



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

National Policy Memorandum

**Bureau of Indian Affairs
Office of Trust Services**

Number: NPM-TRUS-34 A2

Effective: 5/03/18

Expires: 5/03/19

Title: Revised Communitization Review Procedures – Amendment 2

1. Purpose

This memorandum extends NPM-TRUS-34 A1, Revised Communitization Review Procedures – Amendment 1, issued April 14, 2017, for one additional year. Indian Affairs' (IA) official system of record, the Trust Asset and Accounting Management System (TAAMS), will be programmed to include the tracking of Communitization Agreements (CAs). However, until that enhancement is implemented, the CA process and Google Tracking Sheet procedure documented within this memorandum still apply.

Changes to the CA transmittal process have become a necessity given the increase in cooperative agreements being filed by industry, and the surge in caseload backlog of this activity. This policy explains the CA Google Tracking Sheet procedure, which allows for the tracking of CAs throughout the review and approval process. The CA process involves the documented receipt and review of royalty allocation agreements for completeness and accuracy, coordinating the adjudication of said agreements with the Bureau of Land Management (BLM), and preparing the CAs for Bureau of Indian Affairs' (BIA) approval.

2. Scope

This policy applies to all IA programs, offices, regions, and agencies involved in the CA process.

3. Policy and Procedures

All BIA regions and agencies will immediately discontinue the practice of utilizing the “pre-CA” or any similar process to allocate royalties using unapproved documents of producing oil and gas leases. All offices will review their current procedures and take corrective measures, if necessary, to ensure the timely review, adjudication, and approval (in final form) of CAs. In addition, BIA will utilize the CA Google Tracking Sheet (available at: <https://sites.google.com/a/bia.gov/division-of-real-estate-services/bia-minerals/ca-tracking>) to

track all pending CAs including those documents that are approved but not yet recorded under their jurisdiction.

It is important to track the CA from the initial filing through recordation with the Land Title Records Office (LTRO) in order for the Title Status Report (TSR) to show the CA as an encumbrance on the land. The CA Tracking Instructions (Attachment 2) must be used for the CA Google Tracking sheet. The listed cells contain the information that is needed to track the CAs throughout the approval process.

Companies, or their representative(s), **will submit CAs directly to the BIA Regional Director or Superintendent of the Agency which has jurisdiction over the trust mineral properties involved.** If any trust mineral acreage is included in the CA well spacing, the CA will be considered an Indian CA.

1. The submitted agreements will be logged according to regional/agency correspondence process. The receipt date at the agency/region location will be the official “receive date” for BIA.
2. Upon receipt of a proposed CA, the instructions found on the CA Google Tracking sheet will need to be followed.
3. At least one (1) original will be forwarded, or retained, by the BIA Agency with jurisdiction for review.
4. At least one (1) original or copy will be forwarded to the BLM for adjudication.
5. At least one (1) copy to the Tribe, when tribal acreage is involved, and a copy to an Indian mineral owner, when requested.

Agencies are advised, upon receipt of their review copy, to perform a “quick review” in order to determine if there are problems which may ultimately delay CA approval. Receiving a review copy early in the process allows adequate time to identify any problems that may exist with the CA, so that a solution may be devised and implemented before well completion and royalty payment activity. For example, solutions for acreage mismatches require coordination between BIA, BLM, and the company/operator, if royalty payment delays are to be avoided.

Critical Check Points for BIA Agency Review:

1. Ensure proper inclusion of all trust tracts within the CA area and the status of those tracts (unleased/leased/primary term date).
2. Ensure that proper **net** acres are attributed to the CA for each tract.
3. Ensure that correct percentages are assigned to each trust tract on the recapitulation page of the CA.
4. See the Communitization Checklist (Attachment 3) for complete details.

Problems uncovered by the initial BIA review should be addressed quickly by notifying both the company and BLM of the apparent problems noted. It is the responsibility of BLM and the company to provide an approvable CA document to BIA; however, BIA should take the lead in documenting potential acreage errors that will affect royalty payments. This is an important step

considering the length of time it takes for the agreements to be adjudicated and recommended for approval.

It is the responsibility of the BIA, as the approving office, to monitor the review and adjudication time frames. BIA agencies are encouraged to actively participate in the process with BLM and the company.

This procedure is in accordance with BIA's regulations at 25 CFR 211.28 and 212.28, and will facilitate the processing of CAs submitted by the companies for approval. This will provide for more accurate management of the CA receipt date, lease expiration(s), and future lease decisions. This procedure also more accurately follows the current Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures (SOP), Attachment A, Section IV, Formal Agreements.

It is at the BIA's discretion to approve a CA which has been filed late by a company; however, the company filing late or filing with the wrong office (e.g. BLM) jeopardizes the CA's approval.

The BLM will immediately return CAs to companies and/or operators who file CAs with them rather than with the appropriate BIA office. The attached Notice (Attachment 1) can be provided to your respective BLM office for their use as a cover Notice to industry. BIA agencies and regions may also provide this Notice to oil and gas companies doing business within their areas of jurisdiction.

All CAs must be encoded, imaged, and recorded in Indian Affairs' official system of record, TAAMS, within 24 hours after approval (during normal business hours). A copy of the approved CA must be provided to BLM and to the Department of the Interior's Office of Natural Resource Revenue (ONRR) within 10 business days of approval.

4. Roles and Responsibilities

- A. **Director, BIA** is responsible for establishing policy and guidance for oil and gas leases, agreements, and associated procedures.
- B. **Deputy Bureau Director – Trust Services, BIA** is responsible for developing standardized procedures, communicating those policies and procedures to the field, and monitoring compliance.
- C. **Regional Directors** are responsible for approval of oil and gas agreements.

D. Agency Superintendents are responsible for timely review and adjudication of agreements, the coordination of corrections, and the approval and recording of agreements. Agency Superintendents may also be responsible for approval of oil and gas agreements.

5. Approval



5-3-2018

Darryl LaCounte
Acting Director, Bureau of Indian Affairs

Date

Attachment 1

NOTICE TO OPERATORS COMMUNITIZATION AGREEMENT SUBMISSION REQUIREMENTS as of 2015

Please be advised that all Indian Communitization Agreements must be filed with the Bureau of Indian Affairs (BIA).

25 CFR 211.28 and 212.28 state: “A request for approval of a proposed cooperative agreement . . . must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.”

Indian Communitization Agreements, as referred to in this Notice, are defined as “Indian” when there is any interest of trust lands (either tribally and/or individually owned) in the proposed agreement area, regardless of interest amount.

The risk of not having an approved agreement in place before the expiration of the Indian lease(s) is the company’s and may be the result of the company’s failure to properly file the Indian CA with BIA. Filing the CA with the Bureau of Land Management (BLM) will NOT be accepted as compliance with the regulations or this Notice.

If BLM receives an Indian CA from an operator, they will immediately return the CA to the operator, with this Notice. The company will then submit the agreement to the BIA office that has jurisdiction over the lands involved.

Attachment 2

Revised: December 13, 2016

CA GOOGLE TRACKING INSTRUCTIONS

As a result of a recent GAO audit (GAO-16-553), recommendations were identified to be implemented for Communitization Agreement (CA) tracking, processing and setting timeframes with regards to the approval of CAs. CA approval is a coordinated effort between the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM). This coordinated effort has been outlined in the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures (SOP), which can be found on the BLM website:

https://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION/_energy/oil_and_gas.Par.5734.File.dat/Interagency_SOP.pdf

There are identified responsibilities for each Federal agency in the SOP, which provide specific tasks in the process. There have not been any requirements with regard to timeframes to complete certain tasks, except as provided in 25 CFR 212.28, which requires BLM to provide a written recommendation to the BIA within 30-days of a request for review. The lack of timeframes has led to backlogs and third parties being unsatisfied with the approval timeframe.

The BIA has formulated a CA Google Tracking sheet to address the GAO recommendations. This Google sheet is located on the Division of Real Estate Services (DRES) site: [Insert URL for the Google Tracking Sheet site].

Below are the fields to be encoded and/or tracked in the Google sheet. The fields highlighted in GREEN will be used to establish timeframes to complete tasks within the CA review and approval process. The spreadsheet will contain the following information for each CA that is submitted to the BIA.

Agency/Region, example A00, A06
Land Area Code
CA Number
Operator Name
Well Name/Number
Is the well on trust lands
Formation(s)
Legal Description of Communitized Area
Total CA Acres
Tract/Allotment (Same cell separated by comma)
Leases within the Communitized Area (Same cell separated by comma)
Number of trust leases within the CA
Initial Package Received Date
Complete Package Receipt Date (original copies)
Package returned to company, if applicable
Was CA filed timely in accordance with 25 CFR 211.28(e) and 25 CFR 212.28 (e)
Date Requested Recommendation from Agency/Region, If applicable

1

Attachment 2 (continued)

Revised: December 13, 2016

CA GOOGLE TRACKING INSTRUCTIONS

Date Received Recommendation from Agency/Region, If applicable
Date Requested Recommendation from BLM
Date Received Recommendation from BLM
Consent (if needed)
NEPA Final Approval Date
IESC assistance
First Production Date
CA Approval Date
Date of Distribution of the Approved CA
Date Sent/Scanned to LTRO
Date Recorded By LTRO

Our goal is to have a tracking mechanism in TAAMS, which will require enhancements to the system. Until the enhancements can be made, BIA will implement the CA Google Tracking sheet for tracking and monitoring purposes.

When you receive the initial CA for review and approval, ensure that it is a complete package. If complete, proceed with encoding the appropriate information into the CA Google Tracking sheet. Some items will have a drop down list for easy selection, while some items are free form enabling you to type the information requested. If the package is incomplete, the date of receipt of the incomplete package can be encoded into the Initial Package Received Date.

The following list provides a short definition and encoding instructions.

Agency/Region: Jurisdiction where the CA is located, using the appropriate code. (Example: C51- Blackfeet)

Land Area Code: The land area code where the CA is located. (Example: 812 – Pawnee. If there is more than one LAC, separate by commas.

CA Number: The CA number that is assigned by BLM. (free form)

Operator Name: The operator named on the CA (free form)

Well Name/Number: Name(s) of well involved in CA. If there is more than one, separate by commas. (free form)

Is the well on trust lands: This will provide information regarding the well(s) within the CA location. This cell has a drop-down menu: YES or NO.

Formation: Identify the formation in which the CA is communitizing. If there is more than one formation, separate by commas. (free form)

Attachment 2 (continued)

Revised: December 13, 2016

CA GOOGLE TRACKING INSTRUCTIONS

Legal Description of Communitized Area: At a minimum, Section, Township, Range, Meridian. (free form - Example: 36-1S-2W)

Total CA Acres: Enter the total acres for the entire CA not just the trust acres. (free form)

Tract/Allotment: Identify the trust tract(s)/allotment(s) within the CA. If there is more than one tract, separate by commas, entering the TAAMS Tract number. (free form)

Leases within the Communitized Area: Identify the trust lease(s) within the CA. If there is more than one lease, separate by commas, entering the TAAMS Document ID. (free form)

Number of trust leases within the CA: Enter number of trust leases in the CA.

Initial Package Receipt Date: Enter the date the CA package is received, whether or not it is a complete package. (DATE: MM/DD/YYYY)

Complete Package Receipt Date: Enter the date a complete package is received. The initial package may be complete and the two dates may match. If you request additional information or changes/updates from the operator, this will be the date in which you receive the final request. (DATE: MM/DD/YYYY)

Package Returned to Company, if applicable: If a package needs to be returned, insert that date here. (DATE: MM/DD/YYYY)

Was CA timely filed in accordance with 25 CFR Part 211.28 (e): In accordance with both 211.28 (e) and 212.28 (e), a CA must be filed 90 days prior to expiration of any one of the trust leases involved in a CA. This cell has a drop-down menu: YES or NO.

Date Requested Recommendation from Agency/Region, If applicable: Insert the date a recommendation was requested from Agency/Region. (DATE: MM/DD/YYYY)

Date Received Recommendation from Agency/Region, If applicable: Insert the date a recommendation was received from the Agency/Region. (DATE: MM/DD/YYYY)

Date Requested Recommendation from BLM: Insert the date a recommendation was requested from BLM. (DATE: MM/DD/YYYY)

Date Received Recommendation from BLM: Insert the date a recommendation was received from BLM. (DATE: MM/DD/YYYY)

Consent (if needed): Consents to a CA may be required although most leases have the consent as a part of the lease. If consent is required select the drop-down 'YES'. If consent is required but not obtained yet, select the drop-down 'NO'. If consent is a part of the lease provision and not required, select the drop-down 'N/A'.

Attachment 2 (continued)

Revised: December 13, 2016

CA GOOGLE TRACKING INSTRUCTIONS

NEPA Final Approval Date: Insert the date when NEPA compliance has been achieved, i.e. approval of the Categorical Exclusion (CATEX) checklist. (DATE: MM/DD/YYYY)

IESC Assistance: The Indian Energy Service Center is requested to assist with certain work on CAs. If the IESC assisted with the approval of the CA, please indicate as such. This cell has a drop-down menu: YES or NO.

First Production Date: Insert the first production date from the BLM notification memo. (DATE: MM/DD/YYYY)

CA Approval Date: Encode the date the CA was approved by the BIA line official, either Superintendent or Regional Director. (DATE: MM/DD/YYYY)

Date of Distribution of the Approved CA: Encode the date when approved copies are sent to the appropriate parties. (DATE: MM/DD/YYYY)

Date Sent/Scanned to LTRO: Encode the date the CA has been sent or scanned to LTRO for recording. (DATE: MM/DD/YYYY)

Date Recorded By LTRO: Encode the date the CA was recorded by LTRO. This is important for the recorded CA to show on a Title Status Report. (DATE: MM/DD/YYYY)

When a date is entered, the line will turn green and show the whole process as completed.

Attachment 3
Communitization Agreement Checklist

Submitted By: _____

First Date Submitted To BLM or Agency: _____

Lease No. (No.'s): _____

Allotment No. (No's): _____

Section _____ Township _____ Range _____ County _____

Participating Acres _____ Total Acres _____

Well Name: _____ Location: _____

Unit Well Located on: Indian Surface _____ Fee Surface _____

- 1.) Are all Tracts in the section (spacing unit) leased? Yes _____ No _____
(If No, make a notation in your memo as to leasing action)

- 2.) Do all leases have at least 90 days or more before expiration? Yes _____ No _____
(If No, make a determination in your memo as to the disposition of the leases)

- 3.) Is there a signed "Affidavit of Mailing to All Indian Owners"?? Yes _____ No _____

- 4.) Are Lease Numbers accurate? Yes _____ No _____

- 5.) Are Legal Descriptions Accurate? Yes _____ No _____

- 6.) Are Acreage and Net Acreage Descriptions Accurate? Yes _____ No _____

- 7.) Are Tract Acreage Percentages on the Recapitulation page correct? Yes _____ No _____

- 8.) Are required NEPA document(s) completed and attached? Yes _____ No _____

- 9.) Is the language in the CA agreeable to the intent of the lease? Yes _____ No _____

- 10.) Is a pooling and/or spacing order enclosed? Yes _____ No _____

Checklist Completed By: _____

Checklist Reviewed By: _____

Recommended For Approval By: _____