

Memorandum of Understanding
OSM - BIA - BLM

Management of Coal Mining on
Indian Lands



December 2001

**MEMORANDUM OF UNDERSTANDING
BIA-BLM-OSM
MANAGEMENT OF COAL MINING ON INDIAN LANDS**

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MEMORANDUM OF UNDERSTANDING
Among
BIA - BLM - OSM

MANAGEMENT OF COAL MINING ON INDIAN LANDS

Article A - INTRODUCTION

This Memorandum of Understanding (MOU) provides the procedures for cooperation and coordination among the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), and the Office of Surface Mining Reclamation and Enforcement (OSM) for the management of coal mining and exploration on Indian lands in the western United States. It replaces the MOU signed by the Assistant Secretary for Energy and Minerals on May 8, 1980, and the Deputy Assistant Secretary for Indian Affairs on May 1, 1980, entitled "Memorandum of Understanding, BIA-GS-OSM, Management of Coal Mining on Indian Lands." This MOU provides a reference framework and procedural arrangements by which the BIA, BLM, and OSM will carry out their functions and responsibilities that must be coordinated for coal operations on Indian lands (see definition).

The principals to this MOU recognize the role of Indian Tribes as coal owners and governing entities having basic authorities and responsibilities for the development and administration of Indian resource programs. It recognizes the lead role of the BIA representing the Secretary in the Federal-Indian trust relationship and consultation with the Indian mineral owners. It also recognizes OSM's role as the regulatory authority with respect to surface coal mining and reclamation operations and BLM's authority to administer operational aspects of exploration, development, and production on Indian lands.

This MOU discusses only the coordination and consultation necessary among three Department of the Interior bureaus related to coal mining on Indian lands. It does not specifically address all the notifications, coordination and consultation that must take place between each specific bureau and the Tribal governments and Indian mineral or surface owners. Such activities are conducted by each bureau in accordance with its regulations, policies, and internal procedures. The framework of responsibilities and procedures set forth are those that would normally occur on Indian lands within a reservation boundary. Outside a reservation boundary, the complex patterns of Indian and non-Indian ownership of surface and/or mineral rights may require some modifications of the standard procedures set forth in this MOU. These unusual or unique situations will be resolved on a case-by-case basis according to the general principles set forth in the MOU.

This MOU will be supplemented and amended as legislation, court rulings, and modified regulations may require, and as Indian mineral owners become more involved in the coal management program.

Article B - DEFINITIONS AND ACRONYMS (Specific to the purposes of this MOU)

Allotted Lands: means lands allocated to an individual Indian owner and held in Trust for him and his heirs by the Secretary of the Interior.

Applicant: means any person, operator, proprietorship, partnership, corporation, or business association seeking a prospecting permit, lease, minerals agreement, contract, or mining permit/mining plan approval.

Authorized Officer: means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in 25 CFR Parts 211 and 225 and in 43 CFR Part 3480.

BIA: means the United States Bureau of Indian Affairs.

Area Director: means the Bureau of Indian Affairs Official in charge of an Area Office.

BLM: means the United States Bureau of Land Management.

Exploration Plan: means a detailed plan developed in accordance with 25 CFR Part 216 submitted to and approved by BLM under a prospecting permit or minerals agreement approved by BIA in accordance with 25 CFR Parts 211, 212, and 225.

Indian Lands: (as defined within the Surface Mining Control and Reclamation Act of 1977 (SMCRA)) means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian Tribe.

Indian Mineral Owner: means (1) any individual Indian or Alaska native person who owns land or mineral interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or (2) any Indian tribe, band, native, pueblo, community, rancheria, colony, or other group which owns land or mineral interest in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.

Indian Surface Owner: means (1) any individual Indian or Alaska native person who owns an interest in the surface estate of land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or (2) any Indian tribe, band, native, pueblo, community, rancheria, colony, or other group which owns an interest in the surface estate of land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203.

Minerals Agreement: means any agreement, permit, license, contract or lease entered into pursuant to 25 CFR Parts 211, 212 and 225, the Act of May 11, 1938, the Act of March 3, 1909 and the Indian Mineral Development Act of 1982 and other acts pertaining to mineral development on Indian lands; authorizing coal mining and reclamation operations, as approved by BIA.

Minerals Agreement Area: means the area within the minerals agreement boundaries which is delineated on minerals agreement maps, as approved by the BIA.

Minerals Agreement Performance Bond: means a bond approved in consultation with BLM and administered by BIA by which a permittee or operator assures faithful performance of all the provisions of a BIA approved minerals agreement, lease, or prospecting permit as set forth in 25 CFR Parts 211, 212, 216, or 225.

Mining Plan: means the complete plan submitted to BLM relating to the development, production, and recovery of coal resources as required by 25 CFR Parts 216 and 225, and minerals agreement provisions. This is the same mining plan referred to as item 3 in the definition of Permit Application Package below.

Mining Supervisor: As used in 25 CFR Parts 211, 212, and 216 this term means the authorized officer or his designee of the BLM.

NEPA: means the National Environmental Policy Act of 1969, as amended.

Operator (Contractor): means a person, proprietorship, partnership, corporation, or business association which is authorized to conduct exploration or mining activities on Indian lands.

OSM: means the United States Office of Surface Mining Reclamation and Enforcement.

Permit Application Package (PAP): means a proposal, submitted to OSM by an applicant, to conduct surface coal mining and reclamation operations on Indian lands and includes: (1) an application for a SMCRA permit, SMCRA permit revision, or SMCRA permit renewal; (2) all the information required by SMCRA under 30 CFR Part 750; (3) the mining plan or mining plan modifications required under 25 CFR Parts 216 and 225; (4) all the information required by minerals agreement provisions; and, (5) all information required by other applicable laws and regulations.

Prospecting Permit: means an authorization in accordance with 25 CFR Parts 211, 212, 216, or 225 to conduct coal exploration activities upon Indian lands prior to BIA approval of a minerals agreement.

SMCRA: means the Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

SMCRA Performance Bond: means a bond approved and administered by OSM by which an operator or contractor assures faithful performance of all the reclamation and/or environmental protection requirements of the approved SMCRA permit and other environmental requirements as set forth in 30 CFR Part 750.

SMCRA Permit: means a permit issued by OSM to conduct surface coal mining and reclamation operations on Indian lands pursuant to 30 CFR Part 750.

SMCRA Permit Area: means that area specifically approved by OSM within which surface coal mining and reclamation operations on Indian lands are conducted pursuant to 30 CFR Part 750.

Superintendent: As used in 25 CFR Parts 211, 212, and 216 this term means the superintendent or other officer of the BIA having jurisdiction, under delegated authority, over the lands involved.

Article C - RESPONSIBILITIES AND PROCEDURES¹

DUTY	BUREAU RESPONSIBILITY			DIST. TO	REMARKS
	BIA	BLM	OSM		
I. ACTIONS BEFORE ISSUANCE OF A BIA APPROVED MINERALS AGREEMENT.					
A. Exploration Operations Under a Prospecting Permit.					OSM has no regulatory role but may recommend specific data be collected that would be required in the permit application package (PAP) or cumulative hydrologic impact assessment in association with anticipated mining activities.
1. Provide technical assistance to Indian mineral owner in preparation of prospecting permit.	J	J	O	BLM OSM	BIA normally receives the prospecting permit application and/or request for assistance from the Indian mineral owner(s). BIA provides copies of the application to BLM and OSM of the action within 30 days of receipt of request or application.
2. Provide compliance with NEPA requirements.	S	O	O	BLM	Upon request, BLM and OSM will assist BIA.
3. Approve or disapprove prospecting permit.	S	O	O		BIA may consult as appropriate with BLM prior to permit approval. Establishes minerals agreement performance bond and provides BLM with copies of the prospecting permit within 30 days of approval.
4. Provide assistance to the mineral owner in evaluating exploration plans.	J	J	O		BLM will assist BIA.
5. Approve or disapprove the exploration plan.	O	F	O	BIA OSM	BLM consults with BIA before approving the exploration plan.
6. Provide regulatory oversight of exploration operations.	O	F	O		BLM consults with BIA about activities related to surface management.
7. Issue Notice of Noncompliance should operator fail to comply with the terms or conditions of an approved Exploration Plan.	O	F	O		BLM issues notice and reinspects after the time provided to cure the noncompliance. BLM notifies BIA and the Indian mineral owner of the Notice of Noncompliance.
8. Issue Notice of Noncompliance should operator fail to comply with the terms or conditions of an approved Exploration Permit.	F	O	O		BIA issues notice and reinspects after the time provided to cure the noncompliance. BIA notifies BLM and the Indian mineral owner of the Notice of Noncompliance. BLM may provide technical assistance to the BIA for these Notices of Noncompliance.
9. Approve abandonment of exploration operations.	O	F	O	BIA OSM	Consults with BIA before approval.
10. Terminate prospecting permit and release minerals agreement performance bond.	F	O	O	BLM OSM	Consults with BLM before termination.

¹ **F** MEANS THAT THE DESIGNATED BUREAU IS RESPONSIBLE FOR THE FINAL ACTION AFTER NORMALLY-OCCURRING CONSULTATION WITH OTHER BUREAUS AND/OR INDIAN MINERAL/SURFACE OWNERS. A WRITTEN RESPONSE IS REQUIRED FROM THE CONSULTED BUREAUS.
J MEANS THAT THE DESIGNATED BUREAUS HAVE JOINT (SHARED) RESPONSIBILITY FOR THE SPECIFIED ACTION OR PROCEDURE (CONCURRENCE REQUIRED).
O MEANS THAT THE DESIGNATED BUREAU IS RESPONSIBLE IN A CONSULTING, CONTRIBUTORY OR SUPPORTING ROLE (COOPERATIVE ROLE), BUT HAS NO DIRECT OR FINAL RESPONSIBILITY FOR THE SPECIFIED PROCEDURES OR ACTION.
S MEANS THAT THE DESIGNATED BUREAU HAS SOLE RESPONSIBILITY FOR ACTION. NO CONSULTATION IS REQUIRED.

BUREAU
RESPONSIBILITY

DUTY	BUREAU RESPONSIBILITY				REMARKS
	BIA	BLM	OSM	DIST. TO	
B. Minerals Agreement Issuance.					At this stage the Indian mineral owner and the applicant will enter into a minerals agreement, subject to approval by BIA.
1. IMDA Agreements					
a. BIA, BLM and OSM provide technical assistance, consistent with their expertise and to the extent of available resources, to the mineral owner during mineral owner negotiation of the minerals agreement under IMDA. BLM=s technical assistance to a Tribe consists of reviewing the existing geologic data for the specific area identified for the agreement to determine the adequacy of the data and to estimate the fair market value of the deposit. BLM may also provide information for use in negotiating agreement provisions based on its expertise with leases on Federal land.	J	J	J	ALL	BLM, BIA and if requested, OSM, provide assistance to the Indian mineral owner in the course of negotiating, evaluating, and preparing minerals agreement terms, stipulations, and conditions.
b. BIA will coordinate the review of the draft agreement for the Department within the 180 day time-frame established in the regulations. BLM and OSM will provide an evaluation, consistent with their expertise and the extent of available resources, of the negotiated terms of the agreement to BIA.	F	O	O	BLM and OSM	This review is needed in order for the Secretary to make an informed determination of whether to approve the draft minerals agreement. It is an inherently Federal function.
2. 1909 and 1938 leasing acts: BLM provides appraisal information and bond recommendation to BIA for leases under the 1909 and 1938 leasing acts.	O	F	O	BIA and OSM	
3. Assure the agreement complies with NEPA requirements prior to approval.	F	O	O		BIA will consult with BLM and OSM in the preparation of required NEPA documents.
4. Approve or disapprove the minerals agreement executed by the mineral owner and the applicant.	S	O	O	BLM OSM	Copies provided upon approval.

BUREAU
RESPONSIBILITY

DUTY	BIA	BLM	OSM	DIST. TO	REMARKS
II. ACTIONS AND APPROVALS AFTER ISSUANCE OF A BIA APPROVED MINERALS AGREEMENT.					
A. Applications and Actions Not Related to Rights Granted by the BIA approved Minerals Agreement.					BIA processes applications on Indian lands overlying Indian coal, subject to a minerals agreement, for uses not related to the recovery of coal (e.g., grazing, timbering, rights of way, sand and gravel, etc.) before approving non-minerals agreement related use or capital improvements.
1. Receive application for land use or occupancy on minerals agreement lands.	F	O	O	BLM OSM	Copies within 30 calendar days of receipt.
2. Approve, disapprove, or conditionally approve the application.	F	O	O	BLM OSM	BLM and OSM provide recommendations to BIA on potential conflicts with surface coal mining and reclamation within 30 days of receipt of the application.
B. Exploration Operations Under a BIA Approved Minerals Agreement.					
1. Receive the exploration plan from the applicant.	O	S	O	BIA OSM	Additional exploration work under a minerals agreement is conducted under an exploration plan approved by BLM. If a SMCRA permit has been issued, responsibilities and procedures are those set forth in Section III.B. (below).
2. Request interagency participation.	O	F	O		If requested, OSM identifies special data that could be required in a PAP. BIA makes recommendations after consultation with Tribal and individual Indian mineral and surface owners.
3. Conduct a field examination of the area of the exploration plan.	J	J	O		BLM notifies BIA and OSM of the time and place of the joint field examination.
4. Prepare required NEPA documents.	O	F	O		BIA and if requested, OSM, cooperate in the preparation of documents required by NEPA.
5. Approve, disapprove or conditionally approve the exploration plan.	O	F	O	BIA OSM	BLM consults with BIA prior to approval or disapproval.

DUTY	BUREAU RESPONSIBILITY				DIST. TO	REMARKS
	BIA	BLM	OSM			
6. Supervise exploration and reclamation operations under the approved plan.	O	F	O			BIA and OSM will assist upon request. BLM makes all data obtained under the approved plan available to BIA and Indian mineral owner. For geological data a secondary office of control will be established by BIA if necessary.
7. Conduct final abandonment inspection(s) of the area of exploration operations.	J	J	O			BIA and Indian mineral owner participate in the final inspection(s) and make recommendations as required.
8. Approve reclamation of the area of exploration operations.	O	F	O	BIA OSM		BLM consults with BIA prior to approval.
9. Approve abandonment of area of exploration operations.	O	F	O	BIA OSM		BLM approves abandonment of operations in consultation with BIA and Indian mineral owner.
C. SMCRA Permit Issuance and Mining Plan Approval.						
1. Receive PAP which includes the mining plan from operator.	O	O	S	BIA BLM		OSM transmits copies to BIA, BLM and Tribe ² . BIA notifies individual Indian mineral and surface owners of receipt of the PAP.
2. Identify principals responsible for interagency coordination and cooperation.	J	J	J			Each bureau will identify a principal as point of contact responsible for interagency cooperation and notify the others within 10 calendar days of receipt of the PAP.
3. Review the SMCRA permit application for administrative completeness.	O	O	S			OSM will determine the administrative completeness of the SMCRA permit application.
4. Interagency PAP conference(s).	O	O	F			Upon request an interagency (BIA-BLM-OSM) conference(s) will be held, including the Tribe.
5. Notify applicant of deficiencies in administrative completeness.	O	O	S	BIA BLM		OSM will provide copies of any deficiency letters to BIA, BLM, Tribe and other Federal agencies.
6. Receive, distribute and review applicant's submittals in response to administrative completeness deficiencies.	O	O	S	BIA BLM		

2 UNDER THE CURRENT REGULATORY SCHEME OSM WOULD ONLY DEAL WITH TRIBES. ANY COORDINATION WITH INDIVIDUAL INDIANS WOULD BE CONDUCTED BY BIA.

	DUTY	BUREAU RESPONSIBILITY				REMARKS
		BIA	BLM	OSM	DIST. TO	
7.	Issue notice of administrative completeness review stage to applicant.	O	O	S	BIA BLM	Send copies of notification to BIA, BLM, and Tribe.
8.	Conduct a technical review of the PAP for compliance with SMCRA requirements.	O	O	F		BIA, BLM, Tribe, and other Federal agencies will review the PAP and provide comments to OSM within 30 calendar days of OSM declaring the SMCRA permit application administratively complete.
9.	Notify applicant of specific technical deficiencies.	O	O	S	BIA BLM	Include appropriate deficiencies identified by BIA, BLM, Tribe and other Federal agencies.
10.	Receive, distribute and review applicant's response to technical deficiencies.	O	O	S	BLM BIA	BIA, BLM, Tribe, and other Federal agencies will review the applicant's response and provide comments within 30 calendar days.
11.	Assure compliance with NEPA requirements for the mine plan, which addresses coal development, production, resource recovery and protection.	O	F	O		OSM and BLM will be cooperating agencies during the preparation of the NEPA documents. BLM will have lead responsibility for issues related to coal resource recovery and protection.
12.	Assure compliance with NEPA requirements for the SMCRA permit.	O	O	F		OSM and BLM will be cooperating agencies during the preparation of the NEPA documents. OSM will have lead responsibility for issues related to SMCRA-related reclamation and post mining land use issues.
13.	Conduct technical review of the mining plan which addresses coal development, production, resource recovery and protection.	O	F	O		BLM consults with BIA, Tribe, and OSM during the review and prior to approval of the mining plan. BIA and Tribe provide comments and recommendations to BLM within 45 calendar days of receipt of the mining plan. OSM provides comments and recommendations to BLM concerning SMCRA requirements pertaining to the mining plan.
14.	Issue written notification to applicant to approve, disapprove, or conditionally approve the mining plan.	O	S	O	BIA OSM	BLM provides BIA, Tribe, OSM, and other Federal agencies with copies of the decision. BIA notifies individual Indian mineral and surface owners of the decision.
15.	Issue written notification to applicant of the completion of the technical review stage and approve, disapprove, or conditionally approve the SMCRA permit application.	O	O	S	BIA BLM	OSM furnishes copies of notification to BIA, BLM, Tribe and other Federal agencies. BIA notifies individual Indian mineral and surface owners. OSM's decision on the permit application occurs after BLM's decision on the mining plan.
16.	Issue a SMCRA permit.	O	O	S	BIA BLM	OSM provides copies of permit, decision documents and NEPA documentation to BIA, BLM, Tribe, and other Federal agencies.

DUTY	BUREAU RESPONSIBILITY				DIST. TO	REMARKS
	BIA	BLM	OSM			
III. ACTIONS AFTER SMCRA PERMIT AND MINING PLAN APPROVALS.						
A. Changes to SMCRA Permit/PAP and/or Mining Plan.						
1. In accordance with 30 CFR Part 750, OSM initiates revisions and/or receives applications for SMCRA permit renewal, revision, transfer, sale or assignment and approves, disapproves or conditionally approves these applications.	O	O	F		BIA BLM	OSM receives and processes the applications. OSM sends a copy of the application to BIA, BLM, Tribe, and other Federal agencies. BIA, BLM, Tribe, and other Federal agencies will respond within 30 days with comments and/or concerns. If a modification to the mining plan is necessary, and the operator has not submitted one, BLM will advise the operator. Joint site visits will be conducted by the bureaus when appropriate. On occasion, OSM may determine that field conditions or other circumstances require an expedited review and a decision for a permit revision application. OSM will immediately contact the BIA, BLM and the Tribe (by phone or fax) to make appropriate arrangements. On these occasions, OSM will make every attempt to ensure that the other bureaus are properly briefed and involved and as follow-up will provide all parties with a copy of the written decision and documentation.
2. In accordance with 25 CFR Parts 211, 216 and 225, BLM initiates and or receives mining plan modifications and approves, disapproves or conditionally approves these applications.	O	F	O		BIA OSM	BLM receives and processes the modifications. BLM sends a copy of the proposed modification to BIA, OSM, Tribe and other Federal agencies. BIA, OSM, Tribe, and other Federal bureaus respond within 30 days with comments and/or concerns. If a revision to the SMCRA permit is necessary, and the operator has not submitted one, OSM will advise the operator. Joint site visits will be conducted by the bureaus when appropriate. On occasion, BLM may determine that field conditions or other circumstances require an expedited review and a decision for a mining plan modification. BLM will immediately contact the BIA, OSM and the Tribe (by phone or fax) to make appropriate arrangements. On these occasions, BLM will make every attempt to ensure that the other bureaus are properly briefed and involved and as follow-up will provide all parties with a copy of the written decision and documentation.
B. Exploration Operations - SMCRA Permit Area.						
1. Exploration within a SMCRA permit area.	O	O	F			Exploration operations are conducted as approved in the SMCRA permit.
2. Approval of Exploration Plans outside a SMCRA permit area.	O	F	O			Exploration Plans for operations outside a SMCRA permit area are approved by BLM in consultation with BIA and OSM. Procedures are those in Section I. A. or Section II.B. (above), as appropriate.

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DUTY	BUREAU RESPONSIBILITY			DIST. TO	REMARKS
	BIA	BLM	OSM		
C. Inspection and Enforcement.					
1. Monitor, inspect and enforce SMCRA and SMCRA permit requirements for surface effects and reclamation requirements.	O	O	S	BLM BIA	OSM informs BIA, BLM, and the Tribe of scheduled inspections and invites participation. Participation by these bureaus is recommended.
2. Monitor, inspect and enforce mining plan requirements for coal development, production and resource recovery.	O	S	O	OSM BIA	BLM informs BIA, Tribe, and OSM of scheduled inspections and invites participation. Participation by these bureaus is voluntary.
3. Monitor and enforce minerals agreement terms, conditions, and stipulations not related to mining plan or SMCRA permit.	S	O	O	BLM OSM	BIA retains surface management jurisdiction over the area as defined in the minerals agreement. BIA invites participation of BLM, Tribe and OSM in inspections conducted by BIA in the agreement area.
4. Notify cooperating bureaus of violations or potential violations of SMCRA permit, mining plan, minerals agreement, or surface use and provide copies of reports of inspection and enforcement.	J	J	J	BLM BIA OSM	Each bureau (BIA, BLM, and OSM) as a result of monitoring and enforcement activity notifies the other(s) of violations or problems germane to the cooperating agency's sphere of responsibility and each bureau provides inspection and enforcement reports to the other bureaus and the Tribe/Indian mineral owner.
5. Issue to operators notices of violation, cessation orders, and orders to show cause; and assess civil penalties required by SMCRA and SMCRA permits.	O	O	S	BIA BLM	OSM provides BIA, Tribe, and BLM with copies of notices, orders and penalty actions (including notices of proposed assessments and assessment conference reports).
6. Issue notice to operators of noncompliance with mining plan or minerals agreement terms, conditions, and stipulations.	J	J	O	BIA OSM	BLM notifies BIA of noncompliance or potential noncompliance with an approved mining plan; BIA serves notice of noncompliance on the operator and provides copies of notification of noncompliance to OSM and BLM. Notices of noncompliance originating with BIA are served only after consultation with BLM and Indian mineral owner.
7. After the issuance of a notice of noncompliance with an approved mining plan or minerals agreement terms, conditions, and stipulations; take appropriate action up to and including suspension of operations.	J	J	O	BIA OSM	BLM provides notification and copies of action(s) taken and supporting documentation to BIA and OSM. BIA assesses penalties up to and including cancellation of the minerals agreement and provides BLM and OSM copies of the decision, action taken and any additional documentation. Only BLM issues orders of suspension, unless emergency conditions exist.

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DUTY	BUREAU RESPONSIBILITY			DIST. TO	REMARKS
	BIA	BLM	OSM		
IV. ABANDONMENT OF OPERATIONS, RELEASE OF SMCRA PERFORMANCE BOND AND TERMINATION OF A MINERALS AGREEMENT.					
A. Receive and transmit the operator's application to abandon operations required under 25 CFR Parts 216 and 225.	O	F	O	BIA OSM	BLM provides copies of abandonment plan to BIA and OSM within 30 calendar days of receipt. BIA will notify the Indian mineral/surface owners.
B. Arrange for initial interagency abandonment inspection required under 25 CFR Parts 216 and 225.	O	F	O		BLM arranges for participation of BIA, OSM, and the Indian mineral owner(s) in the abandonment inspection.
C. Evaluate the proposed abandonment plan required under 25 CFR Parts 216 and 225.	O	F	O		After consultation with Indian mineral/surface owners BIA provides recommendations to BLM. BLM evaluates coal resource recovery and protection of any remaining coal against the standards in the approved mine plan.
D. Conduct an interim inspection of the records and area within the minerals agreement and determine if the coal production requirements have been met.	O	F	O	BIA OSM	BLM provides BIA, OSM and the Indian mineral owner with written notification that the operator has complied with the production requirements of the agreement.
E. Approve abandonment of operations required under 25 CFR Parts 216 and 225.	O	F	O	BIA OSM	After interim inspection and consultation with BIA and the Indian mineral owner BLM certifies that the coal has been removed as described in the approved plan. BLM notifies the operator, BIA, Indian mineral owner and OSM of approval.
F. Receive operator's application for release of reclamation SMCRA performance bond (or phase of bond).	O	O	S	BIA BLM	Copies will be provided within 30 days.
G. For SMCRA performance bond, conduct joint inspection of the permit area.	O	O	F		OSM arranges for joint inspection in cooperation with the operator, BIA, BLM, Tribal and surface owners. BIA notifies the individual Indian surface owners.

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	BIA	BLM	OSM		
H. After operator's public notice of release of SMCRA performance bond, receive comments/objections, hold public hearings and/or conferences on proposed release of SMCRA performance bond.	O	O	F		BIA and BLM provide comments to OSM within 30 days after the last publication of the bond release notice; BIA after consultation with the Indian mineral/surface owners notifies OSM of operator compliance with requirements for protection of noncoal resources and with measures for postmining land use; BIA and BLM participate in hearing(s) and meeting(s).
I. Approve application for release of SMCRA performance bond.	O	O	S	BIA BLM	OSM notifies BIA, Tribe, and BLM of remedial action (if any), BIA and BLM will comment within 10 calendar days on remedial action (if any) taken. OSM notifies BIA, Tribe, and BLM of final release of reclamation performance bond within 30 calendar days of release.
J. Receive operator's application for termination of minerals agreement and release of minerals agreement performance bond.	S	O	O	BLM OSM	BIA provides copies of application to BLM, Indian mineral owner, and OSM within 30 calendar days of receipt.
K. Approve or disapprove application(s) for termination of minerals agreement and release the minerals agreement performance bond.	S	O	O	BLM OSM	After notification by OSM that the affected lands have been satisfactorily reclaimed and after notification by BLM that production requirements are satisfied BIA approves termination of the minerals agreement and release of minerals agreement performance bond. BIA notifies BLM, Indian mineral owner, and OSM of approval actions within 30 calendar days of termination of the minerals agreement.

Article D - ADMINISTRATION

This MOU clarifies the roles of the BIA, BLM, and OSM with respect to the applicable regulations (25 CFR Parts 200, 211, 212, 216, and 225; 30 CFR Part 750) and Secretarial Order No. 3087, "Organizational Restructuring of the Department of the Interior Minerals Management Functions" for purposes of management of coal operations on Indian lands. In the event of a conflict, the regulations or any authorities cited in any permit, lease, contract, or minerals agreement shall prevail over this MOU.

1. BIA will act, within the statutory and regulatory requirements, generally on behalf of owners of all Indian lands and specifically on behalf of the Indian owners of allotted land held in trust by the Secretary and where practicable will represent their interest in accordance with 25 CFR Parts 211, 212, 216, and 225. To this end, BIA will be the point of contact with the operator and others for all other actions not related to the SMCRA permit or mining plan which may include but not be limited to the minerals agreement, lease, minerals agreement performance bond, rentals, royalties, grazing permits, rights-of-way, existing structures, sale or assignment of lease, etc.
2. BLM will provide the normal point of contact for the operator and all others for coal development, production, and resource recovery (mining plan) as outlined in 25 CFR Parts 211, 212, 216, 225; 30 CFR Part 750), and minerals agreement terms and conditions.
3. OSM will provide the normal point of contact for the operator and all others for PAP submittal, review, and approval; for the environmental aspects of the PAP as outlined in 30 CFR Part 750; and for compliance with the approved SMCRA permit.
4. The BIA, BLM, and OSM will assume joint and continuing responsibility for the interagency information exchange and appropriate communication necessary to the discharge of their individual and collective responsibilities in the management of the mining of coal on Indian lands. To this end, the bureaus will:
 - a. Hold examinations or meetings with applicants, operators, contractors, Indian mineral owners, Indian surface owners, and other involved parties to discuss problems, stipulations, conditions, working agreements, and other items of common concern. Each bureau that is a party to this MOU will notify the other(s) of such examination and/or meetings and invite participation to the extent appropriate and reasonable.
 - b. Immediately notify the other parties to this MOU of any agreements or Indian self-determination contracts negotiated to perform any responsibilities outlined in this MOU pursuant to the Indian Self-Determination Act (Public Law 93-638). Such notification shall specifically identify the MOU responsibilities affected by the agreements or self-determination contracts and delineate the effects of the agreements on these responsibilities. Notification procedures shall be the same for modifications to or terminations of any existing agreements or self-determination contracts. The other parties shall adjust their coordination activities to facilitate the terms of these agreements. Since these agreements are subject to change periodically and the ultimate responsibilities remain

with the Federal agencies, no modifications of the MOU document shall result from these agreements.

5. Create a Coordination Team composed of two members each from BIA, BLM, and OSM. The Team will:
 - a. Conduct examinations of reclamation projects as appropriate.
 - b. Meet at least annually, and as required, to review this MOU and make recommendations or changes to meet current Department or Bureau policies, laws, and regulations.
 - c. Resolve differences among OSM, BIA, or BLM concerning procedures set forth in this MOU.
 - d. Consider and act upon proposed modifications to this MOU submitted at any time by any party to this MOU.
6. This MOU shall remain in effect until superseded or canceled by mutual agreement of the participants.

/s/ M Sharon Blackwell
Deputy Commissioner, Indian Affairs

4-8-02
Date

/s/ Kathleen Clark
Director, Bureau of Land Management

6-12-02
Date

/s/ Jeffery D Jarrett
Director, Office of Surface Mining

6-25-02
Date

/s/ Neal A McCaleb
Assistant Secretary
Indian Affairs

APR 8 2002
Date

/s/ Rebecca W. Watson
Assistant Secretary
Land and Minerals Management

10-24-02
Date