

In the first year of this MOA, each party will bear its own costs for performing the responsibilities listed under Section III. The parties will convene in the second year of implementation to reevaluate the terms of this MOA, including whether to enter into a reimbursable support agreement(s) to reimburse BIA for use of its Awarding Official.

V. Term, Amendment, and Termination

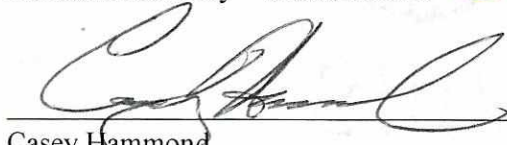
This MOA will remain in effect for 5 years but is subject to periodic review and modification upon written consent of the parties. Either party may terminate this agreement upon 30 days written notice.

VI. Approvals


Tara M. Sweeney
Assistant Secretary – Indian Affairs


FEB 24 2020

Date


Casey Hammond
Acting Assistant Secretary for Land and Minerals Management

FEB 24 2020

Date


Susan Combs
Assistant Secretary for Policy, Management and Budget

FEB 24 2020

Date

Contractible Federal Functions and Activities Related to Indian Oil and Gas Development

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
Tract selection <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Determine if an area has future potential leasing possibilities (i.e., mineral potential evaluation) • Analyze and identify tracts available for lease 	BIA	SOP II.B. through II.E.
Land Title and Records Office <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • TAMS encoding • Record title inquiries 	BIA	SOP III.C.1.
Environmental and cultural resources review <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Pre-approval review under TERA statute • Preparation of NEPA review for Federal approvals 	BIA	SOP II.H.
Surface lease approval and changes² <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Sale notice procedures • Issue lease document • Providing appropriate BLM office the lease sale bonus bid documents • Review assignor compliance history • Provide recommendation on bond adequacy prior to assignment approval • Execute or renegotiate gas storage agreement (if applicable) 	BIA	SOP III.A. through III.B.1.; III.C.; IV.H. through IV.H.4.; V.J.1b.

¹ "SOP" refers to Attachment A to the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures, issued by the Assistant Secretary for Policy, Management and Budget on September 27, 2013. Relevant SOP sections are listed solely to assist Tribes and contracting bureaus and offices in describing contractible functions.

² May be within scope of TERA or HEARTH Act authority; if not, not contractible (25 U.S.C. § 415).

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
<ul style="list-style-type: none"> • Ensure compliance with gas storage agreement reporting requirements (if applicable) • Can be on the mineral lease or off-lease 		
Surface lease inspection and enforcement <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Business leases • Verify gas storage injection, withdrawal volumes, and payment (if applicable) 	BIA	SOP II.A.; VIII.D.3.; 25 C.F.R. Part 162
Mineral lease approval and changes³ <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Negotiate lease terms • Consult with non-BIA bureaus on proposed lease terms • Assign record title • Review assignor compliance history • Consult with non-BIA bureaus if one or more leases are producing • Manage lease modifications, readjustments, resurveys, etc. • Consult with non-BIA bureaus if one or more leases are producing; on proposed non-standard lease terms; financial obligation adjustments; RIK agreement; and CRA agreement • Take corrective action, as appropriate • Document change of operator • Approval of assignments, subleases, or transfers of operating rights 	BIA	SOP II.G.; III.C.; III.G. through III.H.2.; IV.B.; IV.D.2a. through IV.D.2c.; V.C.; V.D.
Lease enforcement <i>Includes, but is not limited to:</i>	BIA	SOP III.F.1; III.F.2; III.F.4.; III.F.5.; VI.A.1a; VI.A.1b; VI.A.1e.; VIII.D.1.; IX.B.; XI.A.

³May be within scope of TERA; if not, not contractible (25 U.S.C. §§ 396a-g).

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
<ul style="list-style-type: none"> • Conduct well status determinations; “release” decisions; suspension of operations and/or production decisions; relinquishments • Bill, collect, and account bonuses on Indian fluid mineral leases, rental on leases, and other lease related revenue, and deposit into appropriate accounts • Verify non-royalty lease revenues • Impose civil penalties and assessments, where appropriate • Resolve protests and appeals 		
<p>Lease cancellation</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> • Consult with non-BIA bureaus on proposed lease terminations and cancellations • Revoke ability of a person or company to engage in leasing activities 	BIA	SOP III.I.1. through III.I.2a.; III.J.1; III.J.2.; IX.C.1. through IX.D.; IX.F.1
<p>Communitization or unitization agreements (CA/UA) approval</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> • Consult with non-BIA bureau on CA/UA • Managing CA/UA agreements 	BIA	SOP IV.F. through IV.F.2.; IV.F.4. through IV.F.6.; IV.G.1. through IV.G.7.; IV.G.12 through IV.G.16.
<p>Securing and enforcing bonds</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> • Request bond accuracy determinations • Review bond reduction requests • Monitor bonding sufficiency • Work with other Bureaus to demand performance from the surety • Consult with other Bureaus on all bond termination/relinquishment requests • Bond release 	BIA	SOP III.E. through III.E.3.; V.R.4.

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS¹
Rights-of-way, renewals (including roads associated with development)⁴ <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Approving and renewing ROWs, including on-lease and off-lease 	BIA	SOP III.B.2
ROW enforcement <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Bill, collect revenues • Enforce reclamation requirements 	BIA	25 C.F.R. Part 169
Location of trust lands <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Determine trust land locations • Consult with non-BIA bureau to identify drainage, wells drilled without approval, and acreage for CA/UA agreements 	BLM	SOP I.B.
Federal surface lease approval (Indian minerals)⁵ <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Approving and renewing Federal surface leases over Indian minerals 	BLM	
Approval of Applications for Permit to Drill (APDs) <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Approving APDs 	BLM	SOP V.A.; V.E.
Indian mineral lease inspection and enforcement <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Drainage review 	BLM	SOP IV.D. through IV.D.1a.; IV.D.1c.; V.G. through V.J.1a.; V.J.2. through V.R.3.; VI.E.; VIII.A.; VIII.B.; VIII.B.1.; IX.A.; IX.B; XI.A.

⁴ May be within scope of TERA; if not, not contractible (25 U.S.C. §§ 323-328).

⁵ May be within scope of TERA; if not, not contractible (43 U.S.C. § 1752, § 1761).

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
<ul style="list-style-type: none"> • Take corrective action, as appropriate (e.g., entering into a CA/UA agreement, relinquishment, drilling protective well) • Notice of cessation of drainage • Review Indian lease operations to ensure diligent development • Authorize disposal of produced water • Approve well deepening or plug-back • Maintain up-to-date well reference data • Review Notices of Intent to Convert to Injection • Approve well converted to water supply on lease site • Notify non-BIA bureaus of inappropriate claims of beneficial use • Verify production • Ensure measurements are in compliance with the Standard of Accuracy • Approve departures from Standard of Accuracy and off-lease measurement • Approve surface commingling • Determine avoidable loss of royalty-bearing minerals • Approve venting and flaring • Inspect alleged thefts • Manage down-hole abandonment • Administer and accept reclamation of leases • Evaluate operator restoration plans, and any modifications, as applicable • Monitor for reclamation compliance • Consult with other Bureaus on determinations of avoidably lost minerals • Prepare and coordinate compliance strategies • Inspect and enforce surface compliance • Process undesirable events • Initiate order to cease production (i.e., shut-in) • Impose civil penalties and assessments, as appropriate 		

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
<ul style="list-style-type: none"> Resolve data discrepancies and coordinate with other Bureaus, as needed 		
<p>Production oversight</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> Issue production notices and maintain up-to-date well reference data Provide and verify monthly volumes and quality information for past drainage, to be assigned a value and billed for compensatory royalty due Issue notice of cessation of drainage for the need to terminate Compensatory Royalty Agreement (CRA) Provide other Bureaus with first or last production notice; nonpaying unit determination; and plans of development Determine number of countable wells and production rates Verify production and coordinate with other Bureaus on work plans Validate production inventories Monitor vented or flared volumes Request operators modify OGORS when volumes are unacceptable Work with other Bureaus to resolve missing production reports Maintain up-to-date well reference data 	BLM	<p>SOP III.F.3.; IV.D.1b.; IV.D.2d.; IV.D.2e.; IV.E.; IV.F.3.; IV.G.8. through IV.G.11; V.F.; VI.B.1a; V.B.1b.; VIII.C.1.; VIII.C.1b. through VIII.C.3.; XI.A.3.</p>
<p>Securing and enforcing bonds (for surface of split estate)</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> Request value of a trust surface estate Prepare, execute and administer surface use agreements (see approval of Rights-of-way, above) If no surface agreement is reached, securing a bond to cover surface damages Monitor bonding sufficiency 	BLM	<p>SOP III.B.2a. through III.B.3a</p>

FUNCTIONS	BUREAU	RELEVANT SOP SECTIONS ¹
<ul style="list-style-type: none"> • Work with other Bureaus to demand performance from the surety • Consult with other Bureaus on all bond termination/relinquishment requests • Bond release 		
Mineral appraisals <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Provide mineral assessment and mineral valuation • Determine fair market value for mineral leasing purposes 	AVSO, BLM	SOP I.A.; II.F.
Royalty compliance <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Prepare and coordinate annual compliance work plan • Process undesirable events • Perform sales volume comparison • Verify that rents and royalties are paid • Verify reported commodity prices and claimed allowances • Verify reported royalty rates • Verify royalty recoupments 	ONRR	SOP VIII.A.; VIII.B.1.; VIII.C.1a.; VIII.D.2. through VIII.D.2b.

Inherent Federal Functions and Activities Related to Indian Oil and Gas Development

Functions	Bureau	Relevant SOP sections ¹
Archaeological Resources Protection Act permit Federal action under 16 U.S.C. § 470cc <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Issuance of permit for excavation or removal of any archaeological resource on Federal or Indian lands 	BIA	
Royalty collection Federal action under Section 202, Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), Pub. L. 97-451, 96 Stat. 2447, (Jan. 12, 1983). <i>Includes, but is not limited to:</i> <ul style="list-style-type: none"> • Collection and accounting of post-production royalties • Bill for late or underpaid royalties and additional royalties from compliance activities • Bill for additional royalties from drainage assessments and avoidably lost minerals • Perform debt collection activities, including referral to the Department of the Treasury • Receipt, entering, monitoring, correcting, and transmitting production and royalty data 	ONRR	SOP VI.A.1c.; VI.A.1d; VI.A.1f; VI.C.; VI.E.; VI.F.; IX.E.; IX.F.; XI.A. through XI.A.4
Royalty distribution	ONRR, OST	SOP VII.A. through VII.D; VII.E.2. through VII.G.

¹ “SOP” refers to Attachment A to the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures, issued by the Assistant Secretary for Policy, Management and Budget on September 27, 2013. Relevant SOP sections are listed solely to assist Tribes and contracting bureaus and offices in describing contractible functions.

Functions	Bureau	Relevant SOP sections ¹
<p>Federal action under Sections 104 and 105, FOGRMA</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> • Transfer of royalty payment to OST for deposit in appropriate accounts • Issue Explanation of Payment Report(s) 		
<p>Issuance of royalty orders and Notices of Noncompliance</p> <p>Federal action under Section 109, FOGRMA</p> <p><i>Includes, but is not limited to:</i></p> <ul style="list-style-type: none"> • Issuance of Order to Report, Order to Perform, and other Orders • Issuance of Notice of Noncompliance for knowing and willful or other violation of Orders, statute, or regulations 	ONRR	SOP VIII.C.1.; IX.B.