



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

OIL AND GAS LEASING IN INDIAN COUNTRY: AN OPPORTUNITY FOR ECONOMIC DEVELOPMENT




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SEP 24 2012

Memorandum

To: Donald E. Laverdure
Acting Assistant Secretary – Indian Affairs

Marcilynn Burke
Acting Assistant Secretary, Land and Minerals Management

From: Mary L. Kendall 
Deputy Inspector General

Subject: Final Evaluation Report – Oil and Gas Leasing in Indian Country:
An Opportunity for Economic Development
Report No. CR-IN-BIA-0001-2011

This memorandum transmits the results of our final evaluation report on oil and gas leasing in Indian Country. Our review concluded that Indian oil and gas leasing is not achieving its full economic potential. Numerous problems contribute to a general industry preference to conduct business on private, Federal, and state lands before considering Indian lands. Indian landowner frustration with some of these conditions has led to legal action against BIA. We found, however, that improving Federal oversight could help stimulate oil and gas development on Indian lands.

Specifically, we found that Indian oil and gas development would benefit from a more dedicated and coordinated management focus. Indian leases have increased to almost 17,500 in the last 5 years, yet BIA does not have formal policies and procedures to ensure consistency and transparency of its leasing actions. This lack of Federal guidance frustrates Indian mineral owners and the energy industry. In addition, complex regulations, insufficient funding, and liability concerns hinder tribal efforts to assume greater control over oil and gas leases. Outdated and unapproved BIA guidance documents increase the possibility for inconsistent and unproductive energy-related decisions. Further, application of environmental reviews and mineral appraisals remains inconsistent. BIA also has no long-term planning process and no follow-up process to ensure implementation of recommendations to correct internal control review weakness.

Although some issues with oil and gas leases on Indian lands do not have an easy solution, many opportunities still exist for the U.S. Department of the Interior (DOI) to improve conditions for leasing.

We make nine recommendations to strengthen DOI's management of Indian oil and gas development. Based on management's response to the draft report (see Appendix 3) we consider recommendation 2 to be resolved and implemented, with no further action required. We consider

recommendations 3, 4, 7, 8, and 9 to be resolved but not implemented (see Appendix 4), and we will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track their implementation. We consider recommendation 1 to be unresolved (see Appendix 4), however, and request Indian Affairs to follow through with its plan to appoint a senior official, keeping OIG informed of the steps taken regarding this issue. Finally, we consider recommendations 5 and 6 to be unresolved (see Appendix 4) and we are asking Indian Affairs to reconsider the responses to these recommendations.

Please provide us with a written response within 30 days. The response should provide information detailing actions DOI has taken or plans to take to address the unresolved recommendations, officials involved, and target dates for implementation. Please address your response to:

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The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented.

We appreciated the cooperation and assistance of Indian Affairs staff. If you have any questions regarding this report, please call me at 202-208-5745.

Table of Contents

Results in Brief	1
Introduction.....	2
Objective	2
Background	2
Findings.....	4
Oil and Gas Management Emphasis	4
NEPA Implementation	7
Mineral Appraisals	9
Support for Indian Self-Determination	10
Promising Technologies and Practices.....	11
Other Impediments Identified	12
Additional Issues.....	13
Conclusion and Recommendations.....	16
Conclusion.....	16
Summary of Recommendations	16
Appendix 1: Scope and Methodology.....	20
Scope	20
Methodology	20
Appendix 2: TERA Process	22
Appendix 3: Indian Affairs Response.....	25
Appendix 4: Status of Recommendations.....	39

Results in Brief

The Bureau of Indian Affairs (BIA or Bureau) reviews and approves oil and gas and other mineral leases on Indian lands, which represent billions of dollars in overall annual economic benefits, significant to Indian Country. The Bureau does this without a formal program backed by consistent administrative guidance and protocols. Our review found opportunities for BIA to improve its oversight of oil and gas leases on Indian lands.

Insufficient guidance and oversight of oil and gas leases by U.S. Department of the Interior (DOI) agencies have frustrated tribal officials and members, agency employees, and the energy industry in Indian Country. In addition, Federal attempts to support tribal sovereignty through the use of tribal energy resource agreements under the Energy Policy Act of 2005 have been hampered by complex regulations, insufficient funding, and tribal concerns about assuming increased responsibility. Outdated and unofficial BIA guidance documents also increase the likelihood for inconsistent, ineffective decisions at the local level. These problems contribute to a general preference by industry to acquire oil and gas leases on non-Indian lands. As a result, oil and gas leasing in Indian Country is not achieving its full economic potential, and frustration with leasing inefficiencies has led Indian landowners to take legal action against BIA.

Although some issues with oil and gas leases on Indian lands do not have an easy solution, many opportunities still exist for the DOI to improve conditions for leasing. BIA personnel with oil and gas responsibilities comprise a dedicated workforce, committed to advancing leases on Indian lands. We did find, however, that these same employees often do not have the necessary resources to provide efficient assistance.

We also found a critical need for focused, coordinated program management of Indian oil and gas development. As Indian oil and gas leases have increased to 17,500 in the last 5 years, BIA continues to approve leases without formal policies and procedures to ensure consistency and transparency. BIA inconsistently applies National Environmental Policy Act requirements and has no long-term planning process.

We make 9 recommendations to strengthen BIA's management of Indian oil and gas development and help DOI fulfill the intent of the Energy Policy Act of 2005, by supporting Indian self-determination through oil and gas lease development.

Introduction

Objective

We initiated this evaluation to determine the extent to which the U.S. Department of the Interior (DOI) supports or impedes oil and gas economic development in Indian Country. We specifically analyzed —

- the ability of the Bureau of Indian Affairs (BIA) and the Office of Indian Energy and Economic Development (IEED) to administer and coordinate Indian oil and gas leasing, including their ability to respond to workload changes;
- the effectiveness of services provided by the Bureau of Land Management (BLM) for Indian oil and gas leasing, including the preparation of mineral valuation determinations prior to sales; and
- the economic development potential of Tribal Energy Resource Agreements (TERAs) and the reasons why none have been authorized.

Appendix 1 contains the details of the scope and methodology for this report.

Background

According to the U.S. Department of Energy, Indian land represents a very small percent of the United States' land base, but contains an estimated 10 percent of the Nation's energy resources. In a combined area slightly larger than the state of Utah, Indian Country has approximately 17,500 active oil and gas leases. Five of the 12 BIA regions (Eastern Oklahoma, Great Plains, Rocky Mountain, Southern Plains, and Western) contain 96 percent of these oil and gas leases. Of these active leases, about 10,700 were issued in the past 5 years. Royalties received from Indian leases exceeded \$430 million for fiscal year (FY) 2011.

Despite the large number of leases, BIA does not have a formal oil and gas program to provide oversight and assistance. Energy is only one of many component areas managed by BIA's realty division under its Trust Services directorate. Trust Services, in turn, manages five other divisions in addition to realty. The Bureau also has relatively few employees with education and work experience specific to oil and gas. Accordingly, employees stationed at regional or agency offices typically acquire their knowledge through experience and formal training obtained while on the job.

An agreement titled "A Memorandum of Understanding between BIA, BLM, and MMS Regarding Working Relationships Affecting Mineral Lease Activities" outlined the oil and gas responsibilities of DOI bureaus. Signed in 1991 and commonly known as the Tripartite Agreement, the document also was intended to foster cooperation among the bureaus and clarified that BLM may perform mineral valuations prior to Indian lease sales upon request from BIA.

Until the early 1980s, BIA sold oil and gas leases on behalf of Indian tribes. With the enactment of the Indian Mineral Development Act of 1982, however, tribes generally have taken over the responsibility. Most tribal leases now are sold by tribal governments, while allotted leases are negotiated between Indian owners and companies, with BIA involvement. BIA still holds a limited number of lease sales each year for Indian lands, mostly in Oklahoma. To fulfill its trust responsibility, BIA approves all Indian leases and, along with IEED, provides technical assistance to Indian mineral owners upon request.

More recently, another vehicle was created to foster self-determination. The Energy Policy Act of 2005 allows tribes to assume energy functions from BIA, both through a formal process and by documenting the specific arrangements in a TERA.

Finally, BIA's approvals of tribal leasing and development activities are subject to the National Environmental Policy Act (NEPA). Under NEPA, Government agencies must consider environmental impacts prior to undertaking any major Federal action. Possible impacts must be identified and publicly disclosed, with mitigation solutions considered.

Findings

Indian Country has considerable potential to benefit from oil and gas development. Oil and gas revenue could strengthen tribal economies, improve the welfare of individual tribal members, provide significant employment opportunities, and increase the production from U.S. domestic energy reserves. We identified impediments, however, that prevent the full development of these resources.

Due to various factors, some of which are beyond BIA control, the oil and gas industry generally considers Indian leases to be their lowest priority, preferring to lease private, state, and federally owned lands first. Impediments to development include —

- no coordinated strategy and organizational structure to manage BIA's oil and gas activities;
- inconsistent policies and procedures among regions;
- funding shortfalls;
- complexities associated with self-determination;
- extra layers of governmental review;
- fractionated ownership of allotted lands;
- dual taxation;
- perceived risk of doing business with tribal governments and allottees; and
- high well permit fees assessed by BLM.

In addition, tribes and BIA managers stated that BIA is not sufficiently funded or staffed to manage the oil and gas workload. The scope of the workload is wide and BIA operates under tight deadlines. Further, many BIA employees do not have specialized education or work experience in oil and gas and, therefore, cannot always effectively assist Indian mineral owners.

Incentives for the oil and gas industry to conduct business in Indian Country may be overlooked. Oil and gas leases in Indian Country provide opportunities for industry to secure large tracts of land to explore and develop. In addition, tribal leases give industry a chance to negotiate with a single property owner who controls many thousands of acres of contiguous land. Oil and gas reserves on Indian land also remain relatively unexplored.

Oil and Gas Management Emphasis

Despite impediments to oil and gas lease development in Indian Country, the extent of current annual leasing activities is enormous. About 17,500 oil and gas leases exist on Indian reservations serviced by 18 BIA agency offices, mostly in the western United States. Revenues and other economic impacts such as jobs and related businesses from oil and gas and other mineral leases represent billions of

dollars in overall annual economic benefits. This leasing-related income helps fund Government operations and basic services for tribal members.

With so much at stake both for tribes and industry, oil and gas constitutes a substantial activity that warrants more attention. In the absence of an established program or a director to manage its heavy oil and gas workload, BIA currently cannot provide this focus. BIA has neither short- nor long-term goals, or performance measures. Consequently, BIA does not take an active role in overseeing activities that range from exploring potential energy reserves to identify leasing prospects, constructing well pads, drilling wells, producing oil and gas resources, and restoring the land after production ceases. BLM provides assistance, but BLM also has a much broader role in that it manages Federal leases. Thus, Indian Country competes with Federal lands for BLM's attention and resources.

Coordination is especially needed when unexpected increases in oil and gas development negatively impact a tribe's infrastructure. North Dakota has been experiencing a significant oil boom in recent years, which has also impacted the Fort Berthold Reservation in the western part of the state. Significant oil reserves were discovered on this reservation in 2005. Within the next few years, tribal landowners sold approximately 2,000 leases and drilling commenced. Although the tribe welcomed the financial benefits, the unanticipated drilling activities burdened existing infrastructure, including reservation roads, law enforcement capacity, food and water availability, housing, social services, and medical services. These impacts even now have not been fully addressed.

Fort Berthold was unprepared for its oil boom. During our fieldwork, we heard that other reservations may soon experience an oil boom and are likewise unprepared. Fort Peck Agency officials in Montana, for example, said the local reservation has no strategy to deal with a major leasing increase expected in the near future.

Notably, the two reservations described above are located in a rich oil producing region known as the Bakken shale formation underlying North Dakota, Montana, and the Canadian Province of Saskatchewan. Indian reservations in this and other regions are prime candidates for increased oil leasing in the coming years.

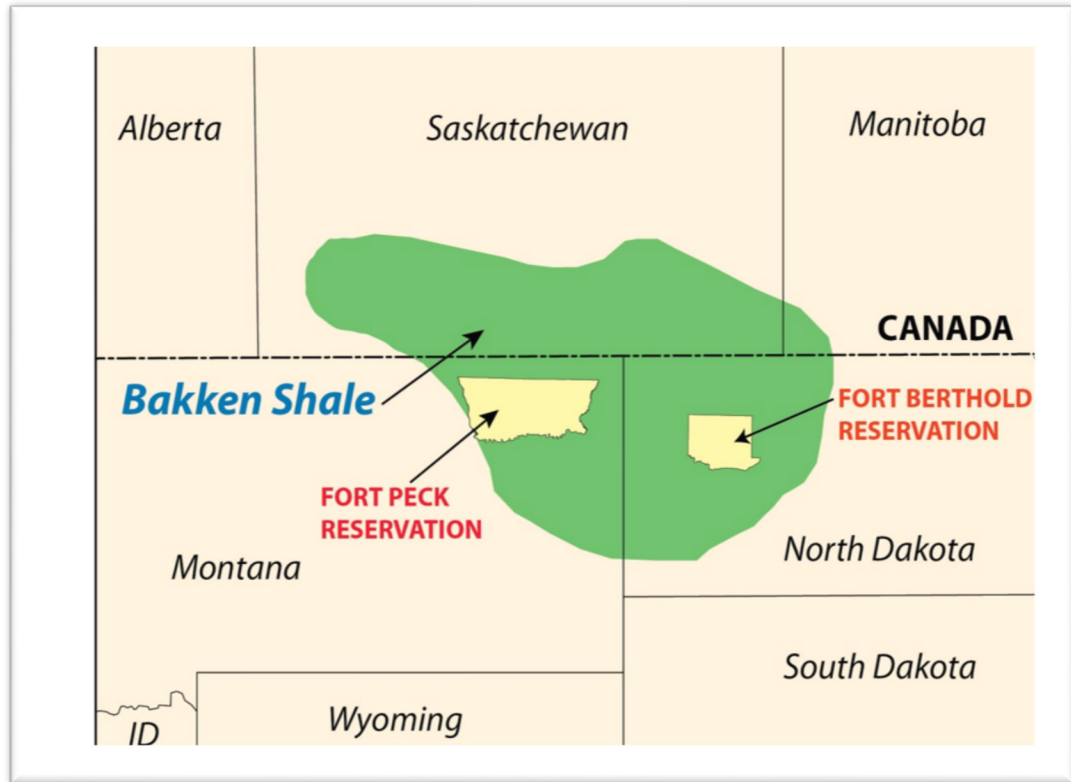


Figure 1. Bakken shale formation along with affected tribal reservations. Image courtesy of Office of Indian Energy and Economic Development.

We found outdated and inconsistently applied BIA policies and procedures covering oil and gas exploration. For example, the document titled “Procedural Handbook for Mineral Estate Fluids,” issued without formal approval or implementation in 2006 and last updated in March 2007, is still considered a draft and, therefore, is inconsistently applied. BIA regional and agency offices use the handbook to varying degrees or not at all. When we notified BIA officials of this issue, they agreed to finalize the handbook by April 2012. Originally signed in 1991, the Tripartite Agreement delineating the oil and gas responsibilities of BIA, BLM, and Office of Natural Resources Revenue (ONRR) is also outdated. In response to Office of Inspector General (OIG) notification, BIA officials stated that the agreement would be renewed in 2012.

DOI does have a steering committee to address Indian energy and minerals, but this body serves only in an advisory capacity. Consequently, oil and gas issues tend to be handled reactively without the benefit of prior planning, and whatever progress is made is not evaluated. Such an environment can lead to negative outcomes. For instance, tribes complain that BIA officials at regional and agency offices lack the expertise to provide effective assistance. Tribes with extensive oil and gas experience and expertise may even consider BIA to be a hindrance to resource development. The situation is serious enough that tribes and individual

tribal members are threatening legal action against BIA for alleged mismanagement of oil and gas.

Transfers or assignments of leases from one company to another are an accepted industry practice. We learned, however, that oil and gas leases have been used speculatively and that when leases are transferred between companies without tribal notification the process is derogatively known as “flipping.” Flipping occurs when a company acquires an Indian lease for investment or speculative purposes without actually intending to develop the property. Tribal officials expressed frustration about not being informed beforehand. They indicated that some transfers resulted in significant profits to the company, in which the tribe did not share. To date, BIA has not established a policy on this issue.

Overall, BIA has placed little emphasis on oil and gas operations in Indian Country. Without a new focus on oil and gas BIA cannot set consistent policy, establish procedures, anticipate changes in workload, troubleshoot problems, provide daily direction and overall coordination, and measure performance.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

1. Designate a senior official to manage Indian oil and gas activities conducted by BIA and IEED;
2. Complete necessary revisions and updates and formally implement the “Procedural Handbook for Mineral Estate Fluids”; and
3. Work with BLM, ONRR, and the Office of the Solicitor to update and approve the provisions of the Tripartite Agreement.

NEPA Implementation

While the circumstances for each reservation and lease vary, BIA field offices are inconsistently applying NEPA to oil and gas leases in Indian Country. NEPA broadly applies to all BIA approvals of tribal leases. Some BIA field offices and Indian reservations satisfy NEPA by completing environmental studies for all areas to be included in a potential lease before that lease is approved. At a later leasing phase, they further comply with NEPA by conducting more focused site reviews required for applications for permit to drill (APD) before drilling operations commence.

Other field offices and tribes perform just the specific site reviews needed for APDs, citing NEPA’s categorical exclusions to fulfill the environmental review for actions having no individual or cumulative impact on the human environment.

A categorical exclusion enables BIA and tribes to expedite the permit process by eliminating a more detailed environmental review. Reviews conducted at the APD phase, however, tend only to cover impacts on the immediate area of the well without considering the potentially broader impacts to the overall leased area or to the reservation.



Figure 2. Impacts of drilling extend beyond the well pad. In this case, an oil spill on the Blackfeet Reservation in Montana led to mitigation downstream. Photo by OIG.

According to regulations issued by the Council on Environmental Quality (40 CFR 1501.2) as well as BIA's own NEPA handbook, NEPA should be considered at the earliest stage of a major Federal action. We believe that BIA's involvement in oil and gas lease approvals on Indian lands constitutes a major Federal action. To date, however, there has been no national-level directive regarding the timing of NEPA reviews for tribal leases.

Federal regulations require BIA to commence the NEPA process at the earliest possible time. While the level of analysis required for specific projects will vary, a standard BIA policy to require the necessary NEPA compliance at the earliest stage of leasing potentially diminishes long-term oil and gas impacts on highways, water, and basic services in Indian Country, as well as on the land designated for pipelines and access roads. In addition, tribal governments have authority to require additional environmental reviews and protection. Tribes potentially benefit from larger scale pre-lease environmental studies analyzing

such cumulative impacts of oil and gas leasing as increased truck traffic, construction, and water demands, enabling them to develop their resources without adversely impacting the overall reservation environment.

Although tribes might benefit from these broader reviews, funding them remains difficult, unlike funding site-specific APDs that, paid by industry applicants, place no additional financial burden on BIA or the tribe. Industry, however, has no incentive to fund larger, pre-lease studies, since these studies occur prior to lease ownership and cost significantly more. In addition, these broader reservation studies could delay development of Indian resources by requiring environmental studies during two separate phases. Tribal governments and BIA may need to explore alternative funding avenues such as cost-sharing with industry, since oil and gas development is a mutually beneficial endeavor.

More consistent NEPA application would eliminate conflicting requirements on reservations and allow for greater predictability for industry.

Recommendation

4. We recommend that the Assistant Secretary for Indian Affairs review and, as necessary, revise NEPA compliance policies to establish consistency across Indian Country.

Mineral Appraisals

A mineral appraisal documents the market potential of the various minerals (oil and gas in this instance) on a tract of land. Specifically, the appraisal identifies the potential existence of oil and gas deposits, estimates the volume of production, assesses the likelihood and timeframes that minerals may actually be produced, and identifies potential competing leases that could prevent the lease from being developed. The appraisal also helps prevent bid rigging and collusion among prospective companies. This specialized appraisal area is a critical component of the leasing process and should be performed by a licensed minerals economist.

We found, however, that appraisals are sometimes not conducted or are performed by less-than-qualified personnel. Accordingly, before entering into lease negotiations with oil and gas companies, Indian mineral owners often do not know the value of their resources. These owners are at a disadvantage when negotiating such critical matters as the dollar amount of the bonus bid, the royalty rate, and timeframes for drilling the first well.

Once signed, a lease agreement is a binding contract. This means that land owners need to bargain for favorable lease terms up front. According to the 1991 Tripartite Agreement, BIA may ask BLM to assess the fair market value of proposed bonus bids prior to leasing. We were informed by BLM that, once the existing BIA workload has been completed, BLM will discontinue its Indian

Country valuation services. The minerals appraisal function of BLM has been transferred to DOI's Office of Minerals Evaluation (OME). OME, however, has insufficient funding and staff to meet the nationwide demand for appraisals.

Tribes are beginning to demonstrate their frustration. A legal complaint filed in the U.S. Court of Federal Claims in 2011 alleges that BIA has not fulfilled its fiduciary duties to obtain fair market value for Indian landowners and allottees at the Fort Berthold Reservation.

Recommendation

5. We recommend that the Assistant Secretary for Indian Affairs direct BIA to work with BLM and OME to identify potential high value prospects and conduct mineral appraisals for these prospects, as appropriate.

Support for Indian Self-Determination

The Indian Tribal Energy Development and Self-Determination Act of 2005, which was part of the Energy Policy Act of 2005, established Tribal Energy Resource Agreements (TERA) to promote Indian self-determination by enabling tribes to develop their own energy resources. Six years after enactment of the law, however, no tribe has applied for an oil and gas agreement. Tribal officials at various reservations expressed concerns regarding the increased and unreimbursed costs that tribes would incur after assuming functions formerly performed by BIA, increased tribal liability should oil and gas deals fail, and the complex regulatory process to implement TERAs (see Appendix 2). In addition, only tribal-owned leases may participate in a TERA, which excludes those reservations having mostly individual or allotted ownership.

We have no comment on the tribal objections but believe that more can be done to further tribal self-determination goals. BIA and tribes currently do not use a collaborative format, such as compact agreements or a memorandum of agreement detailing the specific tasks the tribe would like to assume. BIA has not revisited the TERA regulations with the intention of simplifying and streamlining the process.

Recommendation

6. We recommend that the Assistant Secretary for Indian Affairs review and work with DOI and Congress to revise, if necessary, the TERA statutes and regulations to enable Indian tribes to exercise self-determination over tribal oil and gas operations.

Promising Technologies and Practices

Technologies and practices beneficial to BIA oil and gas development have been implemented only sparingly across Indian lands. IEED has developed software known as the National Indian Oil and Gas Evaluation Management System (NIOGEMS). This represents a significant improvement over the current Trust Asset and Accounting Management System database for managing oil and gas activities, including leasing and production data, by incorporating geospatial information as well as a digital mapping capability. The Wind River Agency in Wyoming reported a tenfold improvement in productivity for certain realty activities after implementing NIOGEMS.

NIOGEMS, however, is used at only 12 reservations across the country, and use at these sites is inconsistent. For example, the Blackfeet Tribe uses NIOGEMS extensively, while the BIA agency serving the tribe is unable to access the system due to system incompatibility. This has resulted in discrepancies in ownership status between the two entities, as well as delays in lease payments while the agency reconciles its data with the more accurate tribal NIOGEMS data. With wider and consistent implementation, NIOGEMS presents an opportunity for significant improvement for oil and gas management.

IEED also attempted to implement a “one-stop shop” to assist Fort Berthold with oil and gas lease development after a long period of inadequate assistance during its oil boom. This approach involved stationing additional personnel on the reservation, but ultimately did not succeed. Currently, IEED is supplying advisors on an ad hoc basis to assist the tribe and the agency with specific technical knowledge. The practice of supplying advisors has proven successful at Fort Berthold and could be a valuable strategy for other reservations with expected oil and gas booms on the horizon.

IEED received one-time Congressional funding in the amount of \$500,000 to help provide tribes with this type of support, but funding will soon expire. Estimates suggest that the Uintah and Ouray Tribes in Utah, among others, will need as much help as Fort Berthold in the near future, but no money is currently available for these activities.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

7. Direct IEED to accelerate the deployment of NIOGEMS to additional tribes and BIA agency offices and address incompatibility issues; and
8. Explore options that would make specialists available to provide oil and gas assistance in Indian Country where requested and needed.

Other Impediments Identified

During our review, BIA and tribal officials cited several additional factors as impediments to oil and gas development. We are not making any recommendations regarding these issues, but are including them in the report for informational purposes.

- A severance tax on oil and gas production or value is a common mechanism governments use to raise revenues. Unique to Indian reservations, however, is the possibility that both state and tribal governments may lawfully impose the tax in a process known as “dual taxation.” This is considered detrimental for Indian leases because dual taxation does not occur on private, state, and federally owned lands. In some cases, tribal and state officials may negotiate a tax-sharing arrangement so that the overall levy is equivalent to non-Indian lands, but this is a hurdle that each tribe must address in an effort to make their lands cost competitive.
- A longstanding issue involving allotted Indian leases is fractionated ownership in which the same property may have multiple owners. This creates a problem for oil and gas leases since companies need consent from owners holding a combined majority interest in the land to approve a lease. In 2009, however, as part of a settlement in the Cobell vs. Salazar litigation, the Department announced a \$1.9 billion funding initiative known as the Cobell Land Consolidation Program to enable tribes to buy back individually owned lands over a 10-year period. This should help in the long term, although fractionation will continue to impact oil and gas development in the immediate future.
- Interviews revealed that industry perceives interacting with tribal governments to be a risky business endeavor due to periodic turnover of elected council members. Their experience suggests that newly elected officials may not be “business friendly.”



Figure 3. Pumping unit used for producing oil on tribal lands. Photo by OIG.

- Although not an issue directly related to the leasing process, industry officials have expressed dissatisfaction with BLM because the agency is required in its annual appropriations legislation to impose a \$6,500 fee to process each APD on Federal and Indian lands. This fee is much higher than the fee for wells drilled on state and private lands and is considered a detriment, particularly for smaller companies.

Additional Issues

During our review, we noted that BIA does not have a process to ensure implementation of recommendations contained in its internal control assessments. BIA developed an internal control review process in accordance with Office of Management and Budget Circular A-123. As an essential part of that process, the BIA's Office of Internal Evaluation and Assessment schedules and conducts internal reviews of various BIA offices on a periodic basis. We examined four reports of regional and agency offices issued in 2009 and 2010. Each report disclosed internal control weaknesses pertaining to oil and gas leasing activities and made recommendations for improvement. For example, one report showed that an agency office had not updated the ownership status of its oil and gas leases and that some oil and gas files were missing. Although the reports indicated that results had been shared with officials at an exit conference, our review found that the Office of Internal Evaluation and Assessment does not have a process to conduct a subsequent follow-up to verify implementation of recommendations.

BIA requires a corrective action plan detailing how to address recommendations but it has no requirement for following up on whether the plan was carried out. We believe that instituting an official process to verify implementation of recommendations would strengthen the objectives and effectiveness of the internal control review process. This could take the form of a return visit by the Office of Internal Evaluation and Assessment or the submission of documentary evidence to support the completion of corrective actions. Without such a process, there is no assurance that recommendations are implemented. In response to initial OIG notification, BIA agreed to implement a procedure by February 2012.

Recommendation

9. We recommend that the Assistant Secretary for Indian Affairs establish a formal follow-up procedure to ensure that recommendations contained in internal control assessments are implemented.

We also noted that inaccurate boundary surveys deter oil and gas leasing on some reservations in Indian Country. Existing boundary surveys in certain riparian (riverbank) areas at the Fort Peck Reservation have become outdated as the Missouri River has shifted its boundaries. Part natural cycle and part the result of significant recent flooding, these changes have altered approximately 20 miles of riparian boundary and made land ownership uncertain.

Where needed, the land must be resurveyed to establish legal ownership boundaries before oil and gas exploration and development can take place. Although the tribe's energy company estimated the land could deliver \$2 billion in future economic benefits, BIA lacks funding for the boundary, also known as cadastral, surveys.

Currently, BIA provides funds to BLM to perform cadastral surveys through reimbursable service agreements. Although BIA Fort Peck Agency officials stated that funding requests have been made, these are backlogged with other nationwide requests competing for limited BIA funds. Further, the Indian Affairs' budget for cadastral surveys was significantly reduced for FY 2012, potentially leaving the riparian boundary survey issue without an immediate solution. A tribal energy company official suggested, however, that some benefit would be realized if BIA's surveying techniques allowed for the use of aerial photography to help initiate drilling. BLM stated that aerial photography may be a valuable tool, although additional procedures may be necessary to ensure compliance with Federal laws and regulations for surveying lands.

Waterways are common on reservations. Although we only reviewed riparian boundary concerns at Fort Peck, these issues also could impact other locations in Indian Country.

We are not making a recommendation on this matter but are raising it to BIA's attention for whatever action deemed appropriate.

Conclusion and Recommendations

Conclusion

This report highlights a number of issues that, particularly when occurring in combination, discourage oil and gas companies from conducting business in Indian Country. This results in the loss of vital economic and other development opportunities for tribal governments and tribal members. We believe, however, that with minimal additional funding, BIA can solve or mitigate most of the issues by committing to a renewed focus on oil and gas, actively promoting the advantages of Indian leases to industry, and implementing the recommendations in this report.

Summary of Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

1. Designate a senior official to manage Indian oil and gas activities conducted by BIA and IEED.

Indian Affairs (IA) Response: IA non-concurred with the recommendation but acknowledged the need for “Central Office/Senior level emphasis” on the oil and gas program. IA stated it would develop a plan to identify a senior official to provide executive level oversight and policy direction over the program. In formulating the plan, IA will analyze the current structure of the oil and gas program and assess the need for a program office within the Central Office that would be responsible for policy development, operational procedures, and executive-level oversight.

OIG Reply: We consider this recommendation unresolved, pending IA's decision to appoint a senior official to provide oversight and policy direction. We are encouraged that IA acknowledged a need for greater emphasis of the oil and gas program and that it will develop a plan to provide executive-level oversight and policy direction. Taking on this initiative might be sufficient to satisfy the intent of the recommendation. Accordingly, we request that IA follow through with its plan to appoint a senior official and keep OIG informed of the steps taken regarding this issue.

2. Complete necessary revisions and updates and formally implement the “Procedural Handbook for Mineral Estate Fluids.”

IA Response: IA concurred with the recommendation, stating that it had revised the “Procedural Handbook for Mineral Estate Fluids” in July 2012. Additional updates and releases of the handbook are anticipated in the future.

OIG Reply: We consider this recommendation resolved and implemented. No further action is required.

3. Work with BLM, ONRR, and the Office of the Solicitor to update and approve the provisions of the Tripartite Agreement.

IA Response: IA non-concurred with the recommendation as originally worded. The Assistant Secretary for Policy, Management and Budget decided that the revised Tripartite Agreement will be issued as a policy document and not a memorandum of understanding. Accordingly, the document will be issued unilaterally rather than as a three-party agreement.

OIG Reply: The approach of the Assistant Secretary to unilaterally issue the policy document satisfies the intent of our recommendation, which was to update oil and gas policies. Accordingly, we modified our recommendation to update and approve the provisions of the Tripartite Agreement (and not the Agreement itself), and consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

4. Review and, as necessary, revise NEPA compliance policies to establish consistency across Indian Country.

IA Response: IA concurred with the recommendation, stating that it will make a “concerted effort to achieve consistency.” In addition, it will work closely with BLM, which has NEPA compliance responsibility for drilling permits, to ensure consistency and streamlining where possible.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

5. Direct BIA to work with BLM and OME to identify potential high value prospects and conduct mineral appraisals for these prospects, as appropriate.

IA Response: IA non-concurred with the recommendation as originally worded. IA stated that the Department’s Office of Minerals Evaluation (OME) has responsibility for conducting mineral appraisals for Indian minerals, but that insufficient funding prevents OME from staffing permanent employees.

OIG Reply: We consider this recommendation unresolved. As explained in the report, a mineral appraisal is a critical tool for helping Indian owners

obtain proper value for their resources. While we acknowledge the funding limitations at OME, options should be explored to seek assistance and to maximize the results with the current funding level. For example, IA could consider assessing cost recovery fees on the oil and gas industry, and could work with OME to review the appraisal process and identify strategies to control costs. We modified our recommendation to direct BIA to make fair market valuations on proposed bonus bids and mineral appraisals a high priority and to work with BLM and OME to continue conducting them where necessary. We request that IA reconsider its response to this recommendation.

6. Review and work with DOI and Congress to revise, if necessary, the TERA statutes and regulations to enable Indian tribes to exercise self-determination over tribal oil and gas operations.

IA Response: IA non-concurred with the recommendation as originally worded. IA disagreed that complexity of the TERA regulations impedes tribal self-determination over oil and gas activities and stated that the regulations closely track the statutory framework, which DOI does not have the authority to change. In addition, tribes may pursue other options such as contract agreements, self-governance agreements, and negotiation of business lease terms under the Indian Mineral Development Act.

OIG Reply: We consider this recommendation unresolved. The issue of regulatory complexity was raised by the tribes, not us, and tribes considered this an important factor in not pursuing a TERA. Given the fact that no tribe has ever applied for an oil and gas TERA, it appears this avenue to self-determination is essentially at a dead end. Since IA's response correctly pointed out that DOI does not have the authority to change the statutory framework or regulations, we modified our recommendation to review and work with DOI and Congress to revise, if necessary, the TERA statutes and regulations. Accordingly, we request that IA reconsider its response to this recommendation.

7. Direct IEED to accelerate the deployment of NIOGEMS to additional tribes and BIA agency offices and address incompatibility issues.

IA Response: IA concurred with the recommendation, stating that NIOGEMS will be deployed to new locations. Challenges exist that must be addressed prior to full deployment to all locations that have oil and gas leasing, exploration, and development activities. The compatibility issues identified in the draft report are more DOI resource and policy issues than actual compatibility issues.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant

Secretary for Policy, Management and Budget for tracking of implementation.

8. Explore options that would make specialists available to provide oil and gas assistance in Indian Country where requested and needed.

IA Response: IA non-concurred with the recommendation as originally worded, stating that it was considering various options to provide assistance in Indian Country. These options include a rapid response team and localized multi-bureau coordination teams. The Indian Energy and Minerals Steering Committee has also been asked to assist in this effort. IA acknowledged it has a small number of employees with oil and gas experience and that limited funding makes it difficult to hire more staff. The experience at Fort Berthold, however, has provided a “model” to help other locations that need assistance.

OIG Reply: Although non-concurrence was expressed, we believe the alternative approach proposed by IA will achieve the goal of providing the needed assistance in Indian Country. We therefore modified our recommendation and consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

9. Establish a formal follow-up procedure to ensure that recommendations contained in internal control assessments are implemented.

IA Response: IA concurred with the recommendation, stating it will establish a formal follow-up process and procedure to ensure that internal review recommendations are implemented.

OIG Reply: We consider this recommendation resolved, but not implemented. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

Appendix I: Scope and Methodology

Scope

We addressed oil and gas leasing activities conducted on tribal and allotted lands, focusing on the identification of properties for potential leasing, the sales process, and award of leases. For analysis purposes, we obtained data starting from FY 2008. Our review did not include the post-leasing phases of well drilling, production, well plugging, lease reclamation, and final lease abandonment. We conducted this evaluation in accordance with the “Quality Standards for Inspection and Evaluation” issued by the Council of the Inspectors General on Integrity and Efficiency in January 2011. The assignment was conducted from February through September 2011. We believe the work performed provides a reasonable basis for our conclusions and recommendations.

Methodology

To conduct our evaluation, we reviewed laws, regulations, policies, and procedures related to oil and gas leasing; analyzed leasing data; examined prior reviews; interviewed knowledgeable oil and gas leasing officials; and observed conditions at various Indian reservations.

We visited or contacted the following organizations:

- BIA headquarters, Washington, DC;
- BIA Eastern Oklahoma Regional Office, Muskogee, OK;
- Federal Indian Minerals Office, Farmington, NM;
- BIA Great Plains Regional Office, Aberdeen, SD;
- Office of the Solicitor, Washington, DC;
- Office of the Special Trustee, Albuquerque, NM;
- Revenue Watch Institute, New York, NY
- BIA Rocky Mountain Regional Office, Billings, MT;
- BIA Southern Plains Regional Office, Anadarko, OK;
- BIA Southwest Regional Office, Albuquerque, NM; and
- U.S. Department of Energy, Office of Indian Energy, Washington, DC.

In Denver and Lakewood, CO, we visited or contacted the following:

- Council of Energy Resource Tribes;
- KPMG LLP;
- Office of Indian Energy and Economic Development;
- Office of Minerals Evaluation;
- State and Tribal Royalty Audit Committee; and
- Western Energy Alliance (an oil & gas industry association).

We also visited or contacted the following Indian tribes and their BIA agency offices:

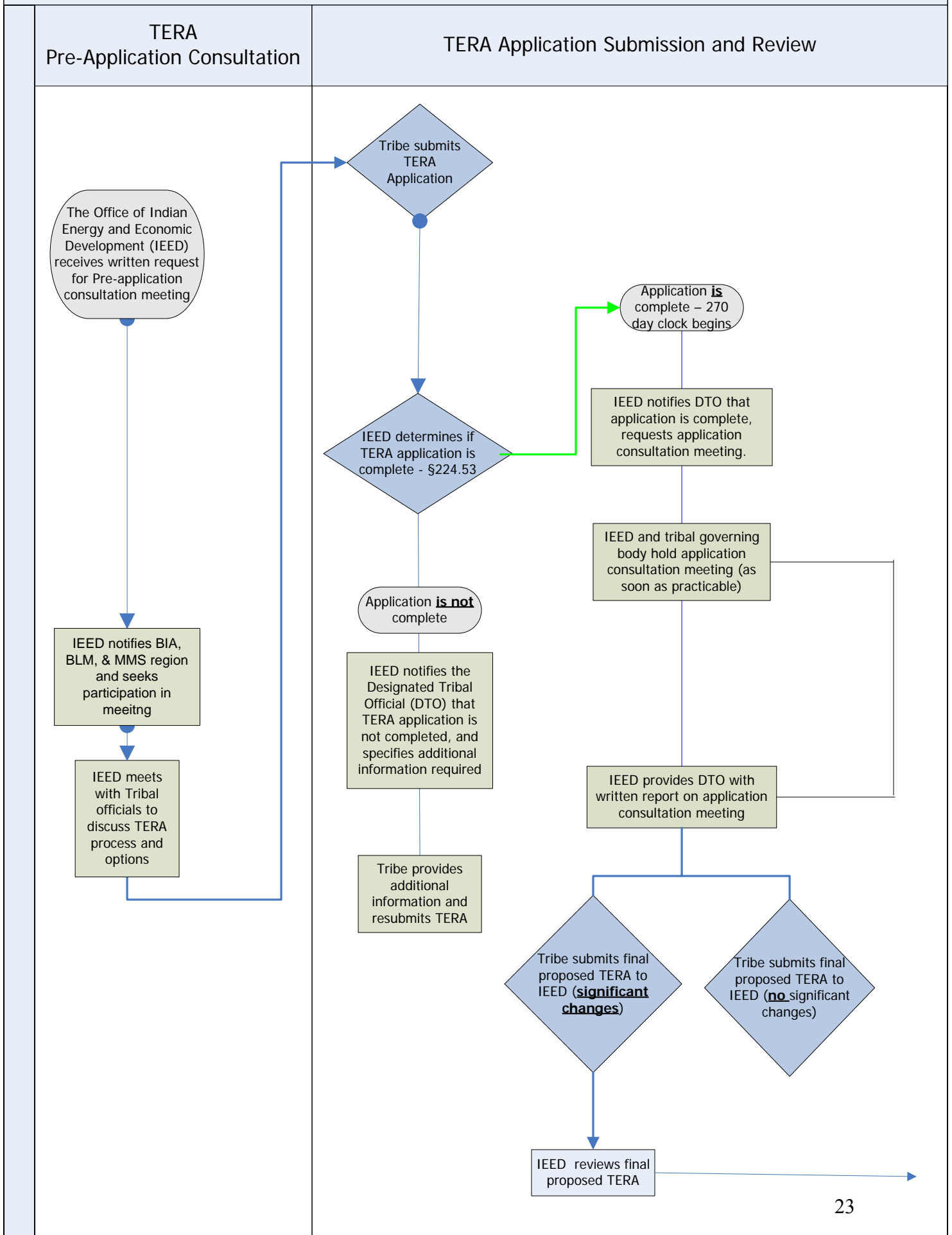
- Blackfeet Reservation, MT;
- Fort Berthold Indian Reservation, ND;
- Fort Peck Indian Reservation, MT;
- Southern Ute Indian Reservation, CO; and
- Jicarilla Tribe, NM.

We also attended an Indian Minerals Steering Committee meeting held in Lakewood, CO.

Appendix 2: TERA Process

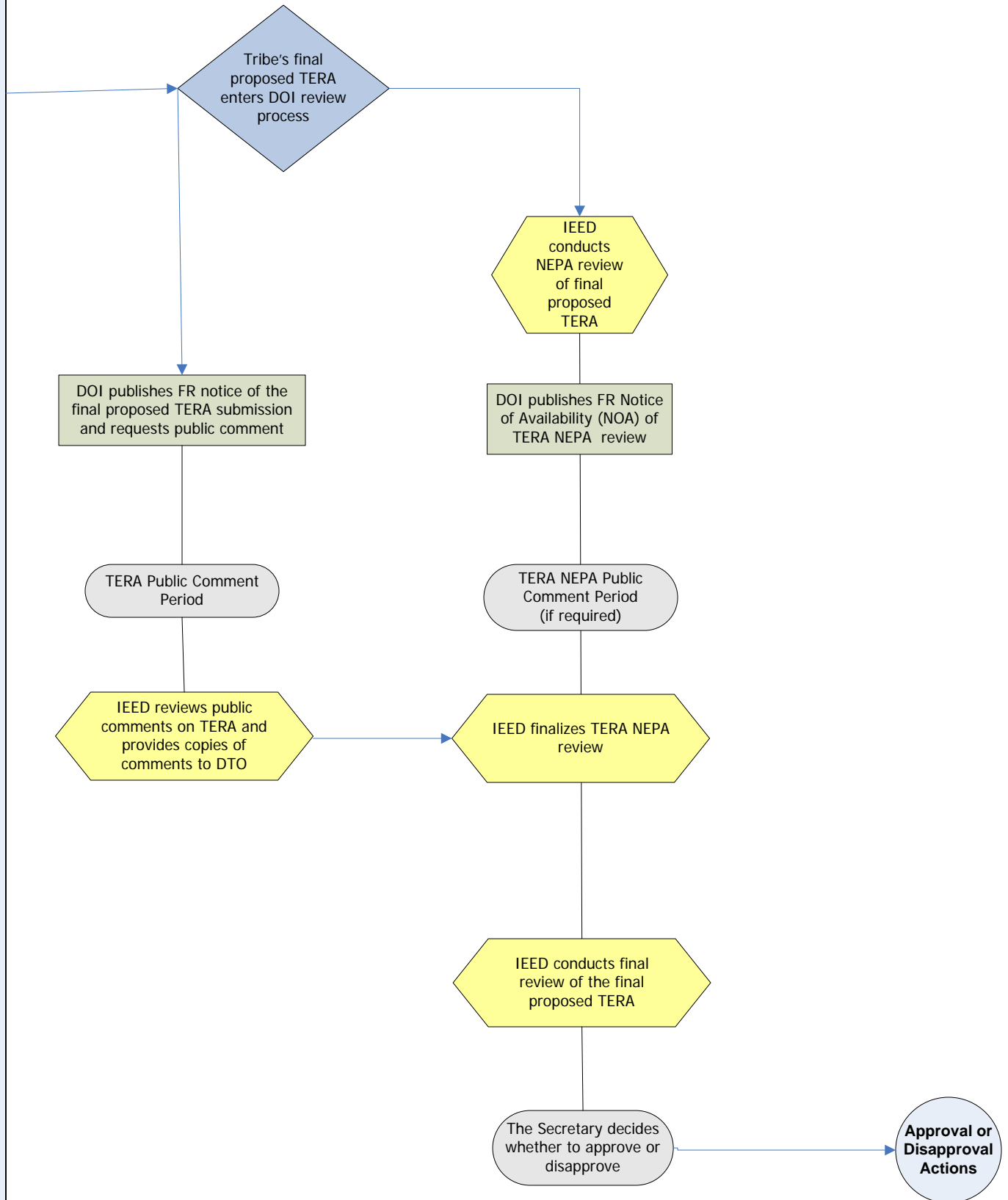
The TERA Process map follows on page 23.

TERA Application and Review Process



TERA Application and Review Process

DOI (IEED) TERA Review



Appendix 3: Indian Affairs Response

Indian Affairs' response follows on page 26.




United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 18 2012

Memorandum

To: Ms. Kimberly Elmore
Assistant Inspector General for Audits, Inspections and Evaluations

From: Donald "Del" Laverdure
Acting Assistant Secretary – Indian Affairs 

Subject: Evaluation of Oil and Gas Leasing in Indian Country
Report No. CR-IN-BIA-0001-2011

Indian Affairs appreciates the opportunity to comment on the Office of Inspector General Evaluation of Oil and Gas Leasing in Indian Country, an Opportunity for Economic Development. Indian Affairs provides the following response to the report's recommendations. Additional Bureau of Indian (BIA) and Bureau of Land Management (BLM) comments to the draft evaluation are included in Attachment 1.

Recommendation #1

Designate a senior official to manage Indian oil and gas activities conducted by BIA and OIEED;

Response:

Indian Affairs Non-concurs with recommendation number 1.

Although Indian Affairs non-concurs with the recommendation as stated, we do acknowledge the need for a Central Office/Senior level emphasis on the O&G program. We will develop a plan to identify a senior official to provide executive level oversight and policy direction over the O&G program. In formulating the plan, Indian Affairs will analyze the current structure of the O&G program and assess the need for a Central Office program office responsible for policy development, operational procedures and executive level oversight.

Responsible Party: Assistant Secretary, Indian Affairs

Target Date:

Recommendation #2

Complete necessary revisions and updates and formally implement the "Procedural Handbook for Mineral Estate Fluids";

Response:

Indian Affairs concurs with recommendation number 2.

We have revised the 2007 draft Procedural Handbook for Mineral Estate Fluids and have received comments and input from the field. Final review and inclusion of relevant comments will be completed during the week of July 16, 2012. The final handbook will be finalized by July 20, 2012. This Handbook will be a living document and we anticipate additional updates to and releases of the Handbook in the future.

Responsible Party: Director, BIA

Target Date: July 20, 2012

Recommendation #3

Work with BLM, ONRR, and the Office of the Solicitor to update and approve the Tripartite Agreement;

Response:

Indian Affairs Non-concurs with recommendation number 3.

ONRR, part of ASPMB has assumed ownership in large measure for managing the document. To get the latest version out for edits in Sept 2011, ONRR had the Assistant Secretary for Policy, Management and Budget (PMB), Rhea Suh, sign the transmittal memorandum to all participating Bureaus within DOI. The Assistant Secretary, PMB, has determined that the document will go out as a policy document and not an MOU. Therefore, she has the authority to issue it unilaterally.

Responsible Party: ONRR

Target Date:

Recommendation #4

Review and, as necessary, revise NEPA compliance policies to establish consistency across Indian Country;

Response:

Indian Affairs concurs with recommendation number 4.

We acknowledge there is no specific directive addressing “Tribal leasing” for oil and gas but the same standards are utilized for all leasing activities on Indian land including O&G, residential, agricultural and business leasing. We will make a concerted effort with input from our O&G program and the Office of Environmental Services to achieve consistency.

Additionally, we will work closely with the Bureau of Land Management (BLM), who has the NEPA compliance responsibility for APD's. NEPA compliance for APD's is accomplished in various ways, including preparation of the NEPA documents by BLM or BIA, or by a third-party contractor provided by the applicant in order to expedite the permit review process. We will work with BLM on the various processes to ensure consistency and streamlining where possible.

Responsible Party: Deputy Assistant Secretary for Management, Indian Affairs, Director, BIA
Target Date: January 30, 2013

Recommendation #5

Direct BIA to make mineral appraisals a high priority and to conduct them where necessary;

Response:

Indian Affairs non-concurs with recommendation number 5.

Responsibility for conducting mineral appraisals on Indian Minerals falls within the Office of Mineral Evaluation within the Department. We contacted OME and were advised that there major issue is the lack of funding which prevents them from staffing permanent employees.

Recommendation #6

Review and revise, if necessary, the TERA regulations to enable Indian tribes to exercise self-determination over tribal oil and gas operations;

Response:

Indian Affairs non-concurs with recommendation number 6.

The report inaccurately concludes that the complexity of the Department's TERA regulations impede tribal self-determination over oil and gas activities in Indian Country. This is simply not the case. The Department's TERA regulation and the processes to evaluate and approve Tribal Energy Resource Agreements closely track the framework established in the statute that authorizes the agreements. The Department does not have authority to change the complex statutory framework. The report accurately notes the factors that tribes are weighing and that are likely contributing to their reluctance to enter into a TERA. The factors include:

- Tribal capacity for carrying out a regulatory program which would include realty, environmental, administrative, and technical functions the Tribe would be assuming;
- Costs associated with implementing a Tribal Energy Resource Agreement and the tribal staffing resources necessary to undertake these functions; and
- The statutory release of liability for losses to any party (including Tribes) for any negotiated term of, or any loss resulting from, the negotiated terms of a lease, business agreement, or right-of-way the Tribe executes under a Tribal Energy Resource Agreement. This release is similar to the release in Indian Minerals Development Agreements.

Additionally there are other options that further tribal self-determination that are available to tribes who choose not to pursue a TERA. Tribes may contract the realty and right of way functions under Public Law 93-638 or self-governance agreements or Tribes may negotiate the business lease terms under the Indian Minerals Development Act.

We fully support Tribal self-determination, however, we have reviewed the regulations and have arrived at the conclusion that the present TERA regulations are essentially in line with 25 U.S.C.A. 3501-3504. Without revisions to the statute we do not believe we have the authority to make any significant revisions to the regulations that would make TERA's any more attractive to Indian Tribes.

Recommendation #7

Direct IEED to accelerate the deployment of NIOGEMS to additional tribes and BIA agency offices and address incompatibility issues;

Response:

Indian Affairs concurs with recommendation number 7.

We are deploying NIOGEMS to new locations; we anticipate the next location for implementation is Osage. There are challenges that must be addressed prior full deployment to all locations that have active oil and gas leasing, exploration and development. The compatibility issues identified in your draft report are more DOI resource and policy issues than actual compatibility issues.

Responsible Party: Director, OIEED

Target Date: 3/31/2013

Recommendation #8

Explore establishing a rapid response team of specialists to provide oil and gas assistance in Indian Country where requested and needed;

Response:

Indian Affairs Non-concurs with recommendation number 8.

This is an option we are exploring, but there are other options which may achieve the same goal, such as the development of localized coordination teams (BIA, BLM, ONRR, OST). Additionally we are seeking more involvement from IEMSC in the development of DOI policies/procedures to assist in the operation and training of potential rapid-response teams and/or localized coordination teams.

We are not presently structured to have a specific group of employees devoted entirely to a rapid-response team however we do believe we have actually done a variation of a rapid-response team at Fort Berthold and Uintah and Ouray. We temporarily assigned experienced

staff from other locations to assist both locations with their oil and gas leasing needs. We have a very limited number of experienced employees across the country and it is difficult to hire qualified oil and gas specialists in the present environment within the confines of federal hiring.

IEMSC is presently expanding what has been referred to as the “Fort Berthold Model” to Uintah and Ouray in an attempt to address problems we are experiencing with processing applications for permit to drill and the roles and responsibilities of all stakeholders, BLM, ONRR, BIA, OST and the U&O Tribe. We are confident this will improve operation in this location and we will then have the potential to expand the “Fort Berthold” model to other locations as needed. The “Fort Berthold Model” essentially is collaboration between the Federal Bureaus listed above to clearly define the roles and responsibilities of each which will provide much greater accountability.

Responsible Party: Director, BIA

Target Date:

Recommendation #9

Establish a formal follow-up procedure to ensure that recommendations contained in internal control assessments are implemented.

Response:

Indian Affairs concurs with recommendation number 9.

Indian Affairs will establish a formal follow-up process and procedure to ensure that internal review recommendations are implemented.

Responsible Party: DASM

Target Date: November 15, 2012

ATTACHMENT 1

Indian Affairs and Bureau of Land Management Additional Comments on Draft Report

INDIAN AFFAIRS

Indian Affairs provides the following comments pertaining to the Office of Inspector General (OIG) draft report facts, figures and statistics.

- On page two, the report states that Indian Land totals approximately 5 percent of the United States Land Base. Actually there are approximately 55.4 million acres of Indian land in the United States and approximately 2.3 billion acres in the entire United States which is closer to 2.5 percent of the U.S. land base.
- The report also states there are 20,600 active oil and gas leases in Indian Country, however, our system of record (TAAMS), contains 17,518 active oil and gas leases which is 3,082 fewer leases than what is reported in the report. (Attachment 2)
- On page three of the report, the statement is made, “while allotted leases are negotiated directly between Indian owners and companies”. This is true for Fort Berthold under the Fort Berthold Indian Minerals leasing Act, but the Bureau of Indian Affairs has responsibility to negotiate on behalf of Allottees upon their request, otherwise leasing is done pursuant to an advertised lease sale, and not just in Oklahoma.

BUREAU OF LAND MANAGEMENT

While the draft report’s findings and recommendations are largely directed to the Bureau of Indian Affairs (BIA), the Bureau of Land Management’s (BLM) roles and responsibilities for oil and gas leasing and development are also an important part of the analysis. We think that the OIG could strengthen the draft report by adding a general discussion of the BLM’s oil and gas activities in Indian Country. We provide some suggested language below. Also, enclosed is a set of technical comments to assist you in responding to the draft report.

We suggest including the following clarifying information in the introductory paragraphs of the response to the draft report.

The BLM’s authority for providing leasing and development support is provided in regulations, including 25 CFR part 211—Leasing of Tribal Lands for Mineral Development, 43 CFR part 3160—*Onshore Oil and Gas Operations* and 43 CFR part 3180—*Onshore Oil and Gas Unit Agreements: Unproven Area*.

At the *leasing* phase, the BLM supports the BIA’s management of the trust mineral estate in the following three ways.

1. Mineral Appraisals – Prior to conducting a sale, the BIA may request an opinion from the BLM on whether the minerals within the lands that are being considered for lease are appropriate for leasing. The BLM will perform a mineral appraisal and advise the BIA if existing information would support a determination that there are minerals of sufficient quantity and quality to be leased;
2. Fair Market Value Determinations – The BLM provides the BIA with a fair market value determination for evaluating the bonus bids tendered with the sale or during the negotiation phase of a lease.
3. Cadastral Surveys – The BLM is the final and official Federal authority regarding legal boundary determinations for the lands that are to be offered for lease.

At the *development* phase, the BLM has a number of authorities and responsibilities for administering oil and gas operations on Indian lands, including the following:

1. Applications for Permit to Drill (APDs) – The BLM processes and approves APDs for Indian oil and gas leases. As part of the approval process, the BLM conducts an onsite inspection to identify any resource concerns that the operator will address. On Indian lands, the BLM performs this inspection in coordination with the BIA and the local tribe.
2. Inspection and Enforcement – The BLM has an inspection and enforcement program to verify that drilling, production, abandonment and reclamation activities are performed in compliance with all operations-related lease stipulations, conditions of approval, and all applicable laws and regulations. Reclamation inspections, in particular, are performed in cooperation with the BIA and the local tribe.
3. Production Verification – The BLM has established minimum standards for measuring oil and gas production from Federal and Indian lands. The BLM performs production inspections of measurement equipment and conducts records audits to verify that operations are meeting minimum standards and operators are properly reporting production volumes to the Office of Natural Resource Revenue for royalty payment determinations.

Technical Comments

Comment 1 – Mineral Appraisals

Page 2-3, the last paragraph on page 2 that continues on to page 3 reads as follows: “An agreement entitled ‘A Memorandum of Understanding between BIA, BLM, and MMS Regarding Working Relationships Affecting Mineral Lease Activities’ established the oil and gas responsibilities of DOI bureaus. Signed in 1991 and commonly known as the Tripartite

Agreement, the document also was intended to foster cooperation among the bureaus, including authorizing BLM to perform mineral valuations prior to Indian lease sales.”

BLM Response: The authority for the BLM to perform mineral valuation is not granted under the Tripartite Agreement. Rather, 25 CFR 211.4 provides the authority under which the BLM performs mineral valuations on Indian lands. The Tripartite Agreement provides some clarity on which functions each of the bureaus (BIA, the BLM, and the former MMS) performs and the requirements for exchange of information.

We recommend the following statement as a replacement to cited sentences in the report:

*An agreement titled “A Memorandum of Understanding between BIA, BLM, and MMS Regarding Working Relationships Affecting Mineral Lease Activities” outlined the oil and gas responsibilities of the DOI bureaus. Signed in 1991 and commonly known as the Tripartite Agreement, the document also was intended to foster cooperation among the **bureaus and clarified that the BLM may perform mineral valuations prior to Indian lease sales.***

Comment 2 – Mineral Appraisals

Page 10, the third sentence of the first full paragraph reads as follows: “According to the 1991 Tripartite Agreement, BIA may ask BLM to assess the fair market value of proposed bonus bids prior to leasing. The minerals appraisal function of BLM has since been transferred to DOI’s Office of Minerals Evaluation (OME).”

BLM Response: Although the Department transferred to the Office of Mineral Evaluation the responsibility for performing mineral valuations, the BLM continues to provide a determination of the fair market value of oil and gas leases whenever the BIA requests this service. The BLM plans to discontinue this service, however, when it completes its existing BIA workload.

We recommend the following statement after the sentence cited from the report:

Although this function has been transferred to the OME, the BLM still provides fair market value determinations of oil and gas leases whenever the BIA requests this service. The BLM plans to discontinue this service, however, when it completes its existing BIA workload.

Comment 3 – Tripartite Agreement

Page 6, the last two sentences of the first paragraph reads as follows: “Originally signed in 1991, the Tripartite Agreement delineating the oil and gas responsibilities of BIA, BLM, and Office of Natural Resources Revenue (ONRR) is also outdated. In response to initial OIG notification, BIA officials stated that the agreement would be renewed by October 2012.”

BLM Response: The Department is currently revising the operating procedures addressed in the Tripartite Agreement. Beginning in March 2009, the affected bureaus undertook a revision of the procedures outlined in the document and provided draft language to field offices in April 2010. The bureaus distributed a second draft in December 2011, with responses due by February 29, 2012. The bureaus received over 1,500 comments. The bureaus anticipate completing new guidance by late summer 2012.

We recommend that the second sentence be replaced with the following statement:

*In response to this draft report, the OIG was informed that the new guidance is targeted for completion by **late summer 2012**.*

Comment 4 – I&E Operations

Page 5 the second paragraph reads as follows: “With so much at stake both for tribes and industry, oil and gas constitutes a substantial activity that warrants more attention. In the absence of an established program or a director to manage its heavy oil and gas workload, BIA currently cannot provide this focus. BIA has neither short- nor long-term goals, or performance measures. Consequently, DOI does not manage activities that range from exploring potential energy reserves to identify leasing prospects, constructing well pads, drilling wells, producing oil and gas resources, and restoring the land after production ceases.”

BLM Response: Although the BLM does not manage oil and gas activities as a lessee or operator, the agency has operational responsibility to provide oversight of all aspects of development that occur after the issuance of an oil and gas lease. This oversight responsibility includes drilling, production, and abandonment operations. Of the five activities listed in the draft report, the BLM oversees four: “constructing well pads, drilling wells, producing oil and gas resources, and restoring the land after production ceases.” The oil and gas industry performs the first listed activity: “exploring potential energy reserves to identify leasing prospects.”

At a minimum, we recommend that the OIG delete the last sentence because it is inaccurate.

Comment 5 – NEPA

Page 7, the last two sentences of the last paragraph reads as follows: “Some BIA field offices and Indian reservations satisfy NEPA by completing environmental studies for all areas to be included in a potential lease before that lease is approved. At a later leasing phase, they further comply with NEPA by conducting more focused site reviews required for applications for permit to drill (APD) before drilling operations commence.”

BLM Response: The BLM is responsible for compliance with NEPA for APDs. Compliance with NEPA is accomplished in various ways, including preparation of the NEPA document by the BIA because of its expertise in or knowledge of the natural resources on Indian lands and preparation of the NEPA document by a third-party contractor provided by the proponent to expedite the permit review process

We recommend that the OIG replace the second sentence with the following statement:

At the development phase, the BLM is responsible for complying with NEPA in the site-specific reviews for APDs. The BLM, the BIA, or a third-party contractor may prepare the documentation.

Comment 6 – APD Fee

Page 13, the first two sentences on the page reads as follows: “Although not an issue directly related to the leasing process, industry officials have expressed dissatisfaction with BLM because the agency imposes a \$6,500 fee to process each APD on Federal and Indian lands. This fee is much higher than the fee for wells drilled on state and private lands and is considered a detriment, particularly for smaller companies.”

BLM Response: Congress mandates the fee for APDs in the Department’s annual appropriations legislation. The fee is designed to offset a reduction in funding to the BLM for managing the oil and gas program. The BLM does not have discretion to waive this fee.

We recommend that the OIG include a new sentence at the end of the report statement that says the following:

Congress sets the \$6,500 fee for APDs in DOI’s annual appropriations legislation. The BLM does not have discretion to waive this fee.

Comment 7 – Surveys

Page 14, the third and fourth sentences of the last paragraph read as follows: “Further, the Indian Affairs’ budget request eliminated cadastral surveys for FY 2012. This leaves the riparian boundary survey issue without an immediate solution.”

BLM Response: Rather than eliminated, the BIA reimbursable for cadastral surveys for FY 2012 was reduced from approximately \$11 million to \$3 million. It is a significant reduction and requires the BIA to prioritize further its requests for cadastral survey. This prioritization could mean that oil and gas development could not take place on Indian lands along the Missouri River at the Fort Peck Reservation until existing boundary are resurveyed to establish legal land ownership boundaries.

We recommend that OIG replace the statement with the following statement:

The BIA budget request in FY 2012 reduced funds for cadastral surveys from approximately \$11 million to \$3 million. This reduction requires the BIA to prioritize further its requests for cadastral resources across Indian Country, which could potentially leave the riparian survey issue without an immediate solution.

Comment 8 – Surveys

Page 14, the last sentence of the last paragraph reads as follows: “A tribal energy company official suggested, however, that some benefit would be realized if BIA’s surveying techniques allowed for the use of aerial photography to help initiate drilling.”

BLM’s response: We agree that aerial photography is a very helpful and valuable, time-saving tool in for determining boundary. However, riparian boundary determinations can be a complex process involving several steps, such as performing on-the-ground dependent resurvey of the rectangular surveys, dating of any existing trees, soils analysis, and records research. As the final official Federal authority for making boundary determinations on Indian lands (See 25 USC

176), the BLM must ensure surveys performed on Indian lands conform to the rules and regulations under which public lands are surveyed.

We recommend that the OIG include the following clarifying language to acknowledge the complexities often associated with boundary determinations:

The BLM agrees that aerial photography may be a valuable, time-saving tool for riparian boundary surveys but states that it may be necessary to take additional steps and use additional tools to ensure these determinations are made in compliance with Federal laws and regulations for surveying public and Indian lands.

ATTACHMENT 2

Regions and Agencies with Oil & Gas

	Total Oil & Gas Leases	Tribal Status		Individual Status		
		Producing	Non Producing	Producing	Non Producing	
Great Plains Region & Tribes						
Fort Berthold Agency	2,615	269	68	201	2,346	1,361
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota						
Turtle Mountain Agency	69	0	0	0	69	46
Turtle Mountain Band of Chippewa Indians of North Dakota						
Region Totals	2,684	269	68	201	2,415	1,407
Southern Plains Region Tribes						
Southern Plains Region						
Absentee-Shawnee Tribe of Indians of Oklahoma						
Alabama-Coushatta Tribes of Texas						
Sac & Fox Nation, Oklahoma						
Citizen Potawatomi Nation, Oklahoma						
Kaw Nation, Oklahoma						
Anadarko Agency	1,286	12	4	8	1,274	542
Kiowa Indian Tribe of Oklahoma						
Comanche Nation, Oklahoma						
Apache Tribe of Oklahoma						
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma						
Delaware Nation formerly (Delaware Tribe of Western OK)						
Caddo Nation of Oklahoma						
Fort Sill Apache Tribe of Oklahoma						
Concho Agency	982	31	31	0	951	236
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)						
Pawnee Agency	967	30	3	27	937	833
Otoe-Missouria Tribe of Indians, Oklahoma						
Pawnee Nation of Oklahoma						
Ponca Tribe of Indians of Oklahoma						
Tonkawa Tribe of Indians of Oklahoma						
Shawnee Agency	94	0	0	0	94	0
Kickapoo Tribe of Oklahoma						
Region Totals	3,329	73	38	35	3,256	1,645
Rocky Mountain Region Tribes						
Blackfeet Agency	2,427	176	162	14	2,251	2,197
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana						
Crow Agency	33	7	5	2	26	20
Crow Tribe of Montana						
Fort Belknap Agency	1,733	88	0	88	1,645	1,548
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana						
Fort Peck Agency	1,702	133	16	117	1,569	1,430
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana						
Wind River Agency	51	40	14	26	11	1
Arapahoe Tribe of the Wind River Reservation, Wyoming						
Shoshone Tribe of the Wind River Reservation, Wyoming						
Region Totals	5,946	444	197	247	5,502	5,196

Regions and Agencies with Oil & Gas							
	Total Oil & Gas Leases	Tribal Status			Individual Status		
			Producing	Non Producing		Producing	Non Producing
Midwest Region Tribes							
Michigan Agency	3	0	0	0	3	3	0
Saginaw Chippewa Indian Tribe of Michigan							
Region Totals	3	0	0	0	3	3	0
Eastern Oklahoma Region Tribes							
Cherokee Nation	12	1	0	1	11	11	0
Cherokee Nation, Oklahoma							
Chickasaw Agency	158	0	0	0	158	158	0
Chickasaw Nation, Oklahoma							
Okmulgee Agency	131	0	0	0	131	130	1
Thlopthlocco Tribal Town, Oklahoma							
Muscogee (Creek) Nation, Oklahoma							
Osage Agency	3,593	0	0	0	3,593	2893	700
Osage Nation, Oklahoma (formerly the Osage Tribe)							
Talihina Agency	54	0	0	0	54	54	0
Choctaw Nation of Oklahoma							
Wewoka Agency	42	0	0	0	42	42	0
Seminole Nation of Oklahoma							
Region Totals	3,990	1	0	1	3,989	3,288	701
Western Regions Tribes							
Southern Paiute Field Station	2	2	0	2	0	0	0
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)							
Uintah & Ouray Agency	903	304	246	58	599	256	343
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah							
Region Totals	905	306	246	60	599	256	343
Southwest Regions Tribes							
Jicarilla Agency	127	127	125	2	0	0	0
Jicarilla Apache Nation, New Mexico							
Southern Pueblo Agency	2	2	0	2	0	0	0
Zia Pueblo							
Southern Ute Agency	139	58	55	3	81	78	3
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado							
Ute Mountain Ute Agency	40	40	39	1	0	0	0
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah							
Region Totals	308	227	219	8	81	78	3
Navajo Region Tribes							
Navajo Region Tribes	353	37	37	0	316	304	12
Navajo Nation, Arizona, New Mexico & Utah							
Region Totals	353	37	37	0	316	304	12
NATIONAL OIL & GAS TOTALS	17,518	1,357	805	552	16,161	6,888	9,273
		7.75%	59.32%	40.68%	92.25%	42.62%	57.38%

Version 2 06/28/12

Appendix 4: Status of Recommendations

In response to our draft report (see appendix 3), Indian Affairs concurred with four recommendations and did not concur with the remaining five. For some issues, IA suggested alternative corrective actions that potentially achieve the desired outcome of our recommendations. In those cases, we will monitor developments to ensure that the necessary corrections actually result. The table below summarizes the status of the recommendations.

Recommendations	Status	Action Required
2	Resolved and implemented.	No further action required.
3, 4, 7, 8, and 9	Resolved; not implemented.	Recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking implementation.
1	Unresolved.	Appoint a senior-level official over the oil and gas program and provide target date of implementation.
5 and 6	Unresolved.	Reconsider response to recommendations.

Report Fraud, Waste, and Mismanagement



Fraud, waste, and mismanagement in government concern everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to Departmental or Insular Area programs and operations. You can report allegations to us in several ways.



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