

Section 101. Objectives and Policy.

.01 Objectives

The general objective of the Bureau of Indian Affairs in relation to the land held in a restricted status for the Indians, individually and tribally, is through cooperation and instruction and through other types of assistance provided by the Bureau, to bring about self-use of such lands and their resources, and to furnish additional lands when needed to provide an economic land base, all with the general purpose of making the Indians, individually or as communities, self-supporting and qualified to assume responsibility for administering their own resources. This is to be accomplished by:

- A. Working with Indians in developing an understanding, appreciation and ability to manage their physical resources.
- B. Assisting the Indians in the development and execution of long-term programs that will include the maximum utilization of available land resources.
- C. Assisting the Indians by conservation and development of their land and mineral resources.
- D. Assisting tribes or other groups and individuals to acquire lands adequate for their needs.
- E. Assisting Indians to consolidate fractional heirship interests into useable units.
- F. To assist Indians in obtaining an adjudication of compensation for rights, legal and moral, created by reason of their relationship to the Federal Government.
- G. To vest in the Indian who has had an opportunity and demonstrated a reasonable degree of competency in handling his own affairs, responsibility for administering his own property, having due regard as to the effect of any such action upon the well-being of his family, other Indians in the community, and the advantageous use of Indian owned lands in the area.

.02 Policy

The objectives set forth are to be accomplished in cooperation with the Indians involved. On the basis that Indians are to take their rightful place as members of society and the community, the cooperation of State and local authorities are to be requested and obtained. Programs for the use of the land should be developed with a view to its most advantageous use and gradual but greater assumption of responsibility by the Indians. Fulfillment of this policy and the objectives set forth can and should lead to the termination of Federal responsibility.

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Section 102. Authority.

.01 Statutory

The principal Acts of Congress under which the Branch of Land functions are as follows:

Act of February 8, 1887 (244 Stat. 388)
February 28, 1891 (26 Stat. 794, 795)
August 15, 1894 (28 Stat. 286, 305)
March 2, 1899 (30 Stat. 990)
March 3, 1901 (31 Stat. 1058, 1084)
May 27, 1902 (32 Stat. 245)
March 11, 1904 (33 Stat. 65)
May 8, 1906 (34 Stat. 182)
March 1, 1907 (34 Stat. 1015, 1018)
May 29, 1908 (35 Stat. 444)
March 3, 1909 (35 Stat. 781, 783)
June 25, 1910 (36 Stat. 855, 856)
March 3, 1921 (41 Stat. 1225, 1232)
June 18, 1934 (48 Stat. 984)
June 26, 1936 (49 Stat. 1967)
May 11, 1938 ~~(49 Stat. 115)~~ *52 Stat. 347*
February 5, 1948 (62 Stat. 17)
May 14, 1948 (62 Stat. 236)

In the respective Chapters dealing with specific subjects, such as Alienation, Acquisition, Leasing, Rights of Way, Leasing for Minerals, Oil and Gas Leases, and other subjects, there will be included citations to the Acts applicable to the subject under discussion.

.02 Authority Vested in Area Directors.

The Area Directors may exercise the authority of the Commissioner of Indian Affairs as delegated in Order 551 in the following classes of land matters as quoted below:

"Sec. 4 Fee Patents and Competency Certificates. The approval of applications for patents in fee or certificates of competency, pursuant to the provisions of 25 CFR 241." (See the Acts of May 8, 1906 [34 Stat. 18] and June 25, 1910 [36 Stat. 856], as amended or supplemented).

"Sec. 5 Sales and Conveyances. The approval of sales and conveyances of original allotments and inherited lands pursuant to the pro-

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visions of 25 CFR 241. The authority conferred by this paragraph extends to and includes the sale of inherited lands without the consent of the Indian owners, the approval of deeds or other instruments of conveyance, the issuance of certificates or memoranda of purchase to purchasers on deferred payment sales, the reduction or waiver of sales fees, the granting of extensions of time to purchasers to make payment, and the cancellation of deferred payment sales in case of default." (See the Acts of May 27, 1902 [32 Stat. 245] and March 1, 1907 [34 Stat. 1018], as amended).

"Sec. 5 Removal of Restrictions (Other Than Five Civilized Tribes). The removal of restrictions against alienation of Indian lands, other than allotted lands of the Five Civilized Tribes, pursuant to the provisions of 25 CFR 241." (See the Acts of Sept. 21, 1922 [42 Stat. 994, 995] and May 11, 1948 [62 Stat. 236], as amended).

"Sec. 7 Land Exchanges. The approval of exchanges of lands between individual Indians, between individual Indians and Indian tribes, between individual Indians and non-Indians, and between Indian tribes and non-Indians." (See the Acts of April 23, 1904 [33 Stat. 297], June 25, 1910 [36 Stat. 856] and June 18, 1934 [48 Stat. 984], as amended).

"Sec. 8 Land Acquisitions. The approval of the purchase of lands for individual Indians and Indian tribes. This authority extends to and includes the acceptance of options for the acquisition of lands and the authorization to disburse restricted individual Indian money to complete the acquisition of lands for individual Indians." (See the Acts of March 2, 1931 [46 Stat. 1471], June 30, 1932 [47 Stat. 474], June 18, 1934 [48 Stat. 984], as amended).

"Sec. 9 Sale of Pledged Land. The approval of authorizations for the sale of restricted Indian lands pledged as security for the repayment of tribal loans to individuals, and the approval or acceptance of conveyances of such lands in accordance with the terms of the pledge in the event of default." (See the Acts of May 27, 1902 [32 Stat. 245] and March 1, 1907 [34 Stat. 1015, 1018]).

"Sec. 10 Allotment Adjustments. The approval and certification of allotment exchanges, correction of patent descriptions and cancellation of multiple allotments, as authorized by the Act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343)."

"Sec 11 Tax Exemption Certificates. The issuance of tax exemption certificates covering lands designated as tax exempt under the provisions of the Act of June 20, 1936 (49 Stat. 1542) as amended May 19, 1937 (50 Stat. 168; 25 U.S.C. 412a) and the Act of May 10, 1928 (45 Stat. 495) as amended May 24, 1928 (45 Stat. 733) and August 4, 1947 (61 Stat. 731)."

"Sec. 12 Leases and Permits. The approval of leases and permits of tribal and allotted lands for farming, farm pasture, or business purposes, pursuant to the provisions of 25 CFR 171. This authority extends to and includes the waiver of requirements for advertising of leases or permits and the waiver of acreage limitations on farm and farm pasture lands." (See Acts of February 28, 1891 [26 Stat. 794, 795], June 25, 1910 [36 Stat. 855, 856], May 13, 1916 [39 Stat. 138], as amended and supplemented).

"Sec. 13 Land Partitions. The approval of partitions of land held in trust or subject to restrictions against alienation, pursuant to the provisions of 25 CFR 241." (See the Act of June 25, 1910 [36 Stat. 855, 856], as amended).

"Sec. 14 Tribal Fees. The approval of fees fixed by tribes when performing clerical and ministerial work in connection with the grants of leases and permits pursuant to 25 CFR 171." (See the Acts of June 18, 1934 [48 Stat. 984] and June 26, 1936 [49 Stat. 1967]).

"Sec. 15 Allotment Applications. The approval and certification of applications for allotments on the public domain under authority of Section 4 of the Act of February 8, 1887 (24 Stat. 388; 25 U.S.C. 334)."

"Sec. 16 Mineral Leases and Permits. The approval of sand, gravel, pumice and building stone leases and permits of tribal and allotted lands, pursuant to the provisions of 25 CFR 186, 189, 195, and 204." (See the Acts of May 11, 1938 [52 Stat. 347], March 3, 1909 [35 Stat. 781], June 4, 1920 [41 Stat. 751], as amended by Act of May 26, 1926 [44 Stat. 858], June 28, 1906 [34 Stat. 539] as amended by Acts of March 3, 1921 [41 Stat. 1249] and March 2, 1929 [45 Stat. 1473]).

"Sec. 17 Deferred Payment Sales, Five Civilized Tribes. The approval of the negotiation of notes given in connection with deferred payment sales of restricted lands of the Five Civilized Tribes, pursuant to the provisions of 25 CFR 241.41." (See the Acts of April 21, 1904 [33 Stat. 448], June 21, 1906 [34 Stat. 325], May 27, 1908 [35 Stat. 312]).

"Sec. 18. Releases of Mortgages. The approval of releases of mortgages given as security for loans made from the restricted funds of individual Indians, upon proof of payment of the loan."

"Sec. 19. Rights of Way. The approval of rights of way for oil and gas pipe lines, telephone and telegraph lines, and public highways, pursuant to the provisions of 25 CFR 256. This authority extends to and includes the issuance of advance authority for preliminary surveys and permission for beginning construction prior to the official approval of the right of way."

"Sec. 20. Lead and Zinc Leases. The approval of leases for lead and zinc mining purposes, Quapaw jurisdiction, pursuant to the provisions of 25 CFR 201. The authority conferred by this section extends to and includes the approval required or other appropriate administrative action on all subleases or assignments of leases now or hereafter in force and bonds and other instruments required in connection therewith" (See the Acts of June 7, 1897 [30 Stat. 62], March 3, 1909 [35 Stat. 781], March 3, 1921 [41 Stat. 1225] and November 18, 1921 [42 Stat. 1570]).

"Sec. 21. Leases and Other Instruments for Oil, Gas and Other Purposes, Five Civilized Tribes. The approval of leases for oil, gas or other mining purposes, Five Civilized Tribes, pursuant to the provisions of 25 CFR 183. The authority conferred by this section extends to and includes the approval or other appropriate administrative action required on all assignments of mineral leases now or hereafter in force on restricted allotted lands, bonds and other instruments required in connection with such leases or assignments thereof, unit and communitization agreements, well-spacing orders of the Oklahoma Corporation Commission submitted for approval under authority of Section 11 of the Act of August 4, 1947 (61 Stat. 731), the acceptance of voluntary surrender of such leases by lessees, cancellation of leases for violation of terms thereof, and approval of agreements for settlement of claims for damages to Indian lands resulting from oil and gas or other mineral operations." (See the Acts of May 27, 1908 [35 Stat. 312] and August 4, 1947 [61 Stat. 731]).

"Sec. 22. Leases and Other Instruments for Oil, Gas and Other Mining Purposes, Anadarko Area, Other Than Osage Oil Leases. The approval of leases for oil, gas or other mining purposes, pursuant to the provisions of 25 CFR 186 and 189. The authority conferred by this section extends to and includes the approval or other appropriate administrative action required on all assignments of mineral leases now or hereafter in force on restricted tribal or al-

lotted lands, bonds and other instruments required in connection with such leases or assignments thereof, unit and communitization agreements, the acceptance of voluntary surrender of such leases by lessees, cancellation of leases for violation of terms thereof, and approval of agreements for settlement of claims for damages to Indian lands resulting from oil and gas or other mineral operations." (See the Acts of May 11, 1938 [52 Stat. 347] and March 3, 1909 [35 Stat. 781]).

"Sec. 23. Assignment Osage Oil Leases and Rights of Appeal. Approval of assignments of Osage oil leases now or hereafter in force and bonds and other instruments required for leases or assignments thereof, and the acceptance of the voluntary surrender of leases. Any person aggrieved by a decision or order approving, disapproving, or rejecting any lease, assignment, bond, or voluntary surrender of a lease, may appeal to the Commissioner of Indian Affairs within 30 days from the date of such decision or order." See the Acts of June 28, 1906 [34 Stat. 539], March 3, 1921 [41 Stat. 1249], March 2, 1929 [45 Stat. 1478]).

1/ Under Secretary's Order 2508, January 11, 1949, F.R. 258-260, and Amendment No. 1. of January 11, 1951, the Superintendent of the Osage Agency may exercise the authority of the Secretary as follows: Oil Leases, Osage Indian Agency. Approval of oil leases made by the Osage tribal council only after the approval by the Commissioner of Indian Affairs of the schedule of bids covering the particular sale, and resolutions of the council extending the prescribed periods for drilling of oil wells within the terms of the oil leases. (See the Acts of June 28, 1906 [34 Stat. 539], March 3, 1921 [41 Stat. 1249], March 2, 1929 [45 Stat. 1478]).

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Section 104. Area Office Land Organization and Functions.

- .01 Organization Area Office. Area offices, the second element of Bureau organization, are under the immediate direction of the Area Directors who are responsible to the Commissioner of Indian Affairs for the administration of all Indian Service activities in their respective areas. The Area Land Officers or other designated persons in charge of land activities at the Area Offices are responsible to the Area Directors and perform the following local staff functions:
- .02 Area Office Functions
- A. Assist tribal councils, Superintendents, and their staffs in formulating reservation land-use plans and programs, including the organization and operation of tribal land enterprises and the formation of Indian land use areas.
 - B. Assist agency land personnel in the techniques of arranging individual economic programs for Indians whose chief source of income is to be derived from the use of the land.
 - C. Advise agency land personnel in the methods of appraising lands, preparation of certificates of appraisements, abstracts of inheritance, instruments of conveyances, and letters of justification for land transactions.
 - D. Advise agency land personnel in the techniques of Indian family land ownership adjustments, partitionments, and conveyances to reduce the multiple ownership and concentrate ownership in the persons most able to make actual beneficial use of the land.
 - E. Advise agency personnel in the techniques of arranging for land exchanges between Indians and non-Indians so that the Indian might acquire land of greater benefit to him than the land he now owns.
 - F. Assist agency land personnel in determining the land needs of individual Indians and Indian groups and the manner of obtaining the needed land.
 - G. Suggest to Superintendents and the Director any needed changes in personnel or procedure that would permit more rapid progress or more thorough performance of land work.

- H. Inspect all proposed land transactions submitted for action of the Area Director.
- I. Return to Superintendents for correction, revision, or re-examination all documents not properly presented.
- J. Prepare for the signature of the Area Director letters relative to land transactions.
- K. Examine applications for fee patents, removal of restrictions, certificates of competency, and sales and all pertinent information relative thereto, check with other officials, if any who may be concerned, and prepare letters for the Area Director, recommending approval or denial of the applications.
- L. Conduct investigations in the field relative to applications for fee patent, removal of restrictions, certificates of competency and sales, when necessary to obtain information not clearly shown in the application or related reports.
- M. Record in the Area Office all deeds and other instruments of conveyance approved by the Area Director.
- N. Maintain a record of deeds and files of correspondence relative to land title transactions.
- O. Instruct field employees in the keeping of standard and proper land records at the agencies.
- P. Work in cooperation with other Indian Service field activities in those instances where their programs involve land use, consolidation, title, or transfer.
- Q. Keep abreast of the latest techniques of land appraisement, passing such data to field personnel.
- R. Recommend allocation of land purchase funds.

Section 105. Agency Office Organization and Functions.

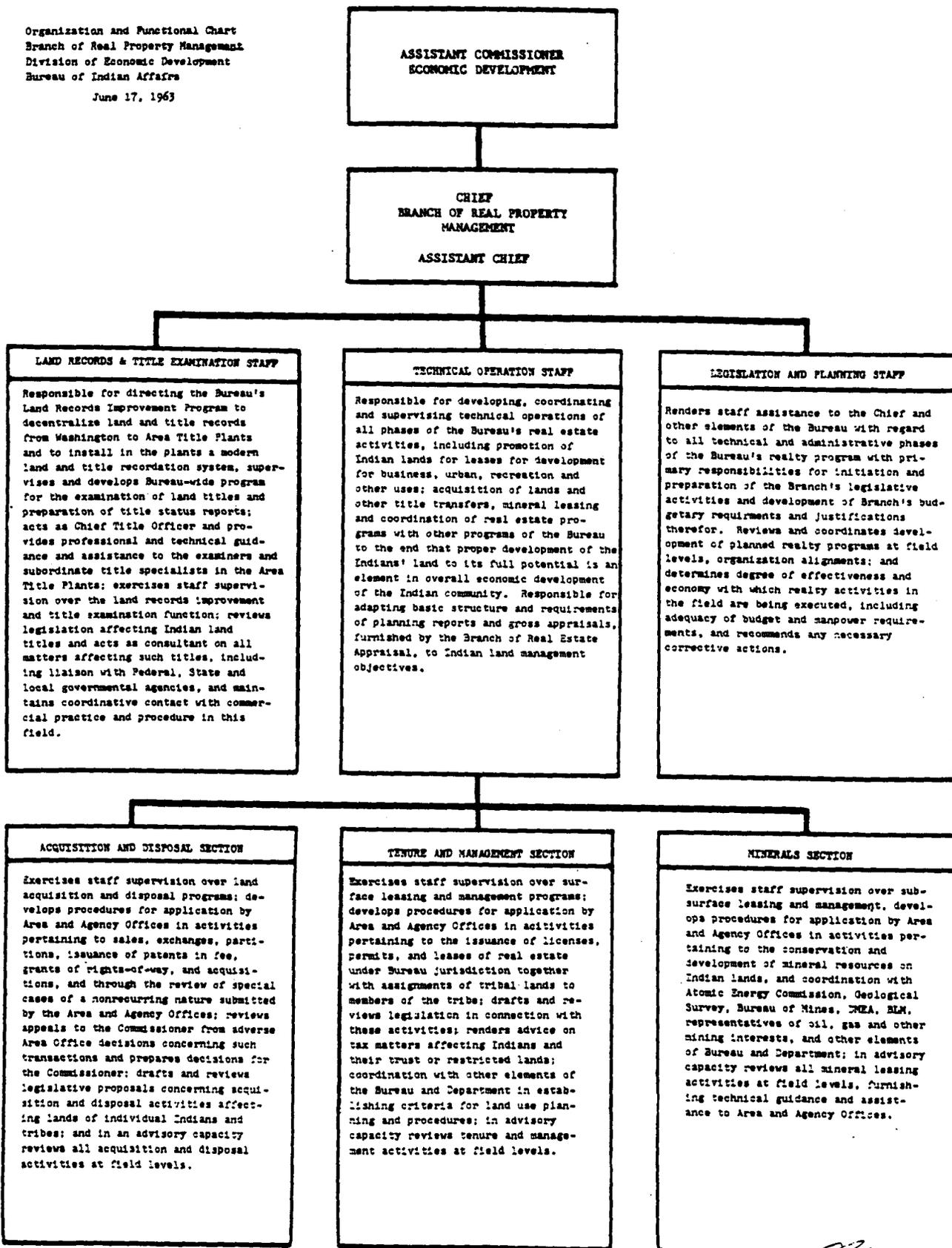
- .01 Organization Agency Office. Field Offices constitute the primary program element of the Bureau. As such, they deal directly with the Indians and with Indian matters in the interest of which, all other activities of the Bureau are directed. Each field office is under the immediate direction of a Superintendent, who in turn is responsible to the Area Director. The Superintendents are responsible for directing, coordinating, and controlling all local functions in accordance with the policies, standards, and procedures established by the Commissioner or by the law. Superintendents perform the land function with the aid of their staffs of assistants. These assistants are directly responsible to the Superintendent for all their actions. In cases where it is possible to assign a Land Officer or Land Field Agent to the field office, the duty of this employee, under the direction and supervision of the Superintendent, shall be as set forth under .02 below.
- .02 Agency Office Functions.
- A. Correlate land programs with programs of other activities on the reservation.
 - B. Prepare summaries and recommendations for each land conveyance for administrative action.
 - C. Appraise the value of the physical properties of land; classify types of land and appraise improvements in connection with exchanges, partitions, and sales of land. Each appraisal shall include the value of minerals, if any, underlying the land. The value of the minerals shall be determined in conjunction with representatives of the U.S. Geological Survey.
 - D. Explain entire land acquisition, adjustment, and consolidation program to Indians, individually and in groups, and to interested county and state officials.
 - E. Prepare lists of land holdings of individual Indians and family groups to be used in determining desirable and equitable land exchanges to be effected in eliminating inherited interests and in providing suitable economic units for the individuals or families.
 - F. Prepare options, appraisal reports, conveyances, maps, correspondence, and other papers involved in land transactions.

- G. Train agency personnel in regulations and procedures for Indian land acquisition, adjustment, and consolidation.
- H. Develop agency land programs in accordance with established policies.
- I. Maintain agency land records and documents, post all changes thereto to provide a current *day to day* record reflecting the status of the individual parcels of land.

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Organization and Functional Chart
Branch of Real Property Management
Division of Economic Development
Bureau of Indian Affairs

June 17, 1963



CHAPTER 2

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2 TERMINATION OF RESTRICTIONS ON AND CONVEYANCES
OF INDIAN LAND INCLUDING EXCHANGES AND PARTITIONS

2.1 Patents in Fee, Certificates of Competency, and Removal of
Restrictions.

- .1 Policy. Patents in fee, certificates of competency, and orders removing restrictions may be issued upon the written application of adult Indian owners. If the Indian owner is competent to manage the property for which he requests a patent, certificate, or order, the Government has no moral or equitable right to deny his application.

If the Superintendent upon investigation finds the applicant to be competent but finds that the land covered by the application is a key tract and the termination of the trust status may adversely affect the protection and use of Indian lands remaining in trust status, the Superintendent will investigate the specific effect of the alienation on the surrounding trust lands, inform the tribal officials or individual Indians of the possibilities available for working out a satisfactory solution to the problem, and assist in negotiations or other action necessary to the solution. For example, this may in some cases be simply a matter of negotiating for a stock right of way, or a right of way for access purposes, or for the construction, maintenance, and use of a logging road to remove timber. Should the tract control the source of livestock water for a grazing unit, it may be possible to acquire a stock watering permit, or it may be a matter of developing other sources of water on another part of the range. Should it be found that acquisition of the tract by the tribe or an individual Indian is the only feasible means of protecting other Indian trust lands, the Superintendent will discuss the matter with the interested parties.

If the tribe or an individual Indian wishes to acquire the land, the Superintendent will assist in negotiating with the owner to acquire the land by purchase or exchange. If negotiations fail due to the refusal of the owner to negotiate a conveyance of the land to the tribe or an Indian, or there is a lack of available funds to consummate the acquisition, the application and all accompanying papers should be submitted by the Superintendent, with his recommendations on the matter, to the Area Director.

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Except in unusual cases, patents in fee, certificates of competency, and orders removing restrictions will not be issued for undivided interests in lands held in multiple ownership where other interests in the tract remain in trust or restricted status, since such action would increase the work and expense involved in administering the interests remaining under Bureau jurisdiction. This policy, of course, does not apply to the issuance of fee patents to non-Indians or alien Indians pursuant to 25 CFR 121.2(c).

- .2 Factors to be considered. General authority for the issuance of patents in fee simple is found in the Act of May 8, 1906 (34 Stat. 182; 25 U.S.C. sec. 349), from which the following is quoted:

"PROVIDED, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, . . ."

The Act of June 25, 1910, Sec. 1 (36 Stat. 855; 25 U.S.C. 372), contains the following:

"If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold."

Over the years a great deal of study has been given to this subject, and various approaches have been made to determinations of competency. The most recent effort on the part of Congress to establish a yardstick for measuring competency of individual Indians is found in the Act of August 11, 1955 (69 Stat. 666), relating to the removal of restrictions from property of members of the Five Civilized Tribes. Sec. 2(a) of this act provides that an order removing restrictions "shall be issued if in the

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judgment of the Secretary the applicant has sufficient ability, knowledge, experience, and judgment to enable him, or her, to manage his, or her, business affairs, including the administration, use, investment, and disposition of any property turned over to such person and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him, or her, from losing such property or the benefits thereof." The regulations issued pursuant to this act are contained in 25 CFR 121.

Precise rules cannot be prescribed for determining the competency and ability of an applicant to manage his or her own affairs. Such rules would tend to have the effect of restricting the exercise of judgment to an undesirable extent. Care must be exercised in evaluating the application for a fee patent or other action to lift the trust or remove restrictions, to the end that reasonable standards are applied in determining the applicant's competency. An applicant should not be required or expected to show in excess of the minimum acceptable normal standards in a similar non-Indian community relative to such criteria as education, experience, training, ability to support himself and his dependents, ability to protect and manage his property and make reasonable use of the income or proceeds thereof.

The Superintendent's findings as to competency, based on analysis in line with the above principles, are to be reduced to writing, indicating the specific competency factors considered and reasons for his decision.

.3 Patents in Fee.

A. Authority.

- (1) Statutory. General statutory authority for the issuance of patents in fee is found in the Act of May 8, 1906, as amended (34 Stat. 182, 183; 25 U.S.C. 349); the Act of June 25, 1910, as amended (36 Stat. 855; 25 U.S.C. 372); and the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483). Special authorities, applicable to certain reservations, also are in existence.

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(2) Regulations. 25 CFR 121.

B. Procedures. In the procedures outlined in this section, no attempt has been made to prescribe the number of copies of documents to be prepared for field purposes. It will be necessary for each Area to supplement the instructions to provide copies for Area and Agency purposes.

(1) Application. Any adult Indian may apply for a patent in fee for any land which is held in trust by the United States for such Indian. The application shall be made on Form 5-105 and shall be submitted to the Superintendent of the Agency having jurisdiction over the lands. See 25 CFR 121.2a pertaining to the disclosure of information regarding the status of applications for patents in fee.

(2) Action by the Superintendent. The Superintendent shall examine the application and ascertain that the land is correctly described and that all applicable questions are fully answered. Applications containing incomplete or ambiguous statements must be returned to the applicant with a statement of the reasons therefor.

If, upon consideration of the application, and investigation, the Superintendent determines that the applicant is competent but finds that a key tract is involved, he shall take the action set out in Section 2.1.1 of this Chapter. If the applicant is found to be competent and a key tract is not involved, the Superintendent shall submit to the Area Director the following:

- (a) Application Form 5-105, approved by the Superintendent, together with written statement of Superintendent's findings of competency described above.
- (b) A report showing the status of title to the land as disclosed by the Agency records. This report shall show the name of the allottee,

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the act under which the allotment was made, and the date of the trust patent. When the land is in heirship status, a tabulation of the probate records is to be made a part of the report. If the applicant acquired the land through means other than allotment or inheritance, the report shall indicate the type of action and instrument of conveyance by which it was acquired, and show the recording data of the Bureau of Indian Affairs. If there is need for preparation and approval of a supplemental plat by the Bureau of Land Management to accommodate the issuance of a fee patent, the report should show this fact.

- (c) Statements of the construction costs and operation and maintenance charges are to be obtained from the Project Engineer or other officer in charge of such records, and submitted with the application whenever the land or any part thereof is within an irrigation project.
- (d) Certification of indebtedness and unpaid probate fees affecting the land in the application.
- (e) A letter, addressed to the Director, Bureau of Land Management, for the signature of the Area Director, stating the application has been approved and requesting that a patent in fee be issued to the applicant. A suggested form of the letter is shown as Exhibit No. 1 at the end of this Chapter. Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patent, particularly as to minerals, rights of way, and irrigation liens.
- (f) An inventory of the estate covered by the proposed fee patent with information on relative values.

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Upon receipt of the patent in fee, the Superintendent shall prepare in letter form to accompany delivery of the patent, an inventory of the estate covered by the fee patent with information on relative values, as provided by 54 IAM 10.1.3D. Each fee patentee shall be informed that his property will be subject to taxation, and shall be given the name and location of the nearest Federal, State, and other tax authority offices. He will be informed of the name and location of appropriate offices administering State laws affecting the use of his land, and will be similarly informed of other liabilities and duties inherent in the ownership of lands in fee simple.

If application Form 5-105 is disapproved, the Superintendent shall advise by letter the basis for the disapproval of the application and advise the applicant of his right to appeal. All appeals shall be processed in accordance with Chapter 12, 54 IAM.

- (3) Action by the Area Director. Upon receipt of the approved application for patent in fee and related data, the Area Director shall examine and review the matter. Upon his approval, he shall take the following action:
- (a) Submit the original and one copy of the letter addressed to the Director, Bureau of Land Management directly to that Bureau, together with information as to the location of the office of record for the reservation involved in the request.
 - (b) Forward two copies of letter addressed to the Director, Bureau of Land Management, to the Superintendent, who shall transmit one copy to the applicant.

Whenever the Area Director disapproves an application, he shall notify the Superintendent of such disapproval and set forth his reasons for such action. The letter shall be transmitted to the

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Superintendent, who will transmit a copy thereof to the applicant and advise him of his right of appeal.

Upon receipt by the Area Director of a report and recommendation on an application for a fee patent, the approval of which would seriously affect the protection and use of Indian lands remaining in trust or restricted status, and where it has not been possible to work out a satisfactory solution to the problem, the matter will be reviewed. If it is determined that all possible action looking toward a solution to the problem has been taken and that the application should nevertheless be approved, the applicant and the tribe or individual Indians adversely affected shall be notified in writing of the decision. The letter to the Bureau of Land Management requesting issuance of a patent in fee should be submitted to the Central Office with a covering letter setting forth the facts of the case.

(4) Recording and delivery of patent.

- (a) Upon issuance of a patent affecting a reservation for which the Central Office is the office of record, the Bureau of Land Management will transmit same to that office for recording in the tract books by number and date. Thereafter, the patent will be transmitted to the field for delivery to the patentee.
- (b) When the patent affects a reservation for which the Area Office is the office of record, the Bureau of Land Management will transmit same to the Area Office for recording and delivery.

.4 Certificates of Competency (except as to the Osage
(Reservation).

A. Authority.

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- (1) Statutory. Section 1 of the Act of June 25, 1910 (36 Stat. 855), as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372).
- (2) Regulations. 25 CFR 121.
- (3) Explanation. Certificates of Competency are issued instead of patents in fee in those instances where the allotment patent conveyed a fee title to the Indian allottee subject to restrictions against alienation, encumbrance, or taxation. Certificates of Competency have the same force and effect as patents in fee, in that they serve to remove all restrictions against alienation, encumbrance, or taxation on the lands described therein owned by the individual named in the certificate.

B. Procedures.

- (1) Application. Any Indian 21 years of age or over may apply for a Certificate of Competency for any land held by such Indian under a patent in fee, initially issued subject to restrictions against alienation, encumbrance, and taxation. The application is to be made on Form 5-105, and shall be submitted to the Superintendent of the Agency having jurisdiction over the lands. Appropriate changes in Form 5-105 should be made so that the references therein to "Patents in Fee" will read "Certificates of Competency" and the citation of the act should be changed to read "Act of June 25, 1910 (36 Stat. 855), as amended."
- (2) Action by the Superintendent. The procedure and responsibility of the Superintendent in handling applications for Certificates of Competency are the same as those pertaining to the issuance of patents in fee. The Superintendent shall consider the competency of the individual and the location of the land in the same manner as when passing upon an application for a patent in fee. If the application is denied, the procedure set forth in Section 2.1.3B(2) of this chapter shall be followed.

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- (3) Action by the Area Director. The Area Director shall consider the application and report of the Superintendent. Upon approval thereof, he shall execute a Certificate of Competency. The original shall be delivered to the applicant by the Superintendent, who shall obtain a receipt therefor. One copy of the Certificate of Competency shall be forwarded to the Central Office. Should the application be denied, the procedure set forth in Section 2.1.3B(3) of this chapter will be followed.
 - (4) Action by the Central Office. Upon receipt of the copy of the approved Certificate of Competency, the document shall be appropriately recorded in the tract book.
 - (5) Action on appeals. Appeals shall be processed as set forth in Chapter 12, 54 IAM.
- .5 Removal of Restrictions on Purchased Lands Held Under Restricted Deeds.
- A. Authority.
 - (1) Statutory. The Act of May 14, 1948 (62 Stat. 236), for lands held under the Act of June 18, 1934 (48 Stat. 984), or the Act of June 26, 1936 (49 Stat. 1967). There is no specific legislative authority governing removal of restrictions on purchased lands. The authority to remove restrictions on such lands is contained in the restrictive clause in the deeds. The restrictive clause in deeds or documents of conveyance usually provides that the land shall not be alienated, sold, or encumbered without the consent of the Secretary of the Interior. There are exceptions where the clause provides "without the consent of the Commissioner of Indian Affairs," and a few instances where it provides "without the consent of the President of the United States." In these instances, the Secretary of the Interior or his duly authorized representative is vested with authority to remove the restrictions.

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(2) Regulations. 25 CFR 121.

B. Procedures.

- (1) Application. Applications for removal of restrictions from purchased lands shall be filed with the Superintendent. Form 5-105, Application for Patent in Fee, should be used for this purpose with appropriate changes therein.
- (2) Action by the Superintendent. The procedure and responsibility of the Superintendent in considering applications for removal of restrictions are the same as those pertaining to the issuance of patents in fee. The title status report should include recording data in the Bureau of Indian Affairs, and date of approval of a certificate, if any, exempting property from taxation pursuant to the provisions of Section 2 of the Act of June 20, 1936 (49 Stat. 1542), as amended by the Act of May 19, 1937 (50 Stat. 188). If the property is subject to taxation, a statement of unpaid taxes, if any, shall be obtained from the proper taxing officials and submitted with the record. The Superintendent shall consider the competency of the individual and the location of the land in the same manner as when passing upon an application for a patent in fee. If the application is denied, the procedure set forth in Section 2.1.3B(3) of this chapter shall be followed.
- (3) Action by the Area Director. The Area Director shall examine and consider the application and report of the Superintendent. If the application is approved, he shall execute an Order Removing Restrictions. (A suggested form of Order Removing Restrictions is set forth in the Appendix, Exhibit No. 2.) The original order shall be delivered to the applicant by the Superintendent, and a receipt obtained therefor. One copy of the Order Removing Restrictions shall be forwarded to the Central Office. If the application is denied, the procedure set forth in Section 2.1.3B(3) of this chapter shall be followed.

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- (4) Action by the Central Office. Upon receipt of the copy of the approved Order Removing Restrictions, the document will be recorded in the appropriate land records.
- (5) Action on appeals. Appeals shall be processed as set forth in Chapter 12, 54 IAM.

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2.2 Sale of Allotted and Purchased Lands, Exclusive of Inherited
Lands of Five Civilized Tribes.

.1 Policy. The Bureau's responsibility for the sale or disposition of trust or restricted lands stems from the United States Government's responsibilities as trustee for the lands. Consequently, the sale or disposition of the lands shall be accomplished in such a manner as to properly discharge the responsibilities and obligations of a trustee to the owner of the land; namely, to assure:

- A. That the rights of the individual owners of the land are protected.
- B. That it is in the long-range best interest of the owners to sell their land.
- C. That, except in the case of gift transactions authorized by the regulations, the present fair market value is obtained for the owners. After exposure to the open competitive market, through advertisement for sealed bids, if the highest bid received is less than the appraised value, such bid may be accepted with the consent of the owner when the bid received approximates the appraised value and is, in the judgment of the Area Director, the highest price that may be realized in the circumstances (see 25 CFR 121.12).

In negotiated sales other than gift transactions authorized by the regulations, the negotiated sale price must be not less than the appraisal. See 54 IAM 2.2.3G.

- D. That every Indian landowner who applies for a sale is fully advised that mineral interests may be reserved in connection with a proposed sale. In each case in which the Indian applicant for a land sale is deemed to be in need of assistance in managing his or her affairs, it is mandatory, except as otherwise authorized, that all mineral interests be reserved where the land is prospectively valuable for mineral or minerals, including, of course, all instances where there is known value or development of minerals.

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The reservation of minerals in connection with the sale of lands in multiple ownership must be handled on the basis of uniformity of quantity of interest as between tenants in common. To do otherwise would complicate ownership records beyond the point of practicability. Thus, all owners will be required to agree on the quantity of interest, if any, to be reserved. Where one or more of the owners is deemed to be in need of assistance in managing his or her own affairs, the action required to be taken on behalf of such individuals will be governing upon all of the other owners as well.

The assistance of the Solicitor's field staff should be utilized in preparation of mineral reservation clauses to assure that such clauses are adequate and appropriate to reserve the minerals desired, and such incidents as are necessary to derive full benefits from the minerals reserved.

The execution of this policy requires that each field office processing applications for the sale of land must obtain reliable data regarding the classification of lands under its jurisdiction with respect to minerals. Information on the subject may be obtained from the Branch of Mineral Classification, Geological Survey, Washington, D. C.

Requests for assistance from the Branch of Mineral Classification should be confined to those instances in which reliable information is not presently available on the general classification of lands. Their response to inquiries will, of necessity, deal with areas and not with specific tracts. The Branch of Mineral Classification prefers that where lands within reservations are involved, two copies of maps be supplied covering the entire reservation; one copy of the map will be returned with their report for the entire area. However, isolated tracts outside of reservations will have to be handled on an individual basis and such requests should include a description of the land according to public land surveys. In the absence of such surveys, a map or plat will suffice. The reports will be confined to a classification as to prospective value.

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- E. That the interests of the tribe are protected to the fullest possible extent in any case in which the tribe has a legitimate and valid interest in acquiring the individual Indian property that may be offered for sale. The precautions which are required to protect this tribal interest are stated in Commissioner's policy statement issued May 12, 1958, as follows:

"Because of the evidence of widespread public concern and substantial public misunderstanding about the Indian Bureau's policy governing sales of Indian land, it seems essential at this time to state the policy that is being followed (and the reasons for it) as clearly and concisely as possible.

"It should be emphasized at the outset that what follows deals only with lands which are the property in trust of individual Indians. Tribally owned lands, which comprise roughly three-fourths of the Indian holdings currently in Federal trust status, lie wholly outside the scope of this discussion since they cannot be sold or alienated except as authorized by Congressional legislation. While there has been some slight diminishment of tribal holdings in the past few years in connection with Federal flood control projects (principally in the upper Missouri Basin), this has been much more than offset by the addition or return of more than 1,000,000 acres to tribal holdings during the same period since 1953. These additions have resulted either from tribal purchases approved by the Department or from legislation sponsored or endorsed by the Department.

"To put the current policy governing sales of individually owned Indian lands in proper perspective, it is necessary to review briefly the immediate historical background. During the 1930's and the early 1940's the Department followed substantially the same policy on land sales that is now being so strenuously urged by the outstanding critics of the present policy. In other words, it strongly discouraged individual Indian landowners from selling their holdings and permitted such sales ordinarily only to other Indian individuals or to tribal groups. During this period hundreds of Indian landowners who

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wished to convert their landholdings in excess of their needs into cash for various purposes were completely frustrated and tied to lands that may have produced little or no benefit to them. Where sales were permitted with the market limited to Indian purchasers, thousands of acres were sold at prices substantially below the returns that the Indian sellers might have realized if free and unrestricted bidding had been permitted.

"During the late 1940's the former policy of restricting the market to Indian purchasers began to break down as Indian landowners demanded to be allowed to sell their holdings for a maximum price. They developed the practice of going directly to Congress for individual legislation that gave them 'fee patents' or unrestricted title to their lands. Although the Department in this period generally recommended against the enactment of such bills, a great many of those introduced in each Congressional session were nonetheless enacted. A substantial acreage of individually owned Indian land was removed from Federal trusteeship through this process and undoubtedly the major portion of it was sold to non-Indian purchasers.

"The policy which the Department and Bureau have been following over the past few years, and especially since 1955, is based on a full recognition of the individual Indian property rights which are unquestionably involved. In allotting lands to individual Indians on many of the reservations and the public domain under Congressional law during the latter part of the 19th century and down through the 1920's, the Federal Government, in effect, gave these Indians a deed to the lands allotted. It thus vested in these individual Indians (and their rightful heirs) a valid property right, though under trust, fully equivalent, in the last analysis, to that enjoyed by any other American property owner.

"Under the system of free democracy few concepts are more centrally important than respect for individual property rights. This is in sharp contrast with the situation in the Soviet Union and other communist countries where individual property rights are either not

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recognized at all or regularly and systematically subordinated to the interests of the State or the larger group.

"At the same time, however, we are also fully aware of our trust responsibilities for tribal property and we recognize that many of the tribal organizations have a legitimate and valid interest in acquiring individual Indian properties that may be offered for sale. The problem, in essence, has been to work out a method for permitting the fullest possible development of sound tribal land acquisition plans without violating the property rights and interests of the individual tribal members.

"During the past four years the Department and Bureau have been giving a great deal of intensive study to this problem and we have recently developed a policy which, we believe, goes a long way toward attainment of the desired objective. The essential elements of this policy are as follows:

1. Wherever a single Indian owner of an allotment asks that his land be sold and, after careful examination of the circumstances in his case, a sale appears to be clearly justified in the light of his long-range best interests, a sale will be authorized.

2. In all such cases the tribal organization will be notified that the particular allotment is being offered for sale. This will give the tribe an opportunity to negotiate a purchase with the owner. If the owner insists on competitive bidding, he will be specifically asked whether he is willing to let the tribal organization meet the high bid that may be offered. The land will then be advertised for sale and sealed bids will be received. If all bids fall substantially below the Bureau's appraisal of the property's value, all will be rejected. If one or more of the bids are acceptable, the tribe will be given the opportunity to buy the land by meeting the high bid provided that the owner has agreed in advance to such an arrangement. If the owner has not agreed and one or more sealed bids ~~exceed the~~

are acceptable,

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~~appraisal~~, the land will be put up for auction with the amount of the highest sealed bid as the floor of the auction bidding. This will give the tribe an additional opportunity to acquire the property in competition with other bidders.

3. In connection with Indian allotments which are in multiple ownership as a result of inheritance, the same general procedure will be followed with a few noteworthy exceptions. Such properties will be sold only if a sale is requested by one of the owners and approved by or on behalf of all the others. If any one of the owners is interested in buying out the others, he will be given first opportunity to purchase the land at the Bureau's appraisal figure unless one or more of the other owners object. A sale may also be made to one of the owners at less than the appraisal if the other owners are agreeable. If more than one of the owners wishes to buy the allotment, all of those interested will submit sealed bids and the property will be sold to the highest bidder. If none of the owners is interested, the property will be offered to the tribal organization at the appraisal price unless one of the owners object. If there is objection by an owner, then the procedure outlined under Number 2 above, involving sealed bids to be followed by an auction, will be used.

"The Department and its Bureau of Indian Affairs recognize that there are difficulties in the present situation which will hinder the tribes from full realization of their land acquisition and development plans even under the policy outlined above. One of these is the difficulty of securing the approval of frequently dozens of owners for sale of multiple-ownership lands as required under existing law. Another is the fact that many, perhaps most, of the tribes do not now have the financial resources needed for a substantial land purchase program. The Department and Bureau are now working to develop legislative proposals which we believe will go a long way toward eliminating these deterrents."

If a tribe, after full consideration of the foregoing policy statement, formally adopts a resolution expressing

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no interest in the purchase of lands which may be offered for sale at the request of its members, such sales may proceed without regard to the special procedures relating to tribal land acquisition. If a tribe has developed a land acquisition program which defines the precise geographical areas to which its interest is confined, sales of individual lands located outside of such areas may proceed without first referring the cases to the tribe. Where the tribal acquisition program is applicable broadly throughout the reservation and in cases where the lands are located within the boundaries of a specific program area, reference to the tribe as a preliminary step is mandatory. The requirement of referring cases to the tribe does not apply where public domain allotments, or other Indian lands, outside reservation boundaries are concerned. See 25 CFR 121.11 regarding notification to tribes.

- F. That recognition is given to the fact that in certain instances the Bureau of Indian Affairs has a dual responsibility; that is, its trust obligations extend both to the Indian landowner who is offering land for sale and to the individual Indians or the tribe who may desire to purchase the offered lands. The Commissioner's policy statement of May 12, 1958, previously quoted, contains not only the broad general principals of Bureau policy on this subject but the procedural details for its enforcement.

The Commissioner's memorandum of April 21, 1959, approved by the Assistant Secretary April 22, 1959, states the general principals and policy which must be observed in determining under what circumstances, individual Indians or Indian tribes may be permitted to acquire land in a trust status. The text of that statement of policy is as follows:

"From time to time questions arise concerning our policies on when Indians may acquire additional land in a trust status and when they will be required to acquire their additional lands in a fee status. I am writing this memorandum in an effort to clarify our policies in this field.

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"It should be understood that in setting down any general policy guidelines there will have to be some exceptions because of the great variety of situations. Moreover, these policy guidelines are for situations where we have administrative discretion and are subject to limitations found in various statutes or appropriation acts.

GENERAL OBJECTIVE

"It seems to me, our guiding principle can be stated quite simply.

"We will take lands in trust to provide protection and service to those Indians who are in need of it. It should be made clear to the Indian people that our policies are intended to help the tribes and the individuals acquire and keep additional lands when they need such help.

"Conversely, we will not take additional land in trust for Indians who now have the ability to manage their own affairs. I see no reason why an Indian quite able to successfully manage his own affairs should be permitted to acquire additional land in trust and receive a variety of free real estate services and tax exemption for his newly acquired land. It would be far better for the Bureau of Indian Affairs to be able to concentrate its efforts on assisting those genuinely in need of assistance and be relieved of providing protection and help to those Indians wanting more land who are highly successful through their own efforts in a business or a profession or as a farmer or cattleman with large holdings.

TRIBAL LANDS

"When a tribe is being given or otherwise acquiring Federally owned land by special legislation, a decision as to whether or not the tribe should receive the lands in trust is a matter for Congress to determine and we will ordinarily make no recommendations.

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"When the land is being acquired by the tribe without special legislation, if it is within the reservation boundary, the land will be taken in a trust status if the tribe so desires, regardless of whether it was held in trust or in fee by the grantor unless there is statutory prohibition.

"If the land acquired by the tribe is outside of the reservation boundary, title to it will be taken in fee unless there are very unusual circumstances, perhaps involving a land exchange.

INDIVIDUALLY OWNED LANDS

"If the Indian is unable to manage his own affairs without assistance, newly acquired land within a reservation will be taken in a trust status for him. This land may have previously been in either trust or fee status. Usually, of course, land to be acquired will be already in a trust status. There should be no hardship to local governments from some tracts going from a fee to a trust status, as in all probability, there will be a net increase from year to year in Indian land going out of trust and being placed on the tax roll.

"If an Indian is clearly able to handle his own affairs without assistance and desires to acquire additional land, he should be required to take the land in a fee status unless there are unusual circumstances such as reinvestment of funds resulting from the Government taking his former trust lands."

It must always be remembered that the United States may not legally be burdened with the obligations of trusteeship in the absence of authority from the Congress and further, that the authorities which have been delegated by the Secretary to take action affecting the title to Indian trust or restricted lands are based on statutory authorities enacted by the Congress. All of the statutes authorizing the sale of Indian lands provide for the issuance of patents in fee simple to the purchasers or provide that approval of the deeds executed by the Indian landowners shall operate to transfer title to the purchasers in fee simple, as though a patent in fee were

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issued. We must, therefore, look to other than our authorities for the sale of Indian land to find authority to permit acquisition by other Indians or Indian tribes in a trust status.

Perhaps the statute of broadest application in this respect is the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as supplemented by the Oklahoma Indian Welfare Act of 1936. The annual appropriation acts have for many years contained general authority for the use of Indian tribal funds for the purchase of land and have directed that the authorized purchases be in a trust status. The Act of March 2, 1931, amended June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a), authorizes the Secretary to allow the reinvestment of the proceeds of the sale of trust or restricted lands in other lands selected by the Indian and provides that title to the land so selected and purchased shall be restricted in the same quantity and upon the same terms and conditions as the lands from which the reinvested funds were derived. There are a number of statutes of special application on particular Indian Reservations or to particular Indian tribes and members thereof, which authorize land purchases in a trust status. For example, statutes authorizing the investment of judgment moneys have contained this kind of authority. Statutes, such as the Act of September 2, 1958 (72 Stat. 1766), relating to the Fort Randall Dam and Reservoir Project and the Indians of the Crow Creek Sioux Reservation in South Dakota, contain special authority for the acquisition of land in a trust status to replace land acquired by the United States for the project.

Some of the statutory authorities for the acquisition of land for Indians make mandatory the taking of title in trust. Some of the authorities provide that they may be exercised by the Secretary of the Interior in his discretion. Under the 1931 and 1932 acts, for example, the Secretary may in his discretion require an individual Indian who is unable to manage his own affairs to take trust title to lands purchased with the proceeds of the sale of other trust lands even though the Indian might wish to acquire the land in fee simple.

It is within this total area of discretion which has been vested in the Secretary by the Congress that the foregoing

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statement of policy must operate. Policy may not be invoked contrary to the provisions of a mandatory statute nor to accomplish an objective which is not within the scope of statutory authority. It may prove helpful in clarifying the nature of the discretion which has been vested in the Secretary, to repeat that in every case where land is being purchased by an individual Indian or an Indian tribe, the United States may not be burdened with trust responsibility except as Congress has authorized, and that most such authorities vest discretion in the Secretary as to whether the use of the authority is to be permitted. This applies both to purchases with trust moneys and with non-trust moneys. Where trust funds are to be used for the purchase, the Secretary's discretion may also extend to determining whether the purchase of land is a wise and proper use of the money. Under a few special statutes (The Fort Randall and Crow Creek Act, supra), Congress has made the decision that land may be purchased with the money and that title shall be taken in trust.

By way of implementing the foregoing, the following criteria are established as guides to assist the field in determining when land may be acquired in trust and when it must be acquired in fee.

- (1) As outlined in the policy statement approved April 22, 1959, the competency factor is to receive primary consideration in connection with purchases by individual Indians.
- (2) An Indian who owns an undivided trust interest in property may acquire the interests of the other owners, whether they be presently held in trust or in fee, and may be permitted to take title in trust provided there is statutory authority therefor, without regard to the competency factor.

.2 Authority.

- A. Statutory. Sales of individually owned trust or restricted Indian lands, including allotments, Indian homesteads, and purchased properties on reservations or on the public domain, are authorized under the Acts

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of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); March 3, 1909 (35 Stat. 778); June 25, 1910 (36 Stat. 855), as amended by the Act of April 30, 1934 (48 Stat. 647; 25 U.S.C. 372); February 14, 1913 (37 Stat. 678; 25 U.S.C. 373); May 25, 1918 (40 Stat. 561); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

B. Regulations. The regulations governing the sale of individually owned trust and restricted lands are contained in 25 CFR 121.

.3 Procedures. In the procedures outlined in this section, no attempt has been made to prescribe the number of copies of documents to be prepared for field purposes. It will be necessary for each Area to supplement the instructions to provide copies for Area and Agency purposes.

A. Application for sale of land.

(1) An Indian owner or owners wishing to sell land must submit to the Superintendent completed Form 5-105. Applications for the sale of land held in multiple ownership may be executed by any Indian owner holding an interest in the land, but the application must be approved by or on behalf of all of the other owners, except as provided herein. The requirement in the May 12, 1958, policy statement that the consent to sale of all owners be obtained was modified by the Commissioner's letter to the Area Director, Sacramento, dated January 6, 1959, a copy of which was sent to all Area Directors, as to lands that can be sold pursuant to the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), which authorizes the sale of trust allotted heirship lands without the consent of all the owners, upon a finding that one or more of the heirs is incompetent. This provision of the 1910 Act is applicable except where the lands are held subject to the Indian Reorganization Act and the Oklahoma Welfare Act. The authority granted by the 1910 Act should be exercised with caution in order to avoid the possibility of justified charges that the Bureau is selling Indian land without the

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consent of the owners. It is not possible to prescribe hard-and-fast rules which would govern every case; however, the use of the authority granted by the 1910 Act would be justified where land is held in complicated heirship status, the owners of a substantial percentage of the interest desire the sale, and no valid reason is advanced by the non-consenting owners for not selling. Also, in cases where a minority interest is held by an unprobated estate, or by a person whose whereabouts cannot be ascertained and the above conditions exist the use of the 1910 Act authority may be justified.

In obtaining the consent of the other owners to a proposed sale where consent is required, or in notifying the other owners of a proposed sale where the consent of all owners is not necessary, they shall be notified at the same time of the preference accorded by the foregoing statement of policy to the owners of property in heirship status to purchase the other interests therein.

- (2) Sales of undivided interests, where other undivided interests will remain in trust or restricted status, will not be made except to other owners of the land and to the tribe as herein provided.

Indian tribes may acquire undivided interests in inherited Indian land that is offered for sale or exchange, provided that such interests are acquired by the tribes for the purpose of consolidating lands in aid of the economic development of the Indian community or any of its members and/or as part of a tribal plan for ameliorating the social and economic problems created by the process of heirship and land fractionization.

- (3) All applicable questions on the application form must be fully answered.
- (4) Title status reports should be obtained and determination made that it can reasonably be expected that

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title can be conveyed, i.e., that, where necessary, guardians have been or will be appointed for minors and non compos mentis persons, and that there are no unprobated estates where the consent of all owners is required; that where fee patents are to be issued, there are approved Bureau of Land Management plats describing the parcel to be sold, etc.

- (5) The Superintendent shall determine, after consideration of the information in the application, the program outlined in Item 15 of the application, and such investigation as he deems necessary, whether a sale would be in the long-range best interests of the owners. In making this determination, which in most cases will be of great and lasting significance to the individual Indians concerned, the Superintendent should seek the assistance and advice of his staff specialists and technicians not only in the area of resources management, but also those in the field of community services. The Superintendent shall reduce to writing his findings that a sale will be in the long-range best interests of the owners, indicating the factors considered and his reasons for his decision.
- (6) When an application for sale of land is approved, an appraisal shall be requested. See 54 IAM 10.1.3B.

When it becomes necessary in connection with sales, exchanges, probate inventories, etc., to obtain estimates of fair market value of mineral interests in tracts which are located within areas "prospectively valuable for minerals," those estimates of value should be obtained by utilizing the services of staff appraisers, working cooperatively with local representatives of the Conservation Division of the Geological Survey,--both the Mining Supervisor and the Oil and Gas Supervisor,--in accordance with the procedures which have been employed effectively in the past. It is believed that proper coordination of staff appraisal functions with the cooperative services of the Mining and Oil and Gas Supervisors will meet your requirements in most cases. In many

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instances, particularly in the case of appraisals merely to determine probate fees, staff appraisers will have sufficient information on the particular lands, and of the local mineral market conditions, to provide appraisals without the necessity of obtaining evaluations from the Mining and Oil and Gas Supervisors.

In the interest of encouraging Indians to assume responsibility for administering their own resources and inspiring confidence in the procedures that have been developed for their protection, appraised values may be made known to the Indian owners of the land. When this information is given to the owners, they should be informed in detail why it is to their advantage to hold the information in confidence and not reveal the appraised value to others.

Appraisals made in connection with applications for sale of individual Indian lands are, of course, estimates of the fair market value. Such appraisals are made to the use of the land as dictated by the needs and desires of the general public, and hence, represent an indication of what the land should reasonably be expected to bring on the market. These appraisals, then, are estimates of value to help the Bureau, as trustee for the lands, to decide on acceptable selling prices.

For quite some time it has been the Bureau's position that to disclose the appraised value to the public and particularly to prospective purchasers would, in effect, tend to fix a maximum that would be offered for the land and would thus preclude the owner from having the benefit of testing an open and competitive market. For this reason, appraised values will not be published in Invitations for Bids.

The dual responsibility of the Government to individual Indian landowners and to Indian tribes necessitates that when the tribe is interested in purchasing a tract and it is within their purchase program, the amount of the appraisal should be disclosed to the tribal officials, and they should be cautioned to

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respect the confidential nature of the information. The parties should then be afforded an opportunity to negotiate at not less than that figure. If the negotiations are not successful, the previously established procedures should then be followed. These contemplate that the individual landowner may grant the tribe a preference right to meet the high sealed bid, or if the landowner is unwilling to do that, the tribe may, at its own option, ask that it be given the privilege of competing for the land in oral bidding.

- (7) If an application for sale is disapproved, the Superintendent shall advise the applicant or applicants by letter of the basis for the action, with advice of the right of appeal. All appeals shall be processed in accordance with Chapter 12, 54 IAM.

- B. Notice to tribe and to other Indians. When an application for sale is approved, the appropriate officials of the tribe shall be notified by memorandum of the proposed sale. The memorandum shall state that if the tribe is interested in acquiring the tract, it will be necessary for the tribe to so advise the Superintendent. A specific time limit shall be fixed by the memorandum for the tribe to consider and act. The time limit should be reasonable, considering both the interest of the Indian landowners and the interest of the tribe. Tribes whose existing form of tribal government does not have sufficient flexibility to provide for consideration of these matters with reasonable dispatch may find it necessary to set up a special committee with power to represent the tribe on land matters. Copies of the notice to the tribe shall be publicly posted on the reservation for the information of other members of the tribe who may be interested in acquiring land.

If the tribe is interested in acquiring the tract, it shall so advise the Superintendent by a statement in writing signed by the tribal officer or officers who are authorized to speak for the tribe in such matters. The tribe shall then be given the opportunity of negotiating a purchase prior to advertisement at not less than the appraised value. If the negotiations fail, the land may be included in any subsequent land sale advertisement.

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Whether the tribe will be afforded an opportunity of meeting the high bid will be dependent upon whether the owner has agreed to grant a preference right. Individual members of the tribe shall also have an opportunity to acquire the tract by negotiation if an individual member is interested in the acquisition of the tract. If a preference is not granted to the tribe, it may become necessary to provide for oral bidding. See 25 CFR 121.14.

C. Advertised sales. Upon approval of application Form 5-105 by the Superintendent, the following action will be taken prior to issuing public invitation for bids:

- (1) Written statement of the Superintendent's findings that a sale will be in the long-range best interest of the owners and on the need for assistance in regard to reserving the minerals.
- (2) Appraisal report.
- (3) Title report with abstract of probate orders.
- (4) Statement of irrigation operation and maintenance charges and construction costs where applicable. See 25 CFR 121.21.
- (5) Where a preference to purchase is to be given to the tribe, or to a member of the tribe, or to any reasonably defined class of Indians (25 CFR 121.18), the written statement of the landowner or owners to that effect should be obtained and made a part of the case assembly.
- (6) Prior to advertisement an effort may be made to obtain from the Indian owners statements of a minimum price they will accept for their land in an advertised sale. (See Exhibit 16 for form of authorization to be used.) Such minimum price may be the appraised value or any amount above the appraised value. Where an owner agrees to accept such a minimum price and the amount of the highest acceptable bid at an advertised sale, equals or exceeds that amount it will not be necessary to contact such owner

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again for the purpose of obtaining his acceptance of the bid. After the sale such owner should, of course, be notified that an acceptable bid has been received. This procedure contemplates that the appraised values will be made known to the owners and necessitates that they be fully informed of the nature of appraisals as estimates of value to help in deciding on acceptable selling prices, as set out in 54 IAM 2.2.1A(6). It is realized that this procedure will not, in every case, avoid the necessity of obtaining acceptances from the owners, but it should be of assistance in many cases.

- D. Advertisements. Form 5-114, "Invitation, Bid, and Award," will be used in all jurisdictions. The appraised value of the tract may not be shown in the advertisement. Any departure from the standard terminology in the advertisement involving restrictions, reservations, or conditions must be approved by the Area Director.

In the sale of tracts which have been determined by the tribe to be essential to the protection of its interests and in which negotiation has not been successful, the advertisement will provide for oral bidding to follow the opening of sealed bids in all cases in which a preference right to meet the high bid has not been granted to the tribe seeking such a right, provided the tribe is not the high bidder in such cases. The auction will be held provided one or more acceptable sealed bids are received. The auction will be limited to bidders who, in their sealed bids, offer 75 percent or more of the appraised value of the land. It will not be required that the sealed bid of the tribe amount to 75 percent or more of the appraised value, in order for the tribe to participate in the oral auction. See the regulations, 25 CFR 121.14. Three copies of the advertisement should be sent to the Central Office. After the bids are in, a like number of copies of the abstract of bids should be sent to the Central Office.

- E. Bids. The provisions of the regulations contain relatively detailed guidelines on the subject of inviting, receiving and processing bids. Certain general observations may prove

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helpful. All employees, whether directly responsible for the sale of land or otherwise, should strictly observe the highest degree of caution to the end that they neither give assistance nor the appearance of assistance to prospective bidders in preparing bids. Proper discussion with prospective bidders is limited to assistance in locating the property on maps, giving directions for locating the property on the ground, and general comment on the character of the property, the nature of the improvements, if any, the general type and estimated volume of timber thereon, etc. It is regarded as desirable to refrain from even such limited discussions of the property on the day of the sale.

Responsibility for receiving and holding bids should be assigned, if possible, to a single individual who should have access to a place of safekeeping for holding the bids until the time fixed for the sale. The number of bids received and any information concerning the identity of those who have submitted bids are confidential matters and should not be disclosed to or discussed with other prospective bidders. Disclosure of such information may affect the bidding adversely to the interests of the Indian landowners.

Sealed bids may be withdrawn at any time prior to the time fixed for opening the bids.

All bids must be in the hands of the officer conducting the sale prior to the time fixed for opening the bids. This rule must be enforced without exception, whether the bids are submitted by mail or in person by the bidder or his representative. Delivery of his bid is the sole responsibility of the bidder. Generally, the tardy bidder's reasons are genuine and are not based on an effort to seek unfair advantage. Nevertheless, the only proper procedure in a sealed bid sale is to observe the foregoing rule with no exceptions in any degree.

- F. Opening bids and conducting an auction. Preparation for a bid opening should include, if possible, the arranging for the use of a room of sufficient size to accommodate the anticipated number of interested bidders, landowners,

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and other observers. It should be remembered that a bid opening is a public function and must be conducted in such a manner as to instill confidence in the general public that the procedure is being competently handled. If limitations on physical space make it necessary to use a room normally occupied as office space, the transaction of other business should be deferred until the conclusion of the bid opening to accommodate that procedure with as little interference as possible. Suitable clear desk space should be available to the individual opening the bids to permit the handling of the papers without risk of loss or undue confusion. As each bid is opened, the identity of the bidder, the identification of the property for which the offer is made, and the amount of the bid should be read aloud. The bid should be simultaneously recorded by a clerical assistant on a suitable abstract form. It is advisable to have a representative of the finance function assisting at bid openings to handle the receipt of the deposits submitted with the bids.

At the conclusion of the opening of sealed bids, it is permissible, and within the discretion of the officer conducting the sale, to announce the identity of the apparent high bidders and the amounts of the bids in all cases where it is clearly apparent that the bid is acceptable in terms of its relation to the appraised value or the amount the owners have fixed as the minimum acceptable, if they are asking more than the amount of the appraisal. Any such announcement should be accompanied by an unequivocal statement that it is made for general information purposes only, that it is not an award, and that the authority to accept the bids is vested in the Area Director to whom the record of the bidding must be submitted for determination of the successful bidders and subsequent action.

The deposits submitted with obviously unsuccessful bids may immediately be returned to the bidders if they are present at the bid opening or are there represented by authorized representatives. It is acceptable practice in such instances to require only an informal endorsement of receipt thereof written in any suitable available

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space across the face of the bid and signed by the individual receiving back the exchange.

In conducting an oral auction, following a sealed bid opening, certain additional requirements should be observed. At the outset, it is advisable to include in any one sale no more cases than may reasonably be handled in a day's time. Form 5-114, Invitation, Bid, and Award, provides that the officer in charge may continue the oral bidding to a date and time to be announced upon opening of the sealed bids. Such a continuance should be based on the number of tracts subject to oral bidding, anticipated time needed to complete such bidding and other pertinent considerations. If it is regarded as unlikely that the oral auction may be concluded by the close of business on the date of the sealed bid opening, it should be advertised to be held on the following day. The sale should be scheduled so that the day following the sealed bid opening is a business day. For the convenience of bidders and others interested in being present, the oral auction should be scheduled to begin at an hour reasonably convenient for prospective bidders.

Each oral bid should be repeated aloud by the official conducting the auction and should be immediately recorded in writing on a suitable abstract form so that at the conclusion of the bidding the abstract will show each bid made and the identity of the bidder. In addition, for the convenience of the bidders, suitable black-board space should be available to permit visually demonstrating to the assembled bidders the last bid made. It is not regarded as essential to record on the black-board the complete abstract of the oral bidding.

Oral auction sales will be a new development for many of our field offices. The foregoing comments may be regarded by some offices as unnecessarily detailed. Our effort is to provide as much information as possible based on the collective experience available. It is recognized that there is no substitute for experience and for the development of individual judgment based on that experience. Consequently, it is not possible in this Manual to cover every eventuality.

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It should be remembered that the officer conducting the sale is in a position of authority requiring him to rule on questions of procedure which may arise during the course of the sale. He must be certain that his judgment on questions which may be raised is in accordance with law and regulation. He should not hesitate to call a recess until questions may be resolved by higher authority if necessary. It is his responsibility to maintain orderly procedure to the end that the rules of the sale are strictly observed without partiality and in a manner which will reflect creditably on the conduct of public business.

It is desirable to include in the invitation for bids, preliminary to an oral auction, an announcement that, in the discretion of the officer conducting the proceedings, the auction may be concluded at any time when, in his judgment, sufficient time has elapsed since the last bid was made. In a sale of small tracts, the time allowed for bidding may be shorter. In a sale of large or extremely valuable tracts, such as a heavily timbered acreage, it is not unreasonable to allow bidders a longer time to determine whether they wish to raise the last offer and to calculate the amount of such raise.

Tribal representatives at an oral auction will be expected to carry authority to obligate tribal funds to the full extent of their interest in the auction, and such representatives should not be permitted unreasonably to delay the progress of the auction under the guise of lack of authority.

When the expenditure of tribal funds for the purchase of lands at oral auction is subject to the approval of a duly authorized officer of this Bureau, a determination of the approximate amount which the tribe can afford to pay for the land should be made in advance of the auction. This determination will require that there be considered the special value of the tract to the tribe; i.e., its unique purpose in the tribe's economy, which may result in a determination of a maximum which bears little relation to the appraised value. It must be borne in mind that the appraisal does not fix price, but that it is

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an estimate of the market for the land considering its highest and best use to prospective purchasers generally. Tribal representatives dealing with tribal funds not subject to Bureau approval should, as a matter of good practice, arrive at their own estimates of the amount the tribe may be justified in paying for land in advance of the auction so that unreasonable delay and possible loss of the land may not be occasioned by the lack of such determinations.

- G. Negotiated Sales. The regulations, 25 CFR 121.18, provide broad authority for the approval of negotiated sales. The delegations of authority to the Area Director cover all determinations required to be made within the scope of that section, except the approval of transactions governed by 25 CFR 251.5(c), which has not been delegated.

In considering the justification for a negotiated sale from an Indian landowner to an Indian or to an Indian tribe, recognition must be given to the fact that there is a dual responsibility to both the seller and the buyer. The extent to which those conflicting interests are equitably balanced is the measure of the proper discharge of trusteeship responsibility. The best interests of the seller and of the buyer are not necessarily measurable by the same yardstick. The appraised value of the property fixes substantially the minimum which should be accepted on behalf of the seller, but because an appraisal of the fair market value is made to the uses of the land in general and not to a specific or unique need which may exist for a single purchaser, the appraisal does not necessarily fix the maximum which may justifiably be paid for property by the individual Indian purchaser or by the tribe. Where competitive interest in the land is clearly indicated, advertising is of course desirable.

The record in connection with negotiated sales to non-Indians should contain a documentation of the facts supporting a determination that advertising is impractical. Although other factors may justify a negotiated sale, there will generally be a showing of lack of competition for the land, due to its economic or geographic isolation. The record should also contain the

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written statement of the Indian landowner requesting that the transaction be handled by negotiation.

- H. Instruments of conveyance. See discussion regarding authorities for taking trust or restricted title in 54 IAM 2.2.1F. Where such title is being taken both the authority for taking trust or restricted title and the authority for the sale should, except as otherwise indicated, be cited in the deed.
- (1) When conveyance is to be made to a tribe or an individual Indian and title is to remain in a trust or restricted status, use:
 - (a) Deed Form 5-183 for lands on Indian Reorganization Act reservations and on other reservations where there is statutory authority to acquire lands and take title in the United States in trust for a tribe or an individual Indian.
 - (b) Deed Form 5-185 for lands acquired with the proceeds from the sale of non-taxable trust or restricted lands, or any interest therein, pursuant to the Act of March 2, 1931 (46 Stat. 1471), as amended by the Act of June 30, 1932 (47 Stat. 474; 25 U.S.C. 409a).
 - (c) Deed Form 5-183b shall be used only in cases where Deed Forms 5-183 and 5-185 are not appropriate. Although there is no specific statutory authority for the use of this form it has been judicially recognized that its effect is to pass to the grantee the same quality and quantity of an estate as is held by the grantor (United States v. Chinburg et al, 224 F. 2d 177). Generally, its use should be limited to gift transactions and cases involving exchanges of land or interests in land. It will not be necessary to cite any authority for acquisitions when this form is used.

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- (d) The use of the "Order Transferring Inherited Interests" is possible as a matter of law where the Secretary of the Interior has the authority to sell and convey lands and there is authority for the acquisition by the grantee of the same quality of an estate as is held by the grantor. The Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), which requires the application of /all/ the Indian owners for the approval of conveyances of lands thereunder, renders the use of the Order Transferring Inherited Interests of no procedural value in such cases. Its use for the conveyance of other lands is likewise of doubtful value as a matter of procedure because of the general policy requirement that all of the Indian owners consent to or approve the sale of land in which they have an interest. However, the order may be used in those cases where a conveyance is in the best interests of the Indian owners, its use is permitted as a matter of law, and it complies with the spirit of 54 IAM 2.23A(1).
- (2) When fee simple title is to be conveyed, Deed Form 5-183 or a patent in fee should be used.
- (3) Conveyancing following advertised sales will be handled as follows:
- (a) When it has been determined that there is an acceptable bid, the Superintendent will submit the offer to the Indian owner or owners for acceptance, except as provided in 2.2.3A(1), and 2.2.3C(f).
- (b) If conveyance is to be made by deed, an original and one copy of the appropriate form shall be executed by the Indian owners, and properly acknowledged. The specific statute authorizing the conveyance should be recited in the deed.
- (c) If conveyance is to be by patent in fee, the Superintendent shall prepare a letter, for the Area Director's signature, to the Director, Bureau of Land Management, through the Commissioner of Indian Affairs, requesting that a

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patent in fee be issued to the purchaser. A suggested form for this letter is in the Appendix to this chapter marked "Exhibit No. 6." See also Illustration No. 12, Check List for Indian Patents. The original and two copies of the letter should be submitted to the Central Office; such other copies should be prepared as are required for Area and Agency purposes.

- (d) Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patent, particularly as to minerals, rights of way, and irrigation liens. See also Illustration No. 15.

- I. Sales assembly. After execution of the deed, consents to sale, or preparation for the request for patent, the Superintendent shall submit the following to the Area Director for consideration:
- (1) Application for sale, Form 5-105.
 - (2) Written statement of finding that a sale will be in the long-range best interest of the owners and need for assistance in regard to reserving minerals.
 - (3) Appraisal report, Form 5-100A.
 - (4) Title report with abstract of heirship findings.
 - (5) Irrigation statement and water contract (when applicable) in accordance with 25 CFR 121.21.
 - (6) Resolution of the governing body approving purchase, if sale is to a tribe.
 - (7) Executed deed, consents to sale or request for patent.
 - *(8) Report on Sale of Indian Land, Form 5-110n.
 - *(9) Highest bid.

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- *(10) Signed statement of preference by grantee (when applicable.)

*Applicable only in advertised sales.

The Superintendent's files, in connection with each advertised sale, must include documentation showing that all proposed sales have been referred in writing to the tribal authorities, and the written statement of tribal interest or waiver thereof from the tribal authorities as required by the statement of policy, supra. If no response is obtained from the tribal authorities, the file should include a statement to this effect, including the date notice was given and the time allowed for expression of tribal interest.

J. Approval by Area Director.

- (1) The award will be indicated in the appropriate block on Form 5-114 and executed by the Area Director.
- (2) One copy of the completed contract will be returned to the successful bidder via certified mail, return receipt requested, with instructions to remit to the Superintendent the balance of the purchase price, as specified in 25 CFR 121.20, within 30 days from receipt of notice.
- (3) The Area Director will approve the deed when a deed is to be used to convey title and return same with an executed copy of the contract to the Superintendent with instructions to deliver the original deed to the purchaser upon receipt of the balance of the purchase price plus sales fees.
- (4) Patents in fee will not be requested until the full amount of the purchase price plus sales fees have been received by the Superintendent.

K. Final action by Superintendent.

- (1) When the balance of consideration plus fees has been paid to the Superintendent, he shall immediately

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transmit a copy of the Official Receipt to the Area Director. A copy of the approved deed shall be submitted to the Central Office and distribution made of such other copies of the deed as is required.

- (2) In the event of forfeiture by the purchaser, the Superintendent will immediately notify the Area Director, who will direct that the approved deed or request for patent in fee be destroyed.

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Section 203. Partitions of Inherited Allotments (Except as to
Osage and Five Civilized Tribes)

.01 Authority

A. Statutory

Act of May 18, 1916 (39 Stat. 123, 127; 25 U.S.C. 378).

B. Regulations

25 CFR 241.8

.02 General Policy

The partition of inherited lands should be effected only where such division is advantageous to the heirs and devisees. It is not feasible to partition the property when it will result in splitting the land into uneconomic or otherwise undesirable units and, as a general rule, it would be impractical to partition a tract of grazing or timber land. For the most part, partitions should be confined to the following:

- A. Estates consisting of or capable of being divided into two or more tracts of land each of such value that it is feasible for one or more of the owners to obtain title to a separate tract and thereby reduce or eliminate fractional interests.
- B. Tracts occupied by two or more owners when one or more of them desire to make permanent improvements.
- C. Tracts which are suitable for real estate subdivisions such as lands fronting on a body of water or located within or close to a municipality.
- D. Tracts in which an undivided interest is held in an unrestricted status.

.03 Procedure

A. Action by the Agency Superintendent

When the heirs or devisees of a deceased allottee desire to make a division of the lands of the decedent whereby each will obtain a specific parcel in lieu of an undivided interest in the entire tract, they shall execute a "Petition

for Partition" on Form No. 5-110L. It will be necessary for the petitioners to agree upon a division of the property in order that such division may be set forth in the petition. If any Indian owner of a restricted interest desires to obtain fee simple title to the land to be set apart to him, such heir or devisee should make application for a fee patent or an unrestricted deed on Form 5-106. The Agency Superintendent will render assistance and advice to the owners in order that an equitable and suitable division of the property may be effected. The lands shall be appraised by a member of the agency staff and separate appraisal reports shall be furnished for each parcel. If it is impossible or impractical to arrange a partition upon substantially equal values and these variations exceed 20% of the average value of a partitioned parcel, the variances in valuation shall be explained to the owners and if they desire to proceed with the partition they must make proper arrangements to pay the differences in value or submit signed statements whereby they waive the difference in value. The Superintendent shall submit in duplicate to the Area Director the following documents:

- (1) Petition for partition with the Superintendent's report, which is a part of the form. Any supplemental petitions, statements or agreements in connection with the partition shall be attached to the petition.
- (2) Appraisal reports.
- (3) A report showing the status of the land as disclosed by the agency records and setting forth an abstract of the heirship findings.
- (4) Certifications of Indebtedness covering all estate appearing in the chain of title and covering each individual heir or devisee.
- (5) Statements of construction, operating, and maintenance charges if the land is within an irrigation project, the statements to be furnished by the Project Engineer or other officer in charge of the records.

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- (6) Letter of transmittal containing the recommendation of the Superintendent and any pertinent information not included in the foregoing documents.

In the event the land cannot be partitioned by legal subdivisions of the section or aliquot parts thereof, it will be necessary to effect the partition by execution of deeds. In the event deeds are used, they should be submitted in quadruplicate.

In effecting partition by deeds title to lands held under the Indian Reorganization Act (Act of June 18, 1934 - 48 Stat. 984), shall be conveyed to the United States of America in trust for the grantee and Form No. 5-183, "Deed to Restricted Indian Land", shall be used for this purpose. When the lands are not under the Indian Reorganization Act, Form No. 5-183b, "Deed to Restricted Indian Land Special Form", will be executed as the title conveyed will be the same as that vested in the grantors. However, if any Indian owner applies for a fee simple title and the Superintendent does not deny such application, Deed Form No. 5-183 should be executed in favor of the applicant.

Partitions shall be effected by execution of deeds in the event the allotment is held under a patent in fee subject to restrictions against alienation, encumbrance, and taxation. The form of deed and manner of designating grantee will be dependent upon whether or not the lands are within a reservation under the Indian Reorganization Act as set forth in the foregoing paragraph.

B. Action by the Area Director

Upon receipt of the petition and related documents from the Superintendent, the Area Director shall examine the same and should he find that an equitable and desirable partition will be effected, he shall approve the transaction. When a partition is to be effected by issuance of trust or fee patents to the respective heirs or devisees the Area Director shall address a letter to the Director, Bureau of Land Management, setting forth the legal description of

the allotments being partitioned, the name and number of the allottee, the date of the original trust patent, the division of the land, the full names of the individuals who are to receive trust or fee patents, and the type patent each individual is to receive. This letter shall be transmitted to the Commissioner of Indian Affairs in duplicate, accompanied by a copy of the petition. A copy of the letter shall be forwarded to the Superintendent. A suggested form of letter is set forth in the Appendix as Exhibit No. 7. Specific instructions must be given to the Bureau of Land Management regarding any reservations and conditions which are to be included in the patents, particularly as to minerals, rights-of-way, and irrigation liens.

If the partition is to be effected by deeds the Area Director will approve the deeds. One copy of each deed shall be forwarded to the Central Office for recording, one copy shall be filed in the area office, and the original and one copy thereof shall be forwarded to the Superintendent. The Superintendent shall deliver the original deed to the grantee after making proper notation of the approval on the tract books.

C. Action by the Central Office

Upon receipt of the Area Director's letter to the Director, Bureau of Land Management, the Central Office will make appropriate notation on the tract books of the approval of the partition and transmit the original letter to the Bureau of Land Management. The patents, when issued, will be transmitted by the Bureau of Land Management to the Commissioner of Indian Affairs and will be recorded in the tract book by number and date. Thereafter, the patents will be transmitted to the Superintendent and copies of the letters of transmittal furnished the Area Director. These letters shall contain the patent number, date, and name of patentees.

When the partition is effected by deeds, the only action which will be taken by the Central Office is the recording of deeds.

Section 204. Removal of Restrictions and Sales of Five Civilized Tribes Alloted Lands and Purchased Lands held under Carney-Lacher Form Deeds.

.01 Policy. Orders removing restrictions from allotted or purchased lands held under a Carney-Lacher form of deed may be issued upon the written request of adult Indian owners, or upon the written request of the legal guardian of a minor owner or of an owner who is non compos mentis, and a showing (1) that an adult applicant, who applies for an Unconditional Removal of Restrictions, is competent and capable of managing his own affairs; (2) that approval of an application for Conditional Removal of Restrictions would be beneficial to the applicant and would have no adverse effect upon the applicant's family; (3) that approval of the application, in the case of a minor or a person non compos mentis, is necessary for the support and welfare of the ward, or that it would be advantageous to invest the proceeds of a sale in other lands or assets, provided that such applications have first received the approval of the County Court having jurisdiction over the estate of the minor or incompetent; (4) that approval of an application would permit an applicant to adjust his resources in order to become or to continue eligible for a Public Assistance grant, in conformity with standards of eligibility set by the Oklahoma Department of Public Welfare.

.02 Authority.

A. Removal of Restrictions.

- (1) Statutory: Act of Congress approved May 27, 1908 (35 Stat. 312 and the Act of May 10, 1928 (45 Stat. 495).
- (2) Regulations: 25 CFR 241.13-241.15 and 241.45.
- (3) References: An Order removing restrictions, effective thirty days after dating, Rogers vs. Noel 34 Okla. 238, 124 Pac. 987. Deere vs. Neumeyer 154 Pac. 350.

B. Sales.

- (1) Statutory: Act of May 27, 1908 (Stat. 35, 312) and the Act of May 10, 1928 (45 Stat. 495).
- (2) Regulations: 25 CFR 241.37-241.39, 241.41 and 241.43.

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.03 Determination of Competency and Factors to be Considered Before Approving Applications. See Section 201.02 of this Chapter.

.04 Procedures.

A. Applications for Unconditional and Conditional Removal of Restrictions.

- (1) Applications shall be made on Form 5-484, in duplicate, and submitted to the District Agent having jurisdiction over the land.
- (2) Applications for unconditional removal of restrictions need be signed only once and should be witnessed by one person. On applications for conditional removal of restrictions the applicants shall also sign the agreement for supervision of the proceeds. Applicants unable to write shall execute by right thumb print witnessed by two persons.
- (3) Applications must be executed before a District Agent or acknowledged before a Notary Public or an official authorized by law to administer oaths.
- (4) It is preferred that applications be in the handwriting of the applicant; however, it may be typewritten or in the handwriting of another.
- (5) Applications shall be accompanied by a completed Field Report form in duplicate. Applicants for unconditional orders must prepare the forms.
- (6) Applicants should submit a statement setting forth the reasons or justification in support of their request for an unconditional removal.
- (7) Applicants for an unconditional removal shall furnish the names of three reputable disinterested persons who can give an unbiased opinion on the competency and ability of the applicant to manage his affairs.
- (8) It is desirable that applicants for a conditional removal submit a statement outlining his plans for disposal of the land sale proceeds.

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- B. Action by the District Agent. The District Agent or Social Worker shall make such investigation and inquiry as may be necessary to determine the correctness of information furnished by the applicant. If possible, a conference should be had with each applicant for that purpose. The application, together with the following papers shall be submitted to the Area Director:
- (1) Field Report.
 - (2) Copies of correspondence he has had with the applicant, pertaining to the application.
 - (3) Surface appraisal of the land involved in applications for conditional removal of restrictions.
 - (4) Letter of transmittal in which is listed any pertinent information not set forth in the application or accompanying forms. The letter shall contain the District Agent's recommendation with justification, and outline of plans for disposal of the proceeds if funds are to be supervised.
 - (5) A take-off of the county records on taxable land, or on any land in which there is a question as to title status.
- C. Action on Applications of Welfare Clients.
- (1) A conference shall be held between the District Agent and the County Welfare Director prior to the submission of any application for removal of restrictions.
 - (2) The conference shall cover the following points:
 - (a) The extent of the applicants' resources.
 - (b) Does the applicant's land constitute a surplus resource according to the interpretation of the regulations of the Department of Public Welfare.
 - (c) The general economic conditions of the household; and living arrangements.
 - (d) The relationship of the applicant to the other members of the household and their economic status.

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- (e) Whether the applicant for or a recipient of a Public Assistance Grant fully understands the factors involved as to the requirements of the Department of Public Welfare on resources which affect eligibility for a Public Assistance Grant.
 - (f) Whether the applicant wishes to retain his land resource or wishes to dispose of the land resource in order to maintain continued eligibility for Public Assistance.
 - (g) A sound plan for use of the proceeds of sale of land resources.
 - (h) That sale of the lands involved will not cause hardship for other families living on the land or create additional welfare cases.
- (3) The objective of the conference should be to explore means to improve the living conditions of the applicant. To this end, primary consideration generally should be given to providing an adequate home for the applicant, either through purchase or repairs to the present home.
- (4) The Indian Bureau Social Worker shall be called upon for a case history and recommendation in doubtful cases and in all cases involving recipients of or applicants for Aid to Dependent Children. Applications for removal of restrictions by recipients of or applicants for Aid to Dependent Children Grants shall not be considered unless disposal of land resources is essential to securing a home or providing better educational facilities for the children.
- (5) It shall be made clear that the option rests with the client whether to dispose of a land resource and that the final determination rests with the Bureau whether the land is an available resource.
- (6) All applications should be accompanied by a report of the case history to be furnished by the County Directors of Public Welfare if available.

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D. Action by the Area Director.

(1) Unconditional removals of Restrictions.

- (a) Applications shall be checked in the Area Office to ascertain that land descriptions and other data are correct.
- (b) A complete record of the case shall be made, including all correspondence with the applicant.
- (c) A certificate shall be secured showing that the applicant is not indebted to the Government, and an appraisal shall be secured of the oil, gas and other mineral values of the subject land.
- (d) The persons listed by the applicant as references shall be called upon to furnish their opinion of the ability and competency of the applicant to manage his affairs.
- (e) The Area Director shall examine and review the applications for removal together with the report and recommendation of the District Agent, and related data.
- (f) If the application is disapproved the Area Director shall so inform the applicant in writing, with the reasons for disapproval, and shall inform the applicant of his right to appeal from the decision to the Commissioner of Indian Affairs.
- (g) When favorable consideration is to be given to the application there shall be prepared orders for the removal of restrictions in quintuplicate on form 5-662. Provisions shall be inserted in the order when the application covers the surface and a part of the mineral interests, or when it covers reserved mineral interests only.
- (h) The Area Director shall approve the order, if justifiable.

- (2) Conditional Removals of Restrictions. The procedures in processing applications for conditional removals of restrictions are the same as the procedures in connection with applications for unconditional removals of restrictions, as outlined in Section 204.04D (1) above. In addition, there shall be obtained or prepared the following:
- (a) An appraisal of the surface value of the land.
 - (b) A photostatic copy of the deed shall be furnished in cases of applications for removal of restrictions on purchased land.
 - (c) An Order for Removal of Restrictions on Form 5-540, in quintuplicate; special provisions shall be incorporated in the order for cases in which there are unusual conditions, or in which there is to be a sale of less than a fee simple estate.
 - (d) When both the surface and minerals are owned by the applicant an order removing restrictions from minerals only shall not include more than one-half of non-participating royalty interest.
 - (e) An Order Concerning Terms of Sale and Disposal of Proceeds on Form 5-1041, in quintuplicate.
 - (f) The Area Director shall prepare notice of sale of land and transmit a number of copies to the District Agent who is to conduct the sale.

.05 Procedures for Sales after Issuance of Conditional Orders Removing Restrictions.

A. Action by the District Agent.

- (1) The District Agent shall give as wide publicity as possible to each sale by posting for at least 30 days in his office and in three public places including the County Court House where the land is located, a copy of the notice of sale, and by mailing copies to the land owner and to all known prospective bidders. The land owner shall be given opportunity to advertise his or her land sale in newspapers of the area in which the land is located. (See 25 CFR 241.37)

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- (2) The District Agent shall conduct the sales of lands in conformity with the notices of sales, and shall furnish a complete report on the result of each sale.
- (3) The District Agent shall notify the successful bidder and advise him to comply with the terms of sale within 10 days.
- (4) The District Agent shall transmit to the Area Director by Field Receipt any money deposited with him by a bidder, together with a bidder's certificate form 2-532, in duplicate.
- (5) A high bid of less than the minimum appraised value shall not be accepted.

B. Action by the Area Director.

- (1) The Area Director shall examine and review the report of land sale as submitted by the District Agent and, if the bid is acceptable, advise the land owner of the result and transmit a deed for execution by the land owner.
- (2) The Area Director shall call on the bidder to deposit the balance of the consideration if any remained unpaid.
- (3) The Area Director shall complete the certificate on the Order of Removal of Restrictions and the certificate on the deed executed by the land owner. When the full purchase price and sales fees have been deposited, the Order of Removal and deed shall then be delivered to the purchaser.
- (4) The Area Director shall make a complete record of all sales, including correspondence with the land owner, District Agent, and others involved.
- (5) When the owner desires that a sale for less than the appraised price be approved and the Area Director believes such a sale justified the matter shall be submitted to the Commissioner with this recommendation.
- (6) The Area Director shall immediately refund to the high bidder all money deposited on a land sale that is not approved.

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- (7) The Area Director may authorize the District Agent to re-advertise land for sale when it appears advantageous to do so and it is evident a sale can be made in the best interest of the land owner and his family.
- (8) The Area Director shall withhold or withdraw from sale any land when he has reason to believe sale would not be for the best interests of the applicant.
- (9) The Area Director shall inform the County Director of the Department of Public Welfare, of the result of a land sale when sale of the land affects eligibility for a Public Assistance grant.

LIST OF EXHIBITS

Exhibit No.

- 1 Form of Letter to Bureau of Land Management
Requesting Issuance of Fee Patent to Allottee
- 2 Order Removing Restrictions
- 3 Instructions For Drafting and Execution of Deeds
- 4 Form of "Consent to Sale"
- 5 Order Transferring Inherited Interests
- 6 Form of Letter to Bureau of Land Management
Requesting Issuance of Fee Patent to Purchasers
- 7 Form of Letter to Bureau of Land Management
Requesting Issuance of Trust Patents in
Partitioning Allotments
- 8 Form No. 5-105, Application for Patent or for
the Sale of Indian Land
- 9 Form No. 5-110n, Report on Sale of Indian Land
- 10 Form 5-114, Invitation, Bid and Award
Form 5-113, Schedule of Lands to be Sold (attachment
to Form 5-114)
- ~~11 Form 5-110a, Appraisal Report~~
- 12 Check List for Indian Patents
- 13 Notations of Rights of Way Required in Patents
- 14 Notations of Rights of Way Not Required in Patents
- 15 Data Required by BLM When Rights of Way Must be
Cited in Patents
- 16 Authorization to Accept Bid on Indian Land Offered at
Advertised Sale

Rev. Rev.
237

Rev 54-1

Deleted per 54-2

Director, Bureau of Land Management

Washington 25, D. C.

Through: Commissioner
Bureau of Indian Affairs

Dear Sir:

The application of _____, * _____,
for a patent in fee for land embraced in _____
Allotment No. _____ (Tribe or Public Domain)
_____ (If Public Domain include Land Office and Serial No.)
of _____, pursuant to authority delegated by
_____ (Name of allottee)
Secretarial Order No. _____ of _____, 19____ (____ F.R. ____), and
Order No. _____ of the Commissioner, Bureau of Indian Affairs, dated _____
_____, 19____ (____ F.R. ____), has been approved.

It is requested that a patent in fee be issued to the above-named
applicant for the following described land, provided there are no reasons
appearing on the records of the Bureau of Land Management why such patent
should not be issued: ** _____

Sincerely yours,

Area Director

* Insert the word heir,
devisee, or purchaser,
should one be applicable.

** Add any conditions or reservations
necessary, if they have not been
included with the description.

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ORDER REMOVING RESTRICTIONS

WHEREAS, by a deed dated _____, 19 __, and
recorded in Indian Office Deed Book Vol. __, Page __,

_____ an Indian
of the _____ Reservation, acquired from
_____, land described as the _____

_____ containing _____ acres, subject to the condition that when the
title is in the grantee or heirs, no sale or encumbrance thereof
shall be valid without the consent of the Secretary of the Interior,
and

WHEREAS, the owner has applied to have the restrictions
against the sale or encumbrance of the above-described land removed
and upon examination, consideration, and investigation, it is found
that the best interests of the applicant will be served by removing
the restrictions from the above-described property,

NOW, THEREFORE, by virtue of the provisions of the deed of
conveyance and authority conferred on the Area Director by Secretarial
Order No. _____ of _____, 19__ (___ F.R. _____), and
Order No. _____ of the Commissioner of Indian Affairs, dated _____
19 __ (___ F.R. _____), the restrictions or encumbrance on the
above-described land are removed.

Area Director

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[Handwritten signature]
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INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

DATE

The date to be inserted in the first line should be the date on which the grantor or grantors sign the deed. When they sign on different dates, use the date the first grantor signed.

DESIGNATION OF THE GRANTOR

The space following the date is for the purpose of naming or designating the grantors. This should be written in such a way as to indicate the sex and marital status of the grantor or grantors and should indicate whether the person is to sign as an owner or to extinguish the rights of dower, curtesy, or homestead. Allotment number should, when grantor has one, be shown following the name, as: Marion Smith, Flathead allottee No. 222, a single man. In the examples that follow, the phrase showing the allotment number has been omitted for the sake of brevity.

Marital StatusManner of Designation

- | | |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Has never been married | Marion Smith, a single man
Marion Smith, a single woman |
| (b) Is divorced | Marion Smith, a divorced man
Marion Smith, a divorced woman |
| (c) Separated by death | Marion Smith, widower
Marion Smith, widow |
| (d) Owner is married | The owner is designated first, followed by the designation of the spouse, as

John Adams and Mary Adams, his wife, or
Mary Adams and John Adams, her husband |
| (NOTE: In no case should a wife be designated as Mrs. John Adams.) | |
| (e) Husband and wife as co-owners | John Adams and Mary Adams, for themselves and as husband and wife. |
| (f) Co-owners as grantors | Marion Smith, a single woman; Francis Martin, a single man; Paul Jones, a widower; John Anderson and Mary Wright Anderson, his wife; and John Jones and Anna Jones, for themselves and as husband and wife. |

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

DESIGNATION OF GRANTOR (continued)

- | | |
|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (g) When owner is a minor | Joseph Sampson, legal guardian for Walter Johnson, a minor. (There should be attached to the deed a certified copy of the court order confirming the sale of the land) |
| (h) When owner is mentally incompetent | John Doe, legal guardian for Adolph Doe, incompetent. (Attach to the deed a certified copy of court order) |
| (i) When ownership is Indian-inherited | Following the designation of the grantor(s) show the name of the original allottee, as: heirs of Growler, Fort Peck allottee No. 1381, Probate file Nos. 121280-15, 53575-35, 50477-20, deceased, a Fort Peck Indian. |
| (j) When Indian names are used.
(See Indian Office Cir. 2318) | (1) English name of husband and Indian name of wife: John Smith and Brightstar Smith, his wife.

(2) When both use their Indian names: Big Bear and Brightstar, his wife. |
| (k) When an agent is acting for the grantor | John Smith, attorney in fact for John Doe. (Attach to the deed a certified copy of the power of attorney) |
| (l) When grantor is a corporation | When grantor is a private corporation: John Smith, President, Rocky Mountain Livestock Company |

(NOTE: Certified copy of the resolution of the Board of Directors authorizing John Smith to convey; also, articles of incorporation and, if a foreign corporation, certificate from the proper state officials that the corporation is qualified and in good standing to do business in the state.)

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

DESIGNATION OF GRANTEE

Careful and complete designation of grantee is important. This shows who gets title and how title is taken.

(a) Conveyance in severalty:

1. When conveyance is to result in title in trust for the tribe: The United States of America in trust for the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana. (Use the corporate name of tribes organized under IRA unless special advice is received for other designation. For tribes not so organized, use the designation specified in the Act of Congress authorizing the purchase, or as specifically advised by the Area Director.)
2. When conveyance is to result in restricted title for an individual Indian:
When IRA: The United States of America in trust for Jesse William Couture, Flathead allottee No. 1497.
When not under IRA:
 - (a) For land now held in trust by an Indian (Use deed Form 5-183b) James Sweeney, Fort Peck allottee No. 1686.
 - (b) For land now in fee simple
Conveyance under authority of the Act of June 30, 1932 (47 Stat. 474) Use deed Form 5-185.
James Sweeney, Fort Peck allottee No. 1686.
3. When conveyance is to result in fee simple title:
 - (a) To an individual: John Smith
 - (b) To a private coporation: The Polson Sheep Company, a corpora-
tion.
 - (c) To a public corporation: Dewey County, South Dakota, a public
corporation.

(b) Conveyance in co-tenancy:

1. When conveyance is intended to create a tenancy in common: When grantees are to take in equal shares, follow the outline given for conveyance in severalty but name each of the individual grantees, as: The Unites States of America in trust for Jesse William Couture, Flathead allottee No. 1497, and Felicite Pierre McDonald, an un-

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INSTRUCTIONS
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DESIGNATION OF GRANTEE (continued)

- allotted Flathead Indian.
2. When grantees are to acquire unequal shares: Show the portion each is to receive following his name, thus: Jesse William Couture, Flathead allottee No. 1497, a 2/3 undivided interest, and Felicite Pierre McDonald, an unallotted Flathead Indian, a 1/3 undivided interest.
 3. To create a joint tenancy: Use the same designations in each case as shown above but add words that show the intention to create a joint tenancy, thus: John Smith and Jessie Smith, husband and wife, as joint tenants with the right of survivorship and not as tenants in common.

(c) Creation of conventional life estates: (infra LIFE ESTATES)

ADDRESS OF GRANTEE

- (a) When conveyance is to the United States in trust for the tribe, the address shown in the deed should be that of the agency, as Poplar, Montana, or Browning, Montana.
- (b) When conveyance is to the United States in trust for an individual, the address shown in the deed should be that of the individual's post office, as Wolf Point, Montana, or Ronan, Montana.

THE CONSIDERATION CLAUSE

- (a) When the consideration is to be in money, the actual purchase price should be shown as: Eight hundred fifty and No/100 (\$850.00)
- (b) When the consideration is an exchange of lands of equal value: For and in consideration of the exchange of lands of equal value. (Delete the words "dollars, in hand paid, the receipt of which is hereby acknowledged")
- (c) When the consideration is partly cash and partly other lands: For and in consideration of the sum of \$400.00 and the exchange of other lands valued at \$450.00.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

THE CONSIDERATION CLAUSE (continued)

- (d) When the consideration is the settlement of reimbursable debt: For and in consideration of the settlement of reimbursable indebtedness in the amount of \$850.00.
- (e) When the consideration is partly money and partly personal property: For and in consideration of the sum of \$400.00 and personal property valued at \$450.00.
- (f) Wherever possible show the kind of personal property: Example: For and in consideration of the sum of \$400.00 and livestock valued at \$450.00.
- (g) When only personal property is the consideration: For and in consideration of cattle valued at \$850.00.

(NOTE: Try to show what kind of personal property whenever possible, but when various kinds are involved the general term "personal property (or livestock)" may be used to cover.)

- (h) When the consideration is an exchange assignment:
1. For other lands of equal value: For and in consideration of an exchange assignment of other lands of equal value.
 2. For the same lands: For and in consideration of an exchange assignment of the lands herein conveyed.
 3. For other lands and personal property together of equal value: For and in consideration of cattle valued at \$400.00 and an exchange assignment of other lands valued at \$450.00.
 4. For other lands and cash together equal in value: For and in consideration of \$400.00 and an exchange assignment of other lands valued at \$450.00.
- (i) When the consideration is in settlement of a revolving credit fund loan: For and in consideration of the settlement of indebtedness to the Blackfeet Tribe in the amount of \$346.25.

(NOTE: In cases where no cash consideration is involved such as in b,d,g, h-1, h-2, h-3 and i above, delete the words, "dollars, in hand paid, the receipt of which is hereby acknowledged.")

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INSTRUCTIONS
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THE CONSIDERATION CLAUSE (continued)

- (j) When the conveyance is a gift to a friend or relative: For and in consideration of One Dollar, love and affection.
- (k) When the conveyance is a gift to a tribe: For and in consideration of One Dollar, and other valuable consideration.

(NOTE: Avoid erasures. When correction is necessary draw line through the part in error but do not obliterate. Insert the correction immediately above and initial correction.)

THE LAND DESCRIPTION

Show the name of the county and state in which the land is situated, as: Situated in Roosevelt County, State of Montana. The description of the land should be accurate, must correspond to the description shown in the certificate of appraisal and other papers relating to the transaction and may be in simple abbreviated form, as:

NW $\frac{1}{4}$ of Sec. 2, T. 26 N., R. 45 E. M P.M., containing 160 acres.
Also show the name of the reservation if the land is in trust or restricted status on a reservation.

PLURAL AND SINGULAR WORD FORMS

Blanks are provided so that such words as "party", "do", "him", "his", etc. may be formed to agree with the number and sex of the grantors and grantees.

The grantee in all cases where land is being conveyed to the United States of America in trust is to be considered as singular and referred to by the pronoun "it".

DELETIONS

When the party of the second part is the United States of America in trust for _____ deletions should be made in the covenant and habendum clauses, crossing out the words "heirs, executors, and administrators" and typing in the words, "its successors and assigns".

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

SIGNATURES

Signatures should be in ink and should be spelled the same as in the designation of grantee clause (at the top of the deed). Allotment numbers, marital status, and sex need not be shown but if such information has not been shown in the designation clause, it may be shown here with the signature. Signatures should be witnessed by at least two persons who should sign as witnesses in the space provided.

When the grantor's signature in the deed disagrees with the designation of the grantor in the deed or with other documents and records, the discrepancy may be clarified by the use of an Affidavit of Identity.

DEEDS CONVEYING UNDIVIDED FRACTIONAL INTERESTS

When it is desired to convey only a fractional interest, the following instructions apply:

- (a) Designation of grantor: Name only the grantor or grantors who are to convey by the instrument being drawn.
- (b) Consideration: Should be shown as the actual amount the grantor or grantors will receive, as, if the grantors are conveying a 1/10 interest and the tract is valued at \$1000, the consideration would be \$100.
- (c) Land description would be written as, An undivided 1/10 interest in and to the NW $\frac{1}{4}$ of Sec. 2, T. 27 N, R. 26 E. M.P.M., containing 160 acres.

ACKNOWLEDGMENTS

Acknowledgment should be in accordance with the law of the state where the land is located.

SIGNATURE OF THE SPOUSE

The purpose of having the spouse join the owner in the execution of the deed is to extinguish the common law rights of dower and curtesy and the statutory right of homestead. The rights of dower and curtesy always exist unless abolished by statute.

INSTRUCTIONS
for
DRAFTING AND EXECUTION OF DEEDS

AUTHORITY CLAUSE

- (a) When authority for the conveyance is found in the Indian Reorganization Act, there should always appear in the space following the land description, citation of this law. Illustration:

This conveyance is made in accordance with the
provisions of the Act of June 18, 1934 (48 Stat.
984)

- (b) When authority for the conveyance is found in specific legislation, there should appear in the space following the land description citation of the law authorizing the conveyance. Illustration:

This conveyance is made in accordance with the
provisions of the Act of _____ (Stat. _____)

IRRIGATION LIEN CLAUSE

When the land is within an Indian irrigation project, deeds must contain requirements of 25 CFR 151.1

There must appear in the space following the land description a clause as follows: (Example for lands on Fort Peck and Blackfeet reservations)

This land is within the _____ unit of the FORT PECK Indian Irrigation Project. A first lien exists created by the Acts of May 18, 1916 (39 Stat. 128), March 7, 1928 (45 Stat. 210), and July 1, 1932 (47 Stat. 564) in favor of the United States for unpaid construction, operation, and maintenance costs of the irrigation project.

RESERVATIONS AND EXCEPTIONS

Example showing a reservation: $N\frac{1}{2}$ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving 25% of the gas, oil and mineral rights for 20 years from date of this deed.

Example showing a reservation: $N\frac{1}{2}$ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving the $SW\frac{1}{4}NW\frac{1}{4}$ for five years from date of this deed for purposes of watering and holding livestock.

Example showing a reservation: $N\frac{1}{2}$ of Sec. 1, T. 29 N, R. 4 E, M.P.M., containing 320 acres, reserving the use of the same for life of the grantor.

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IRRIGATION LIEN CLAUSE (continued)

Example showing an exception: $N\frac{1}{2}$ of Sec. 9, T. 5 W, R. 8 W, M.M., containing 320 acres, excepting one frame barn 24 x 32 feet in dimensions.

Grantors are often inclined to show small parcels of land as exceptions without clearly defining the boundaries, as for example: ". . . excepting $2\frac{1}{2}$ acres in the southwest corner thereof". This is not good conveyancing for the reasons, (1) the exact boundaries of the land conveyed are not shown and (2) the land to be retained by the grantor need not be included in the deed. When the grantor desires to retain $2\frac{1}{2}$ acres in the southwest corner the description should be written to cover only the land conveyed and no exception made. For example: $NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$ $SW\frac{1}{4}NW\frac{1}{4}$ Sec. 1, T. 9 N, R. 2 W, M.M., containing 317.5 acres.

CITATION OF RESERVATIONS IN PATENTS

Some of the allotment acts provide for reservations in patents. Even though such reservation has been omitted in the patent it should be cited in subsequent deeds. Such citation in deeds serves the purpose of giving notice to the purchaser and the public of the existence of such reservation. The act providing for the reservation should be cited. Example: $SE\frac{1}{4}NW\frac{1}{4}$ of Sec. 31, T. 34 N, R. 6 W, M.P.M., containing 40 acres. There is reserved for the benefit of the Blackfeet Tribe of Indians all minerals, including coal, oil, and gas in the lands herein described in accordance with the provisions of the Act of June 30, 1919 (41 Stat. 17).

CITATION OF RESERVATIONS IN PREVIOUS CONVEYANCES

Reservations made in previous deeds should be cited in each subsequent deed to show clearly and properly what is being conveyed and to give notice of such easement or right in a third party. Example: (Following the land description) There is reserved by John Doe in deed dated February 2, 1944, recorded in Book 15, page 126, 25% of the gas, oil and mineral rights in the lands herein described for a period of 20 years from the date of the said deed.

RESTRICTED FEE, Definition of: An Indian restricted fee title is a fee title restricted (limited) as to alienation.

RESTRICTED FEE, Creation of: An Indian restricted fee may be created by a grantor holding a fee simple (fee simple absolute) title.

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INSTRUCTIONS
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RESTRICTED FEE, Creation of: (continued)

To create a restricted fee, words of restriction must be written in the instrument of conveyance, following the land description.

The usual words creating an Indian restricted fee are as follows:

Subject to the condition that while the title is in the grantee or heirs the land herein described shall not be alienated or encumbered without the consent of the Secretary of the Interior.

RESTRICTED FEE, Conveyance of: When land held in Indian Restricted fee title is conveyed and it is intended that the restriction should be continued, the words of restriction should be written in the deed except when using deed Form 5-183b in which the printed language of the deed provides for the continuation of the same ownership status.

DEED TO RESTRICTED INDIAN LAND SPECIAL FORM, 5-183b

This form is used to convey allotted lands between Indians of reservations not under IRA but only when the restricted or trust status is a result of an act of Congress, where the restricted or trust status was created by words in the patent.

When consideration is not held in trust, delete the words, "Held in trust by the United States for the benefit of said party (ies) of the second part".

LIFE ESTATE, Definition of: An estate of freehold held only during the term of some certain person's life. See Thompson's Abstracts and Titles, Secs. 40-49, which deal with conventional life estates. For legal life estates see Dower, Curtesy, and Homesteads.

Life Estate for Life of Grantor, Creation of: This is a kind of a reservation, The words reserving the life estate should follow the land description.

Example: "_____ containing 320 acres, more or less, but reserving to the party of the first part a life estate in the said lands."

Example to reserve a life estate in only a portion of the lands conveyed:
"_____, containing 320 acres, more or less, but reserving to the party of the first part a life estate in that portion of the said lands described as follows:_____."

INSTRUCTIONS
for
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LIFE ESTATE, Definition of: (continued)

Estate for the Life of the Grantee, Creation of: This is created by words following the designation of the grantee. Example: "John Smith, for his life". Also, delete the word "heirs" as pertaining to the grantee.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT TO SALE

WHEREAS, the undersigned, is the owner of an undivided interest in those
certain lands described as
.....
which were allotted to
deceased allottee No. of the Reservation,
and

WHEREAS, I have been advised that under authority of the Act of June 25, 1910 (36
Stat. 855) and other applicable provisions of law, the Secretary of the Interior or his duly
authorized representative proposes to sell the above-described land;

NOW THEREFORE, I hereby consent to the sale of said lands and request the Secretary
of the Interior or his duly authorized representative to sell and convey all of my right,
title and interest therein, and I hereby agree to accept the highest bid thereon provided it
is not inconsistent with the present fair market value as indicated by the appraisal, sub-
ject to payment to me or deposit to my credit at the
Indian Agency of my proportionate share of the sale price. It is agreed that rental pay-
ment (crop or cash) will accrue to the purchaser, effective as of the beginning of the
next annual lease period and that all advance rental payments collected shall be deducted
from the purchase price.

WITNESSES:

.....
.....

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ORDER TRANSFERRING INHERITED INTERESTS IN INDIAN LAND

WHEREAS, under authority of the allotment act of _____
_____, the land described below was duly allotted to
_____, deceased _____
allottee No. _____ of the _____ Reservation
_____ for which trust patent was issued _____
and.

WHEREAS, the original twenty-five year trust period pro-
vided for in said patent has been duly extended, and

WHEREAS, Section 1 of the Act of June 25, 1910 (36 Stat.
855), provides the Secretary of the Interior with the exclusive
authority to determine the heirs of deceased Indians, and also
authorizes said Secretary, in his discretion, to cause the lands
allotted to deceased Indians to be sold if he shall decide one or
more of the heirs to be incompetent, and

WHEREAS, the said _____
died on or about _____ since which date
the heirs of the said allottee have been duly determined by the
Secretary of the Interior pursuant to the authority hereinbefore
cited, _____ of whom _____ incompetent, and

WHEREAS, the Tribal Council of the _____
at a meeting duly held _____, approved
the acquisition of the land herein below described and requested
the Secretary to purchase the land, title to which will be taken
in the name of the United States in trust for the _____
_____, pursuant to the act of _____,
and

WHEREAS, deeming it to be for the best interest of the
heirs of the above-named deceased Indian allottee, and the Indians
of the said Indian Reservation, that the land herein described be
reacquired for said Indians, and having previously caused said
land to be appraised by competent appraisers who have fixed the

MAR 30 1951

BIAM REISSUE
FEBRUARY 1984

Rec 4

ORDER TRANSFERRING INHERITED INTERESTS IN INDIAN LAND (continued)

value of the same at the sum of _____

(\$ _____), which sum the Officer in charge of the above mentioned Reservation, pursuant to authority heretofore granted to him, has deposited to the credit of the estate of the said deceased allottee for distribution, upon issuance of this order, to the heirs of said estate, according to their respective interests therein as heretofore found and determined by this Department, and whereas the adult competent heirs have consented to the sale as evidenced by the attached consents of sale,

NOW, THEREFORE, by virtue of the authority conferred upon the Secretary of the Interior by the statutes hereinabove referred to, and other applicable provisions of law, pursuant to authority delegated by Secretarial Order No. _____ of _____, 19__

(__ F.R. _____), and Order No. _____ of _____,

19 __ (__ F.R. _____) of the Commissioner of Indian Affairs,

I hereby declare that all right, title, interest, claim or demand of any nature whatsoever of the heirs of the above named deceased allottee in and to the

_____ Meridian,

within the _____ Reservation is hereby trans-

ferred to the United States in trust for the _____

_____ for use and disposition as other tribal land within said Indian Reservation. The conveyance so made is subject to all valid existing rights-of-way and liens for repayment of irrigation charges, if any.

Done at the City of _____ and dated

_____.

Area Director

Director, Bureau of Land Management

Washington 25, D. C.

Through: Commissioner
Bureau of Indian Affairs

Dear Sir:

I have approved the sale of land described as _____

(Insert legal description, including acreage, meridian, and State)

included in the allotment of _____

(if deceased, state) _____ (Tribe) _____ allottee No. _____
(If Public Domain, _____, pursuant to authority

include Land Office and Serial No.)
delegated by Secretarial Order No. _____ of _____, 19__

(____ F.R. _____), and Order No. _____ of the Commissioner, Bureau of
Indian Affairs, dated _____, 19__ (____ F.R. _____).

It is requested that a patent in fee be issued to _____

_____, the purchaser, for the
above-described land, provided there are no reasons appearing on the records
of the Bureau of Land Management why such patent should not be issued.*

Sincerely yours,

Area Director

*Add any conditions or reservations
necessary, if they have not been
included with the description.

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Mr. Marion Clawson
Director, Bureau of Land Management
Washington 25, D. C.

Through: Commissioner of
Indian Affairs

My dear Mr. Clawson:

I have approved the petition of the heirs of _____
_____ deceased _____ allottee
No. _____, for the partition of the allotment of the deceased
allottee, described as the _____

(Give description of land and acreage)
pursuant to authority delegated by Secretarial Order No. _____ of
_____, 19 ____ (____ F.R. _____), and Order No. _____
of _____, 19 ____ (____ F.R. _____) of the Commissioner
of Indian Affairs.

It is requested that appropriate trust patents be issued
to the heirs for the lands set apart to them as follows:

- To _____,
(Name of heir) _____ (Description of land) _____
- To _____, _____
- To _____, _____
- To _____, _____

Area Director

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Rel 4

BIAM REISSUE
FEBRUARY 1984

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Application for Patent in Fee or for the Sale of Indian Land

Allottee _____ No. _____ Reservation _____

(date)

Application is hereby made for (patent in fee) (supervised sale)*
for the following described land: _____

_____ containing _____ acres, more or less.

In justification of this application, true statements are made to the
following items (item 15 only is applicable for the sale of inherited lands
in multiple ownership):

1. Age _____
2. Date of Birth _____
3. Degree of Indian Blood _____
4. ~~Married~~ Single (strike out one)
5. Education: Years in elementary school _____ High School _____
College _____
6. The following persons are dependent upon me for support
(Give names, ages and relationship) _____

7. I am enrolled as a _____ Indian
(Name of Tribe)
8. Permanent address _____
9. The amount of my annual income is \$ _____

*Strike out words not applicable.

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10. My income is obtained from the following sources: _____

11. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount. (If none, state none.)

12. If indebted to the United States, state amount and purpose of indebtedness. (If not, state none.) _____

13. I do (do not)* live on or make personal use of the land covered by this application.

14. The land is leased and the annual rent received is \$ _____.
(If not leased, state none.)

15. a. I intend to use the land for the following purposes after receiving a patent in fee which becomes taxable from date of issuance:

b. I intend to use the proceeds of sale for the following purposes:

I (We)*authorize the sale of the land heretofore described and hereby accept the highest bid thereon provided it is not inconsistent with the present fair market value as indicated by the appraisal. It is agreed that rental payment (crop or cash)*will accrue to the purchaser, effective as of the beginning of the next annual lease period and that all advance rental payments collected shall be deducted from the purchase price.

*Strike out words not applicable.

BIAM REISSUE
FEBRUARY 1984

It is also agreed that the proceeds arising from the sale of this land may be disposed of in accordance with regulations prescribed by the Secretary of the Interior.

Subscribed and sworn before me
this ___ day of _____ 19__.
I hereby certify that the effect of this
application was explained to and fully
understood by the applicants and the
application is hereby approved.

Title

BIAM REISSUE
FEBRUARY 1984

Rel 237

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Report on Sale of Indian Land

Name of Allottee _____ No. _____ Reservation _____

Item No. _____ Invitation to Bid No. _____

Appraised Value _____

Name of Highest Bidder _____

Amount Deposited with Highest Bid \$ _____

Names and amount of Bids received on subject tract:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

It is recommended that the highest bid be accepted and that the (deed) (request for patent in fee)* be approved.

_____ Title

*Strike out words not applicable.

82229

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FEBRUARY 1984

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

INVITATION, BID AND AWARD
(SALE OF INDIAN LANDS)

ISSUED BY:

INVITATION NO. BIDS WILL
BE RECEIVED UNTIL AND OPENED AT M,
LOCAL TIME,
DATE

DATE:

INVITATION FOR BIDS

SEALED BIDS IN DUPLICATE, SUBJECT TO THE TERMS AND CONDITIONS OF THIS INVITATION, ITS SCHEDULE AND STIPULATED PROVISIONS, WILL BE RECEIVED AT THE ABOVE OFFICE UNTIL ABOVE DESIGNATED TIME, AND AT THAT TIME PUBLICLY OPENED. ALL BIDS ARE SUBJECT TO ACCEPTANCE BY THE RESPECTIVE INDIAN OWNERS AND FINAL APPROVAL BY THE AREA DIRECTOR. THE RIGHT IS RESERVED TO REJECT ANY AND ALL BIDS AND TO DISAPPROVE ANY DEED MADE ON AN ACCEPTED BID IN ACCORDANCE WITH 25 C.F.R. 241 AND SPECIAL DELEGATED AUTHORITIES. EACH BID ON INDIAN LAND OFFERED FOR SALE MUST BE ACCOMPANIED BY A CASHIER'S CHECK, CERTIFIED CHECK, OR POSTAL MONEY ORDER PAYABLE TO THE BUREAU OF INDIAN AFFAIRS FOR NOT LESS THAN 10% OF THE OFFER MADE.

GENERAL INFORMATION AND INSTRUCTIONS TO BIDDERS ARE CONTAINED IN THE TERMS AND CONDITIONS ON THE REVERSE HEREOF.

SCHEDULE OF BID

ITEM NO.	ALLOTMENT NO.	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NO.	NO. OF ACRES	AMOUNT OF BID

THE UNDERSIGNED AGREES THAT IF THE AMOUNT OFFERED FOR ANY ITEM OR ITEMS IN THE ABOVE BE ACCEPTED, HE WILL WITHIN 30 CALENDAR DAYS FROM DATE OF RECEIPT OF NOTICE OF AWARD DEPOSIT WITH THE ISSUING OFFICER BUREAU OF INDIAN AFFAIRS THE FULL AMOUNT OF HIS OFFER TOGETHER WITH STIPULATED SALES FEES AND THAT FAILURE TO MAKE SUCH DEPOSIT WITHIN THE SPECIFIED TIME WILL CONSTITUTE A FORFEIT OF THE 10% DEPOSIT.

SALES FEES ARE AS FOLLOWS:

.....

.....
SIGNATURE OF BIDDER

.....
NAME OF BIDDER (PRINT OR TYPE)

.....
ADDRESS (PRINT OR TYPE)

.....

NOTICE OF AWARD TO SUCCESSFUL BIDDER

YOU ARE HEREBY NOTIFIED THAT YOU ARE THE SUCCESSFUL BIDDER ON THE FOLLOWING ITEMS:

BALANCE OF THE PURCHASE PRICE IN THE AMOUNT OF \$ SHALL BE REMITTED TO THE
ABOVE ISSUING OFFICE NOT LATER THAN

DATE

B I A M REISSUE
FEBRUARY 1984

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**INSTRUCTIONS TO BIDDERS
TERMS AND CONDITIONS OF THE INVITATION FOR BIDS**

1. **MARKING AND MAILING BIDS** - Bids, with their guaranties, must be securely sealed in suitable envelopes, addressed to the issuing office and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. **PREPARATION OF BIDS** - Unless otherwise directed in the invitation, bids shall be submitted in duplicate. Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, and these instructions, is necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed contract including local conditions, uncertainty of weather, and all other contingencies. All item numbers and prices shall be fully and clearly set forth. Copies of the bids shall be identical. The proper blank spaces in the bid shall be suitably filled in.
3. **SIGNATURE TO BIDS** - Each bid must give address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the names of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president," "secretary," "agent," or other designation, without disclosing his principal, may be held to the bid of the individual signing. When requested by the Government, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
4. **CORRECTIONS** - Erasures or other changes in the bids must be explained or noted over the signature of the bidder.
5. **TIME FOR RECEIVING BIDS** - Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will attach to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.
6. **WITHDRAWAL OF BIDS** - Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.
7. **BIDDERS PRESENT** - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others properly interested, who may be present either in person or by representative.
8. **AWARD OR REJECTION OF BIDS** - The award will be made to the highest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is to the interest of the Indian owner and the United States to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The Area Director, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owner or the United States.
9. **ERRORS IN BID** - Bidders or their authorized agents are expected to examine the maps, circulars, schedule, and all other instructions pertaining to the invitation to bid which will be open to their inspection. Failure to do so will be at the bidder's own risk, and he cannot secure relief on the plea of error in the bid.
10. Government appraisals of the herein described property are confidential and will not be made available.
11. The land advertised herein for sale will be sold subject to existing leases of record with the Bureau of Indian Affairs. Rental payments (crop or cash) will accrue to the purchaser, effective as of the beginning of the next annual lease period. In the event advance rental payments have been collected by former owner or owners, such amounts will be deducted from the purchase price.
12. Beneficial use and occupancy of lands purchased which lie within designated range units will be transferred to the purchaser at the end of the current use or pay period.
13. When the Indian land offered for sale is irrigable under a Federal Irrigation Project and the land has been designated as being part of a project, there exists in accordance with existing laws, a lien on the land for the payment of unpaid construction costs. The purchaser, if other than Indian, will be required to enter into a contract for the payment of such charges on a per acre basis. The contract will provide for annual payment of these charges on a due date of each year. Any or all delinquent operation and maintenance charges are to be deducted from the proceeds of the sale.
14. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

SCHEDULE OF LANDS TO BE SOLD
(ATTACHMENT TO FORM 5-114)

ITEM NO.	ALLOTMENT NO.	LAND DESCRIPTION AND INFORMATION

54-1

C H E C K L I S T F O R I N D I A N P A T E N T S

NAME:

Is name given in full? If initials only, specify that there is no full name. Check for correct spelling of name.

DESIGNATION OF PATENTEE:

Is patentee designated properly as allottee, heir, or purchaser? Where more than one patentee is shown have you designated:

- (a) fractional interests, if any;
- (b) tenants in common; or
- (c) joint tentants

Is patentee a corporation? If so, is copy of articles of incorporation included, or reference to prior request where it may be found?

ALLOTMENT NUMBER:

Is the allotment number correct? Does it cover the land requested to be patented?

DESCRIPTION OF LAND:

Is land description correct? Does it conform to the public land surveys? Does it include the meridian and State? If by metes and bounds, has BLM been requested to prepare supplemental plat?

RESERVATIONS:

Minerals - What minerals are to be reserved?
Under what act of Congress are they reserved?
Does the reservation apply to all the lands in the request?
If not, specify which lands are covered by the reservation.
Is timber to be reserved? If so, under what act of Congress?

LIENS AND/OR MORTGAGES:

Is there an irrigation lien on the land? If so, specify giving act of Congress.

~~Is the land to be patented subject to a mortgage? If so, give date of mortgage, name of mortgagee, date and place where recorded.~~

Rel (54-11)

B I A M R E I S S U E
F E B R U A R Y 1 9 8 4

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54-11

54-T1

RIGHTS OF WAY:

For what purpose is the right of way made (highway, tel. & tel. line, transmission line, etc.)

What lands are affected by the right of way?

Under what act of Congress is the right of way authorized?

Is the grant of the right of way by a deed? If so, is the land covered thereby to be excepted from the land to be patented?

Any right of way which must be included in the patent should be shown in the request for patent. See Illustrations 13 and 14.

EXCEPTIONS:

Where land is to be excepted from that to be patented, show date of deed making the exception, date and place of recordation, to whom grant is made, and description and area to be excepted and net area to be patented.

LIEU TRUST PATENTS:

Original trust patent should be surrendered to BLM, with relinquishment noted thereon, or attached thereto.

If original trust patent is not available, state why.

EXCHANGES:

Show act of Congress under which exchange is being made. Give clear description of the land offered and selected, and show the allotments to which each pertains.

NOTATIONS OF RIGHTS OF WAY REQUIRED IN PATENTS

Where lands are entered subject to rights of way granted or authorized under the acts listed below, reservation of such rights of way in the final certificates or patents is required.

(a) Rights of way for Railroads.

June 8, 1872, 17 Stat., 339.
June 8, 1872, 17 Stat., 340.
June 23, 1874, 18 Stat., 274.
May 30, 1888, 25 Stat., 160.
September 1, 1888, 25 Stat., 452-455.
February 12, 1889, 25 Stat., 660.
July 18, 1894, 28 Stat., 112.
June 4, 1898, 30 Stat., 436.
March 1, 1899, 30 Stat., 918.
March 2, 1899, 30 Stat., 990.
April 17, 1900, 31 Stat., 134.
March 3, 1909, 35 Stat., 781.
May 6, 1910, 36 Stat., 349.

(b) Rights of way for purposes other than Railroads.

June 4, 1897, 30 Stat., 11-35.
March 1, 1899, 30 Stat., 941.
March 3, 1901, 31 Stat., 1083, Sec. 3.
March 11, 1904, 33 Stat., 65.
February 1, 1905, 33 Stat., 628, Sec. 4.
March 4, 1911, 36 Stat., 1253.*
March 4, 1913, 37 Stat., 828-843.
February 25, 1920, 41 Stat., 437, Sec. 28, as amended
by the act of August 21, 1935 (49 Stat., 678).
November 9, 1921, 42 Stat., 212, Sec. 17.
December 5, 1924, 43 Stat., 704, Sec. 4, Sub. Sec. P.
March 31, 1933, 48 Stat., 22.
February 5, 1948, 62 Stat., 17.

Roads, trails, telephone lines, etc., actually constructed by the United States must be excepted from any final certificate and patent, with the rights of the United States to maintain, operate, or improve the same so long as needed or used for or by the United States. (Dept. Instr., Jan. 13, 1916, 44 L.D. 513).

* The final certificate and patent must contain a reservation under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by the act of August 26, 1935 (49 Stat. 846), if the right of way is for the development or transmission of hydro-electric power (47 L.D. 595, 598).

NOTATIONS OF RIGHTS OF WAY NOT REQUIRED IN PATENTS

Where lands are entered subject to rights of way granted or authorized under the acts listed below, the rights of way are fully protected by the terms of the statutes as against subsequent adverse rights and no reservation of such rights of way in the final certificates or patents is required.

(a) Rights of way for Railroads.

March 3, 1875, 18 Stat., 482.
July 3, 1882, 22 Stat., 148.
February 15, 1887, 24 Stat., 402.
March 2, 1887, 24 Stat., 446.
February 18, 1888, 25 Stat., 35.
May 1, 1888, 25 Stat., 113.
February 28, 1902, 32 Stat., 43.
May 14, 1898, 30 Stat., 409.

(b) Rights of way for Purposes Other than Railroads.

March 3, 1891, 26 Stat., 1095.
January 21, 1895, 28 Stat., 635.
May 21, 1896, 29 Stat., 127.
June 7, 1897, 30 Stat., 67.
May 11, 1898, 30 Stat., 404.
February 15, 1901, 31 Stat., 790.*
March 3, 1901, 31 Stat., 1084, Sec. 4.
June 30, 1906, 34 Stat., 801.
March 4, 1915, 38 Stat., 1188.
March 4, 1917, 39 Stat., 1197.
June 5, 1920, 41 Stat., 983.
March 1, 1921, 41 Stat., 1194.
December 21, 1928, 45 Stat., 1057.

* The final certificate and patent must contain a reservation under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by the act of August 26, 1935 (49 Stat. 846), if the right of way is for the development or transmission of hydro-electric power (47 L.D. 595, 598).

DATA REQUIRED BY BLM WHEN RIGHTS OF WAY MUST BE CITED IN PATENTS

Type of Reservation	Purpose	Citation of Act of Congress		Title Section	Special Data Needed for Patent
		Stat. at Large	U. S. Code		
Right-of-way	Canals & ditches	14	251	-	None (Applicable to all lands west of 100° except those in Kansas Nebraska & Oklahoma. See illustration 17).
Right-of-way	Railroad & telegraph lines	17	339	-	Name of railroad company.
Right-of-way	Railroad line	17	340	-	Name of railroad company.
Right-of-way	Railroad & telegraph lines	18	274	-	Name of railroad company.
Restriction	Liability for debts	18	482	13	934-939
Right-of-way	Railroad lines	24	388	-	None
Right-of-way	Railroad, telegraph & telephone lines	25	160	-	Name of railroad company.
Right-of-way	Railroad, telegraph & telephone lines	25	152, 155	-	Name of railroad company.
Right-of-way	Railroad, telegraph & telephone lines	25	660	-	Name of railroad company; purpose of right-of-way.
Right-of-way	Aqueducts, canals & dams	25	693	-	Name of right-of-way grantee.
Right-of-way	Canals & ditches	26	391	13	945
Minerals	Gold, silver & quicksilver	26	854	-	None. Applicable to all lands west of 100°. See illustration 17.
Right-of-way and easements	Bureau of Reclamation projects	26	1095	13	1417
Right-of-way	Railroad lines	27	529	-	None.
Right-of-way	Railroad lines	28	112	-	Name of railroad company.
Material site	Timber or stone	30	11, 35	-	Name of railroad company.
Right-of-way	Railroad, telegraph & telephone lines	30	436	-	Name of permittee.
Right-of-way and flowage easement	Dam and reservoir sites	30	571, 576	-	Name of railroad company.
Right-of-way	Railroad & telegraph lines	30	918	-	None.
Right-of-way	Dams, ditches & canals	30	941	-	Name of railroad company.
Right-of-way	Railroad, telegraph & telephone lines	30	990	-	Name of right-of-way grantee. Type of line; name of right-of-way grantee.
Right-of-way	Railroad, telegraph & telephone lines	31	134	-	Name of right-of-way grantee.
Right-of-way	Telephone & telegraph lines	31	1058, 1083	-	Name of right-of-way grantee.
Lien	Irrigation charges	32	388	-	See Acts of 8/9/1912 & 5/15/1922.
Right-of-way	Oil & gas pipe lines	33	65	-	Type of line, name of right-of-way grantee.
Right-of-way	Dams, reservoirs, ditches, flumes, etc.	33	628	16	Name of right-of-way grantee.
Water & Minerals	Mining laws	34	233	16	None except if in Black Hills National Forest. In that case, name of forest.
Minerals	Coal and oil	34	325, 336	-	None.
Right-of-way	Material sites, reservoirs, tree planting, etc.	35	481	-	Name of railroad company; date of approval of appl'n by railroad co.
Minerals	Coal	35	844	30	81
Right-of-way	Material sites, reservoirs, tree planting, etc.	36	349	-	None.
Minerals	Coal	36	583	30	83-85
Exception	Power-site reserves	36	847	43	141-143

Right-of-way Restriction	Bureau of Reclamation highway	6/25/1910	36	855	-	None.
Right-of-way	Alienation restriction	6/25/1910	36	855	-	None.
Minerals	Right of cancellation	6/25/1910	36	855	-	None.
Lien	Electric transmission, telephone, and telegraph lines	3/4/1911	36	1235,1253	43	961
Right-of-way	Coal	4/3/1912	37	631	-	None.
Lien	Drainage assessments	7/19/1912	37	194	-	None.
Right-of-way	Canal	7/19/1912	37	194	-	None.
Lien	Irrigation charges	8/9/1912	37	265	43	511-516
Right-of-way	Flowage	8/24/1912	37	518,527	-	None.
Minerals	Federal improvements	-	-	-	444D	359,513
Lien	Railroad, telephone, telegraph lines	3/12/1914	38	305	48	301
Right-of-way	Oil & gas, oil shale, potassium, phosphate, etc.	7/17/1914	38	509	30	121-123
Minerals	Drainage assessments	7/21/1914	38	553	-	-
Right-of-way	Coal	8/3/1914	38	681	-	None.
Minerals	Flowage	8/6/1914	38	683	-	None.
Lien	Irrigation charges	5/18/1916	39	123	-	None.
Right-of-way	All minerals	12/29/1916	39	862	43	291-301
Minerals	Coal	2/27/1917	39	944	30	86-89
Right-of-way	All minerals	6/30/1919	41	3,17	-	None.
Minerals	Coal	2/14/1920	41	408,420	-	None.
Right-of-way	Oil & gas, pipe lines	2/25/1920	41	437	30	185
Restriction	Use of surface by mineral lessees	2/25/1920	41	437	-	None.
Materials	Timber	2/25/1920	41	452	-	None.
Minerals	All minerals	5/20/1920	41	605	-	None.
Minerals	All minerals	6/4/1920	41	751	-	None.
Lien	Irrigation charges	6/4/1920	41	751	-	None.
Restriction	Occupation for fed. power purposes	6/10/1920	41	1063	16	818
Right-of-way	Electrical transmission line	6/10/1920	41	1063	16	818
Right-of-way	Electrical transmission line	6/10/1920	41	1063	16	818
Minerals	All minerals	3/3/1921	41	1355	-	None.
Lien	Irrigation charges	3/3/1921	41	1355	-	None.
Right-of-way	Federal highways	11/9/1921	42	212	23	1-25
Material site	Federal highways	11/9/1921	42	212	23	1-25
Minerals	Coal or oil and gas	3/8/1922	42	415	48	377
Lien	Irrigation charges	5/15/1922	42	541	43	511-512
Reversionary clause	Missions or schools	9/21/1922	42	994,995	-	None.
Lien	Irrigation charges	6/7/1924	43	475	-	None.
Right-of-way	Federal irrigation purposes	12/5/1924	43	672,704	-	None.
Minerals	All minerals	2/19/1925	43	951	43	993
All types	All purposes	2/28/1925	43	1090	16	486
Minerals	All minerals	5/19/1926	44	566	-	None.
Minerals	All minerals	6/3/1926	44	690	-	None.
Minerals	All minerals	6/14/1926-	44	741	43	869
Reversionary clause	Public purposes	6/4/1954	68	173	-	Purpose for which patent is restricted.

Minerals, Reversionary clause) All minerals
 Reversionary clause) Oil and gas
 Minerals Irrigation charges
 Lien All or specified minerals
 Minerals Rights of agricultural entryman
 Restriction Reclamation lands
 Restrictions Loan to Indian Allottees
 Lien All minerals
 Minerals Sodium or sulfur
 Minerals Paths, trails, lanes, etc.
 Right-of-way Surface of mining claims
 Surface All purposes
 All types All minerals
 Minerals Roads and public utilities
 Right-of-way (1) Public purposes (community sites)
 Reversionary clause (2) Homesite and recreation (interior employees)
 Minerals All minerals
 Right-of-way Roads, highways, etc.
 Right-of-way All purposes

44	1061	2/8/1927	44	-	-	None.
44	1401	3/3/1927	44	-	-	None.
45	200,210	3/7/1928	45	-	-	None.
45	1069	12/22/1928	45	1068	-	Name of mineral(s).
45	1114	1/29/1929	43	299	-	None.
46	367	5/16/1930	43	424	-	None.
46	1124	2/14/1931	25	387	-	Dollar amount of lien.
47	53	2/23/1932	43	178	-	None.
47	1570	3/4/1933	30	124	-	Type of mineral.
48	22	3/31/1933	16	585-590	-	None.
48	808	5/26/1934	-	-	-	None.
48	1269	6/28/1934	43	315g	-	Sufficient to describe reserva. fully.
52	609	6/1/1938	43	682a	-	Width and location of right-of-way; for community sites, purpose, duration, and terms of reversing clause.
68	239	6/8/1954	43	-	-	None.
54	959	9/24/1940	-	-	-	None.
61	418	7/24/1947	48	321d	-	None.
62	17	2/5/1948	25	323	-	Type of reservation; name of grantee; dimensions of right-of-way where applicable.

B I A M R E I S S U E
 F E B R U A R Y 1 9 8 4

AUTHORIZATION TO ACCEPT BID ON INDIAN LAND OFFERED AT ADVERTISED SALE

Place

Date

Whereas, I have applied for a sale of my _____ interest in
land described as: _____

_____, and

Whereas, such land is to be advertised for sale in accordance with
regulations contained in 25 CFR 121; and

Whereas, I have been informed that the appraised value of my
interest in the described land is \$_____, and

Whereas, I am willing to sell my interest in this land for not less
than this appraised value or for not less than \$_____, whichever
amount is greater,

Now therefore, the _____ Area Director, or his authorized
representative, is hereby authorized, in his discretion, to accept on my
behalf any bid which is equal to or in excess of the amount of \$_____.

Signature of Owner

CHAPTER 4

LAND-ALLOTMENTS

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CHAPTER 4

LAND-ALLOTMENTSSection 401. Approval and Certification of Applications for Allotments on the Public Domain..01 Authority.

- A. Statutory. Section 4 of the general allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794), and Section 17 of the Act of June 25, 1910 (36 Stat. 860; 25 U.S.C. 336) which reads in part as follows:

"Where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations,"

- B. Regulations. 43 CFR 176.

.02 Procedure.A. Application for Certificate.

- (1) Action by Applicant. Any Indian desiring an allotment of land on the public domain under section 4 of the general allotment Act of February 8, 1887, as amended, should file an application for a certificate of eligibility. The application shall be filed with the Superintendent of the Indian Agency having jurisdiction over Indian lands in the general area in which the public land is situated. If there be no appropriate Agency, the application should be filed with the proper Area Director of the Indian Bureau having jurisdiction over the general area in which the public land is situated.

The application should be on the approved form. It should contain such information as will permit a determination as to the eligibility of the applicant for an allotment and to establish his or her identity as the Indian applicant.

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- (2) Action by the Superintendent or Area Director. The Superintendent or the Area Director with whom the application has been filed shall examine the application and the records to determine whether the applicant is a recognized member of an Indian tribe or is entitled to be so recognized. The fact that an Indian is a descendant of one whose name was at one time on the rolls and who was then recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not in itself entitle a person to an allotment on the public domain. Tribal membership, even though once existing, may be abandoned. If, upon examination of the application, it be determined that the applicant is not eligible to take an allotment on the public domain, under the fourth section provision, the Superintendent or the Area Director, as the case may be, shall disapprove the application and shall notify the applicant of such disapproval and the reason therefor. If the application fails to provide sufficient information for a determination as to the eligibility of the applicant for an allotment, the applicant shall be so informed. Should the application disclose the applicant eligible to take an allotment on the public domain the Superintendent or the Area Director, as the case may be, shall issue to the applicant a certificate of eligibility. The certificate shall be substantially the same as Exhibit 1 at the end of this Chapter. The certificate shall be executed in quadruplicate. The original shall be delivered to the applicant, and one copy each to be furnished to the Superintendent, Area Director, and the Central Office. Each certificate must bear a serial number and the name of the Agency from which issued. Certificates issued by a Superintendent or an Area Director shall be numbered consecutively.

B. Application for Allotments on the Public Domain.

- (1) Action by Applicant. The applicant must fill out an allotment application form and have the affidavit attached thereto completed. If the applicant so requests and presents his application to the Superintendent or Area Director, as the case may be, for witnessing, the officer before whom he appears should witness the execution of the application and the affidavit. The application and certificate of eligibility should be submitted to the local representative of the Bureau of Land Management of the area in which the land applied for is located.

- (2) Action by the Bureau of Land Management. If the Bureau of Land Management returns the application because it is incomplete or defective, or if the application is suspended because of failure to comply with the regulations, every facility by the Superintendent or the Area Director, as the case may be, should be afforded to the applicant to assist him in complying with the requirements necessary to cure the defects or, if proper, to effect an appeal.
- (3) Action by Superintendent or Area Director. When an application for an allotment on the public domain, accompanied by a report, is submitted by the Bureau of Land Management to the Superintendent or the Area Director, as the case may be, the Superintendent or Area Director shall consider same and, in the absence of any evidence or irregularity which would preclude the issuance of a trust patent to the applicant, shall approve the application.

Approved applications shall be returned to the local representative of the Bureau of Land Management for appropriate action. Trust patents issued pursuant to approved applications will be forwarded to the Commissioner of Indian Affairs for recording. After recording in the Central Office patents will be mailed to the appropriate Superintendent or Area Director, as the case may be, for delivery to the patentee.

- C. Application for Allotment Within a National Forest. The regulations set forth in 43 CFR 176.15, promulgated pursuant to Section 31 of the Act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337) which authorized the making of fourth section allotments within National Forests, provide that when an Indian desires to apply for an allotment within a National Forest he must submit the application to the supervisor of the particular forest for his consideration and determination, and determination by the Secretary of Agriculture as to whether the land is more valuable for agriculture or grazing than for the timber thereon. If a favorable determination is made the application is then forwarded by the Secretary of Agriculture to the Commissioner of Indian Affairs for filing for appropriate action in the district land office in which the land applied for is located.

Upon receipt of such an approved application in the district land office, the Bureau of Land Management will take action thereon as in the case of an application for an allotment on the public domain.

Section 402. Cancellation of Multiple Allotments.

- .01 Policy. Allotments made to Indians in excess of that authorized by law will be cancelled whenever proof is brought to the attention of the Superintendent or Area Director. In the absence of conclusive evidence purported multiple allotments to a single individual should not be cancelled. If one of the allotments is on the public domain and a fee patent instead of a trust patent was issued to the Indian and because of the confused status of the record there is reasonable doubt as to whether the land was entered under the citizen homestead law or under the fourth-section allotment procedure, it may be presumed that the land was entered under the citizen homestead law and therefore is not subject to cancellation as a multiple allotment. If, however, multiple allotments have been made, the allottee or his heirs shall be given written notice thereof and an opportunity to select the allotment or allotments to be cancelled.
- .02 Authority. Act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343).
- .03 Procedure. Whenever evidence is presented to an employee of the Indian Bureau that an Indian has been allotted lands in excess of that authorized by law such evidence shall be presented by such employee to the Superintendent or Area Director, as the case may be, in whose jurisdiction the lands are located. Such officer shall cause an investigation to be made to determine the identity of the allottees to whom the purported multiple allotments were made. Should the investigation disclose that an individual Indian received two or more allotments and the total acreage of such allotments exceeds the acreage to which he or she was entitled to receive under the law, or if the allotments are on different Reservations, the status of the allotted lands shall be investigated to determine whether all or any of the lands are still held under the original trust patents. If all of the allotted lands are in a trust status the allottee or his heirs shall be notified of the finding of the multiple allotments and shall be given an opportunity to select the land to be retained. They shall be informed of the appraised value of the different allotments and all the pertinent information which would assist them in making a determination as to which allotment they desire to retain. The allotment they elect to give up shall be cancelled. If they refuse or fail to elect within a reasonable time after they have been notified of the existence of the multiple allotments, the Superintendent or Area Director, as the case may be, shall select the allotment to be cancelled. If only one allotment remains in a trust status, the allottee or his heirs shall be notified that such trust

allotment is to be cancelled. Prior to any such cancellation the Area Director shall inform the Commissioner of the situation and ask for advice in the matter.

Should the allottee or his heirs agree to relinquish one of the allotments and the trust patent covering the allotment is available, a proper relinquishment should be endorsed by the allottee or heirs on the reverse side of the patent. If the patent has been lost or destroyed, the allottee or heirs should execute an affidavit to that effect and a relinquishment of the allotment.

Allotments shall be cancelled by the Area Director in a memorandum addressed to the Director of the Bureau of Land Management. The memorandum shall set forth the facts, including the name of names of the allottee and description of the multiple allotments. The concluding paragraph should recite that the allotment is cancelled, specify the authority under which such action is taken, and authorize the Director of the Bureau of Land Management to make proper notation of such cancellation on the records of his office.

The original and one copy of the memorandum addressed to the Director of the Bureau of Land Management should be submitted through the Commissioner of the Bureau of Indian Affairs, accompanied by a copy of the memorandum for the Central Office. One copy of the memorandum should be submitted to the Superintendent, if any, having jurisdiction over the land included in the cancelled allotment. The original patent or affidavit should accompany the memorandum to the Bureau of Land Management.

Allotments which have been sold with the approval of the Secretary of the Interior or his authorized representative or on which fee simple or restricted fee patents have been issued are not subject to cancellation by order.

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Section 403. Appeals. Any aggrieved Indian may file an appeal from a decision of the Superintendent or Area Director. An appeal from the decision of the Superintendent shall be filed in writing with that officer, who shall promptly transmit it to the Area Director with the complete record in the case. Should the Area Director uphold the decision of the Superintendent, he shall notify the interested Indian of such action and of his right of appeal from the decision to the Commissioner of Indian Affairs. Should the Area Director reverse the decision of the Superintendent, he shall take appropriate action in the matter.

When the decision of the Area Director is appealed to the Commissioner of Indian Affairs, the Area Director shall promptly transmit the appeal and entire record in the case to the Commissioner for consideration and action. If the Commissioner upholds the decision of the Area Director, he will notify the interested Indian of such action informing him of his right to appeal to the Secretary of the Interior. Copies of the Commissioner's letter to the Indian are to be furnished the Area Director and the Superintendent.

When the Commissioner reverses the action of the Area Director, he will return the case to the Area Director for prompt action by the Area Director consistent with the decision of the Commissioner.

Section 404. Correction of Patent Descriptions.

- .01 Policy. Every effort shall be made to locate and correct errors in the descriptions appearing in trust patents during the period in which such lands remain in a trust status.
- .02 Authority. Act of April 23, 1904 (33 Stat. 297; 25 U.S.C. 343).
- .03 Procedure. Whenever an error is discovered in the description in a trust patent and such error is brought to the attention of the Superintendent or Area Director, the Area Director shall return the patent to the Director of the Bureau of Land Management with a request that the patent be cancelled and a lieu patent issued correctly describing the land. The request shall be submitted to the Director of the Bureau of Land Management through the Commissioner of Indian Affairs.

CERTIFICATE NO. _____, _____
(Agency or Area Office)

TO WHOM IT MAY CONCERN:

This is to certify that _____, an
Indian of the _____ Tribe, is eligible as an
Indian to receive land on the public domain under Section 4 of
the Act of February 8, 1887 (24 Stat. 388), as amended, or in a
national forest under Section 31 of the Act of June 25, 1910
(36 Stat. 855).

(Official title of officer
signing the certificate)

17956

5 Leases and Permits (Nonmineral)Table of Contents

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- 5.2 Authority
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.2 Delegated
 (A) Commissioner
 (B) Area Directors
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5 LEASES AND PERMITS (NONMINERAL)

5.1 Objective and Policy. The objective of the Bureau of Indian Affairs in approving leases or permits on trust or restricted land is to obtain for the Indian owners the maximum financial return from the land, consistent with sound land utilization principles. The granting and/or approval of leases or permits will be in accordance with the regulations in 25 CFR 131. The objective will be achieved in cooperation with the Indian owners to the extent that trusteeship obligations and responsibilities permit.

5.2 Authority.

.1 Statutory. The principal Acts of Congress governing surface leases are as follows:

Acts of February 28, 1891 (26 Stat. 795; 25 U.S.C. 397);
Allotments for 3 years; tribal lands - grazing 5 years

August 15, 1894 (28 Stat. 305; 25 U.S.C. 402);
Surplus tribal lands for farming - 5 years

May 31, 1900 (31 Stat. 229; 25 U.S.C. 395);
Allotted land, allottee incapacitated, 5 years -
farming only

March 1, 1907 (34 Stat. 1034);
Up to 20,000 acres for sugar beets, etc., at
Fort Belknap, Montana, for 10 years

April 30, 1908 (35 Stat. 95);
Irrigable allotted lands on Uintah and
Uncompahgre Reservation - 10 years

April 30, 1908 (35 Stat. 97);
Irrigable lands on Wind River Reservation
for 20 years

June 25, 1910 (36 Stat. 856; 25 U.S.C. 403);
Trust allotments - 5 years

May 18, 1916 (39 Stat. 128; 25 U.S.C. 394);
Arid allotments susceptible to irrigation -
10 years

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- March 3, 1921 (41 Stat. 1232; 25 U.S.C. 393);
Restricted allotments by owners, except Five
Civilized Tribes - farming and grazing
- June 4, 1920 (41 Stat. 751 - basic Crow Act)
- May 26, 1926 (44 Stat. 658-659), as amended by
- March 3, 1927 (44 Stat. 1365)
Crow Reservation - farming and grazing -
5 years, renewals limited
- July 3, 1926 (44 Stat. 894; 25 U.S.C. 402a);
Unallotted irrigable lands, farming, 10 years
- February 14, 1920 (41 Stat. 415), as amended by
Act of
- March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413);
Fees for work incidental to leases
- June 18, 1934 (48 Stat. 988; 25 U.S.C. 477);
I.R.A. reservations - 10 years
- February 11, 1936 (49 Stat. 1135; 25 U.S.C. 393a);
Five Civilized Tribes by 1/2 bloods or more -
farming and grazing, 5 years
- June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503);
Oklahoma Welfare Act reservations - 10 years
- July 8, 1940 (54 Stat. 745; 25 U.S.C. 380);
Inherited allotments by Superintendents
- October 9, 1940 (54 Stat. 1057; 25 U.S.C. 403a);
Fort Madison, Snohomish and Tulalip - 25 years,
with renewal 25 years
- June 25, 1946 (60 Stat. 308);
Crow Reservation - 5 and 10 years allotted lands

LEASES AND PERMITS (NONMINERAL)

August 9, 1946 (60 Stat. 962; 25 U.S.C. 403b and 403c);
Restricted lands in Washington for religious,
educational, and other purposes -- 25 years

March 15, 1948 (62 Stat. 80);
Crow Reservation -- trust lands 5 and 10 years

August 9, 1955 (69 Stat. 539), as amended by
Acts of

September 21, 1959 (73 Stat. 597), June 11, 1960
(74 Stat. 199), and October 4, 1961 (75 Stat. 804);
25 U.S.C. 415, 415a, 415b, 415c, and 415d;
General long-term leasing Acts

- .2 Delegated. A. The Secretary has delegated to the Commissioner authority to act under 25 CFR 131 by Secretarial Order No. 2508, Sec. 13(n).
- B. The Commissioner has delegated to the Area Directors authority to act under 25 CFR 131 by Bureau Order 551, Sec. 12.
- C. Superintendents derive their authority by redelegations from the Area Directors except that Superintendents for the Cherokee and Seminole Agencies receive their authority from the Commissioner. Citations should include the full chain of authority and refer to the appropriate Federal Register citation.

5.3 Applicability of Regulations. The regulations in 25 CFR 131 are generally applicable to the leasing and permitting of trust or restricted lands and Government lands under the jurisdiction of the Bureau. The Secretary may waive or make exceptions to the regulations pursuant to 25 CFR 1.2. There follows an explanation of certain sections of the regulations contained in 25 CFR 131.

LEASES AND PERMITS (NONMINERAL)

§ 131.1 Definitions.

- 131.1(a) "Secretary" -- The regulations omit reference to the Commissioner, Area Director, and Superintendent and refer to the Secretary. The only reference to any other official of the Department is to "the official of the Bureau of Indian Affairs having jurisdiction over the leased premises" in connection with the payment of rentals.
- 131.1(b) "Individually owned land" -- Self-explanatory.
- 131.1(c) "Tribal land" -- Lands held subject to Federal restrictions against alienation include lands held by a tribe in "fee" which are affected by 25 U.S.C. 177. Wherever possible, tribal land reserved for Indian Bureau administrative purposes should be restored to full tribal jurisdiction prior to the approval of a lease. Assigned tribal land has been included in the definition of tribal land. However, a lease can grant no greater interest than that held by the lessor. Hence the requirement that the tribe join in the lease, except where the assignment grants authority to lease. Tribal land reserved for governmental purposes, other than Indian Bureau administrative purposes, is not included in the definition. Leases of such land should be submitted for consideration as an exception to the regulations, in order that necessary clearance with the interested governmental agency may be sought.
- 131.1(d) "Government land" -- This term includes sub-marginal land, title to which has not been granted to the tribes by Congress, as well as land acquired or reserved.
- 131.1(e) "Permit" -- Self-explanatory.

LEASES AND PERMITS (NONMINERAL)

§ 131.2 Grants of leases by Secretary.

The instances where the Secretary is authorized to grant leases have been brought together into this section.

131.2(a)(1)&(2) Where the Secretary is authorized to act for persons who are non compos mentis and for orphaned minors and these persons have representatives under 131.3(2) and (3), the Secretary may either grant leases or approve leases executed by such representatives.

131.2(a)(3) The Secretary may grant leases on behalf of the undetermined heirs of a decedent's estate whether such estate includes the entire interest in a tract of land or an undivided interest therein.

131.2(a)(4) The owners of land that may be leased under this subsection shall be given notice of the date on which a lease may be entered into and of intent to lease the land pursuant to the Act of July 8, 1940 (54 Stat. 745; 25 U.S.C. 380), if a satisfactory lease is not agreed upon within 90 days from such date. Although the matter of the exercise of this authority in particular cases must be left to the judgment of the field officials, it is Bureau policy to utilize the procedures available under the 1940 Act as fully as possible.

131.2(a)(5) Adult Indian owners authorized to grant leases (131.3(1)) who desire that the Superintendent grant leases of their lands may authorize him to do so in writing. The authorities of the Secretary to grant leases under the regulations should be fully explained to such Indians and they should be counseled that the written authority they wish to give can embrace all of the authority of the Secretary under the regulation or any part thereof. Such Indians should be informed that in most instances the leases granted

LEASES AND PERMITS (NONMINERAL)

under the written authority will be advertised for lease, and they may wish to limit their written authority to such leases. The acceptance of a written authority to lease is discretionary with the Superintendent. Where a written authority is submitted to the Superintendent and is not accepted it should be returned to the Indian marked "disapproved" with a letter giving the reasons for not accepting it.

131.2(b) In determining whether the authority in this subsection may be used it is not sufficient that the whereabouts of such an owner is not known to the Superintendent. There should be a reasonable inquiry as to whether those persons with whom he would ordinarily keep in contact know of his whereabouts. The record concerning leases granted under this authority should show the considerations on which the determination is made that the lease is necessary and that the terms and conditions are compatible with the protection and preservation of the property.

131.2(c) Government-owned land not immediately needed for purposes for which acquired or reserved may be permitted pending determination of future need. Such permits should be granted only where necessary to protect and preserve the property and for terms not to exceed one year. Care should be exercised not to commit such lands to a form of tenure that would interfere with disposal of the land as provided by law. The advertisement and permit issued on Government-owned land will contain a provision prohibiting the growing of price supported crops in surplus supply.

LEASES AND PERMITS (NONMINERAL)

§ 131.3 Grants of Leases by Owners or Their Representatives.

131.3(1) Self-explanatory.

131.3(2) Under this authority parents may grant leases on behalf of their minor children. Also, persons standing in loco parentis of minor children may grant leases on the land of such children in cases where the children do not have a duly appointed legal representative. In some instances persons standing in loco parentis and the Secretary may have concurrent authority to execute leases (See 131.2(a)(2)). In such cases, the Superintendent must exercise judgment as to whether to approve a lease executed by the persons standing in loco parentis or to grant the lease under the cited authority.

131.3(3) As is the case under the previous section, in some instances there will be concurrent authority in representatives acting under this section and the Secretary acting under 131.2(a)(1) and (2). The same judgment factors as to whether to approve a lease executed by the representative or to grant the lease himself will have to be used by the Superintendent.

131.3(4) Self-explanatory.

§ 131.4 Use of land of Minors.

This section authorizes the person having the care and custody of minor children to use the land of such children subject to the conditions in the regulation.

§ 131.5 Special Requirements and Provisions.

131.5(a) Self-explanatory.

131.5(b) The regulations by referring to fair annual rental and by authorizing the grant or approval of leases for a consideration that is less than

LEASES AND PERMITS (NONMINERAL)

the appraiser's estimate of fair annual rental more clearly point up the true nature of appraisals; that they do not determine value, but are estimates of value to help Bureau officials to decide on acceptable rentals. A lease may be granted or approved where the proposed contract rent approximates the appraiser's estimate of fair annual rental and is in the judgment of the approving officer the highest rental that may be realized in the circumstances. It will not be necessary to treat such cases as coming under 131.5(b)(3) since in effect the approving officer, using the appraiser's estimate as a guide, is considering the proposed contract rent as fair annual rental.

131.5(b)(1) Self-explanatory.

131.5(b)(2) The limitation on the class of land that can be leased to members for homesite purposes is called to attention and also the fact that under the regulation leases may be given for purposes of subsidizing the tribe as a whole.

131.5(b)(3) In those cases where it is not possible to obtain fair annual rental, a lease may be granted or approved for less than such amount. The appraiser's estimate of fair annual rental is generally based upon leasing of the land for purposes of its highest and best use for a term compatible with the maximization of income to the land. It is recognized that there will be cases where due to local conditions, economic and otherwise, the leasing of land on this basis--the highest and best use for a term compatible with maximization of income--will not be possible. Where such situations exist, leases may be granted or approved for a term compatible with proper protection and preservation of the property

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at the highest rental that may be realized. While, generally, such leases should be limited to a term of one year, a longer term may in some cases be justified. The records should contain documentation of the justification for all leases granted or approved under this regulation.

131.5(c) The regulation has been designed to provide minimum bonding requirements commensurate with adequate protection for the landowner. Experience has shown that excessive bonding requirements can work to the disadvantage of the landowner. It should be noted that the Secretary (or those acting for him under delegated authority) can provide other bonding requirements than those found in the regulations or he can waive the bonding requirements altogether. Either corporate surety bonds or individual surety bonds may be accepted or in lieu of furnishing a surety bond a lessee may deposit with the Superintendent cash or negotiable United States Treasury bonds or other negotiable treasury obligations in the appropriate amount. In the latter cases the lessee should also submit a power of attorney appointing and empowering the Secretary, in the event of any breach of the lease, to pay over any such cash, or to dispose of any such bonds and pay over the proceeds derived therefrom to or for the benefit of the landowners. In any event, the question of whether a bond is satisfactory is left to the judgment of the approving officer.

131.5(c)(1) Bonds guaranteeing rentals will not be required except in those instances where the annual rental is not paid in advance. In these cases a bond guaranteeing one year's rental should ordinarily be required. In cases involving improvement leases, where the improvements have been completed it may not be necessary to require the bond.

131.5(c)(2) Bonds covering the estimated construction cost of improvements should be released upon completion and acceptance of the improvements.

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- 131.5(c)(3) This section applies to obligations other than the payment of rental and construction of improvements. For example, in a given instance it might be appropriate to require a bond to protect the owners against abandonment or against damage caused by misuse of the property.
- 131.5(d) In addition to insurance to protect the improvements and other interests of the lessor, liability insurance should be required where appropriate as a measure of protection to the Indian owners and the United States.
- 131.5(e) A lease is designed to grant peaceful use and possession of property from and after a specified date. Rental is considered due at the beginning of the period for which the rental is paid whether annually or at more frequent intervals. Ordinarily the rent for leased premises should be paid on the date the lessee is to take possession under the lease and annually on such date for the duration of the lease. The regulation provides that except with the approval of the Secretary (or his authorized representative), no lease shall provide for payment of rent in advance of the beginning of the use period for which such rent is paid. The practice of authorizing or requiring rental payments in advance of the period for which the rental is earned should be permitted only when it is fully justified by such circumstances as, for example, emergency needs of the landowner. Every effort should be made to reduce the instances where advance payment of rentals is authorized or required to the minimum which may be dictated by the personal needs of the Indian in each individual lease case.
- 131.5(f) The regulations contain no provisions regarding whether rentals are to be paid direct to the owner of the land or his representative,

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or to the Secretary, except to state that an appropriate provision shall be included in the lease. The instruction given here concerning direct payment of rental is general and should not be construed as precluding a requirement in a given case that rentals be paid to the Secretary. (See requirements of 25 U.S.C. 380 re deposit of rents to account of Indians. See also 131.5(h)(2) concerning recall of direct rental payment provisions in a lease.) A lease of tribal land may provide for the direct payment of rentals when a tribe has facilities for handling its own funds, including an acceptable bonded officer to receipt for funds. Otherwise the lease should provide for the payment of rentals to the Superintendent for deposit to the credit of the tribe in the United States Treasury, except in the case of assigned tribal land in which case the lease may provide for the payment of rental to the holder of the assignment. Leases of individually owned lands may provide for the payment of rentals direct to adult Indian owners who are not non compos mentis. Certain statutes direct that the payment of rental on leases of lands owned by minors granted or approved thereunder, be made direct to the parents. In most cases it is within the discretion of the Secretary as to whether rentals are paid direct to the representatives of minors who are authorized to grant leases or to the Secretary. Rental on land owned by persons who are non compos mentis or are otherwise under legal disability may be paid to the Secretary or to the person who may grant leases on their behalf.

131.5(g) It is mandatory that all leases granted or approved under this part contain these provisions.

131.5(g)(1) This provision has been included in the regulation and is required to be in all leases to assure that where rentals are paid

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direct to the Indian owners, the United States has an interest in the rentals entitling it to bring suit for their recovery. (See Chisholm et al., v. House et. al., 160 F. 2d 632 (10 Circuit 1947)).

131.5(g)(2) Self-explanatory.

131.5(g)(3) Self-explanatory.

131.5(h) It is mandatory that all leases of individually owned land that provide for direct payment of rental contain these provisions.

131.5(h)(1) Self-explanatory.

131.5(h)(2) Where the authority in this regulation is invoked the records should contain documentation of the justification for the action.

§ 131.6 Negotiation of leases.

131.6(a) In cases where all of the owners are adults, authorized under 131.3 to negotiate their own leases, who have negotiated leases in which the proposed rental is not satisfactory to the Secretary, the land may be advertised for lease. Since the Secretary has no authority to grant a lease on land of an adult Indian (except those who are non compos mentis and those whose whereabouts are unknown) the advertisement should state that the award will be made to the highest acceptable bidder subject to the acceptance by the owners. When a lease has been negotiated by adult owners, and by representatives of other owners for whom the Secretary may grant leases, and the rental is not satisfactory to the Secretary, he may advertise the land for lease. If an acceptable bid is received the Secretary may grant the lease on behalf of all the owners.

131.6(b) This section should be read with § 131.3 which is referred to therein. Where the owners who may grant their own leases under § 131.3 represent the majority interest, and these owners

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have negotiated a lease satisfactory to the Secretary, he may join in the execution of the lease for those persons whom he may represent under § 131.2(a)(1), (2), (3), and (5). In addition to the authority to commit the interests of owners of minority interests whom he may represent under § 131.2(a)(1), (2), (3), and (5) to negotiated leases as stated above, it should be noted that under § 131.6(c) the Secretary may also negotiate leases on behalf of those owners for whom he has authority to grant leases under § 131.2 when he is satisfied that in so doing fair annual rental can be obtained. When a lease that has been negotiated by the owners of a majority interest pursuant to this section is not satisfactory to the approving officers the land should be advertised for lease. In such cases the Secretary may grant the lease if a satisfactory bid is received.

131.6(c) When this authority to grant leases without advertising is used the record should be documented as to the justification.

§ 131.7 Advertisement.

It should be noted that the Secretary can grant leases without advertising under the regulation on behalf of owners of undivided interests where he is committing their interest to a satisfactory lease negotiated by owners authorized to grant leases (131.6(b)), and when in his judgment the fair annual rental can be obtained by negotiation (131.6(c)). In all other cases where the Secretary is to grant the lease, the land should be advertised. Land may also be advertised in other instances; for example, see the discussion of § 131.6(a) and (b), above. Also, owners who are authorized to negotiate leases may wish to have their land advertised in order to explore the market. Advertisements should call for sealed bids and contain a statement as to where and how bids shall be submitted. They should also

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include the date, hour, and place set for the opening of bids and state that the award will be made to the highest satisfactory bidder (subject to the approval of the owner where the Secretary does not have authority to grant the lease). The schedule of fees to be charged should be included. The lands should be advertised for lease for at least 30 days. When special conditions justify, the Superintendent may authorize advertising for a shorter period. The reasons for such shorter period should be documented for the record. The advertisement should be given as much circulation as is possible including but not limited to posting at the agency office, the local post office, trader stores, and other public buildings where they may be brought to the attention of interested parties and mailing to all prospective lessees. The advertisement shall not show the appraiser's estimate of fair annual rental nor shall it offer preference rights.

§ 131.8 Duration of leases.

The regulations provide maximum periods for which leases may be granted. The approving officer should ascertain whether a lesser term would be compatible with the maximization of income to the land. The term should not, of course, exceed the number of years provided for in the regulations. It should be noted that § 131.8(a) provides that leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years. Lending agencies or institutions which are insuring loans secured by a leasehold interest may require that the lease contract be drawn in such a manner as to make it a binding agreement for a 50-year period, and they may insist that the additional term be referred to as an "extension" rather than a "renewal." (See Illustration 1.) The regulations provide for a review of all leases which are not based primarily on percentages of income produced by the land at not less than five-year intervals. If upon such review an adjustment of rental is indicated,

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such adjustment may be made by the Secretary where he has the authority to grant leases. Otherwise, the adjustment must be with the consent of the owners and the approval of the Secretary. It is not necessary that the authority of the Secretary to grant leases existed as of the date the lease was entered into if he has such authority at the time the adjustment is made.

§ 131.9 Ownership of improvements. -- Self-explanatory.

§ 131.10 Unitization for leasing. -- Self-explanatory.

§ 131.11 Conservation and land use requirement.

It should be noted that where the lease is granted by the owners, their consent to the annexation of stipulations and plans is necessary. This is required since such annexation becomes a part of the lease.

§ 131.12 Subleases and assignments.

Leases may provide for subleasing without further consent or approval pursuant to 131.12(b) in cases where the nature of the lease would require that this be permitted. For example, a lessee under a recreational development lease will probably want to sublease various operations rather than operate them himself and should be able to do so under the terms of the lease.

§ 131.13 Payment of fees and drainage and irrigation charges.

131.13(a) Provision for the payment of irrigation and drainage charges is included in Lease Form 5-180. Suitable provision should be included in other leases where appropriate.

131.13(b) The total fee to be collected will be computed from a single year's rent, i.e., new leases, first year's rent; subleases, assignments, etc., current year's rent in which made. It should be noted that the Secretary may waive the payment of fees. Where a modification of the lease is primarily for the benefit

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of the Indian and no increase in rental is involved, the fee should be waived. The fees collected shall be deposited to the credit of the United States as general fund receipts except where all or any part of the expenses of the work are paid from tribal funds. In the latter cases an additional or alternate schedule of fees may be established subject to the approval of the Secretary and all or any part of the fee as may be deemed appropriate may be credited to the tribal funds from which the expenses are paid.

§ 131.14 Violation of leases.

Indians who grant their own leases should assume initial responsibility for assuring compliance with the terms of the lease and reporting any violation to the Superintendent. The Superintendent, however, has the basic responsibility for, and shall enforce, compliance with the terms of leases granted or approved by the Secretary. The procedure set out in 131.14 should be observed. Any appeal taken from administrative action should be required to be made in accordance with 25 CFR 2. It should be noted that under 25 CFR 2.10(b) an appeal bond may be required. Such a bond shall be required where the performance of the obligations under the lease was assured by a surety bond which by its own terms would cease upon termination of the lease for any cause. The appeal bond should protect the lessor from any loss of revenue or damage occasioned by the pendency of the appeal.



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON 25, D. C.

Realty
Tenure and Management
2669-61

March 24, 1961

A. M. Prothers, Esquire
Acting General Counsel
Federal Housing Administration
Washington 25, D. C.

Dear Mr. Prothers:

The letter of your predecessor in office requesting advice whether, under the Indian Leasing Act of August 9, 1955, 25 U.S.C. 415, the Secretary of the Interior has authority to approve a lease agreement by an Indian tribe which provides for a 25-year term and an additional 25-year term thereafter, in effect, a binding agreement for a 50-year period, has been referred to me.

You observe that you will amend your regulations to permit Federal Housing Administration insured loans secured by leaseholds so created, provided such lease agreements (1) refer to the additional term as "an extension" rather than a "renewal"; (2) contain the same provisions for each term; (3) provide that execution of a new lease after 25 years is not required; (4) provide that a subsequent default will not cause a forfeiture (the option to continue the lease for the full 50-year period being executed as part of the agreement). The Solicitor's Office informs me that there is no legal objection to your request, and has furnished the following information in support of this conclusion.

The history of the 1955 leasing act to which you refer indicates that Congress intended to permit long-term leasing of this nature. Although there is no specific reference to FHA loans in the hearings or discussion in Congress of this measure, it is evident that the popular long-term amortized FHA type of mortgage made possible under the National Housing Act of 1934 was an influential factor in the enactment of this legislation. The applicable part of that 1955 act provides that restricted Indian lands, tribal or individual, may be leased by the Indian owners, with the approval of the Secretary of the Interior,

"for public, religious, educational, recreational, residential, or business purposes * * * for a term of not to exceed 25 years * * * and with the consent of both parties such leases/"

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may include provisions authorizing their renewal for an additional term of not to exceed 25 years * * *."

The provision concludes:

" * * * all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior * * *."

Commenting on the proposed measure, H. R. 7157, which had been introduced by Congressman Udall, the House Committee Report stated:

"Because of existing limitations upon the duration of leases many Indian lands which could be profitably developed under long-term leases are idle, and the Indians are deprived of much needed income. Other lands that are leased for shorter periods would bring much higher rentals to the owners if the lands could be leased on a long-term basis. * * *."
(Report No. 1093, July 11, 1955)

The Committee also suggested an escalator clause in each long-term lease, "particularly * * * in view of the provisions in this bill permitting an option to renew these long-term leases * * *"; in lieu thereof the records of the transaction should contain a statement why such a provision in the lease was deemed inapplicable." The principle of FHA amortized loans makes such an "escalator clause" inapplicable, but this comment indicates that the Committee had in mind lease agreements extending beyond a 25-year term.

The Secretary of the Interior stated in his favorable report on this measure, March 21, 1955:

" * * * The absence of authority for long-term leases discriminates against Indians who own restricted lands that are suitable for the location of business establishments, residential subdivisions, summer homes, airports, or for other purposes that require a substantial outlay of capital by the prospective leases. It also penalizes Indian owners of raw but potentially valuable farmlands on which the cost of subjugation is too great for the Indian himself to finance. In such cases, prospective lessees are willing to undertake these expensive improvements only if guaranteed tenure by a long-term lease * * *."

We note that you refer to the distinction often made between "renewals" and "extensions" of leases. The distinction is not important so far as the 1955 leasing act is concerned. It becomes of importance only when the nature of the second term of a lease agreement is being considered. For example, the necessity of an affirmative act to indicate exercise of the lessee's privilege to continue the tenancy is an element of a "renewal". Merely remaining in possession is sufficient if an "extension" was intended. See 32 Am. Jur., Sec. 982, 983. The course of conduct of the parties to the lease as well as language of the lease may indicate that what is termed a "renewal" is actually an extension, and vice versa. See 32 Am. Jur., Sec. 956, 961, 975, and cases cited. Nothing in the history of the 1955 leasing act would support the position that an agreement authorizing the "extension" of a 25-year lease for an additional 25 years would not be permissible under that act. The object of the present statute was to lengthen the permissible period of Indian leasing by removing "those unfair restrictions" upon Indian lessors, in order to encourage prospective lessees. Whether the lease agreement is in the nature of a technical "renewal" or "extension", or is designated as one or the other, is immaterial. Congress requires only that (1) the lessee's privilege is not extended beyond two 25-year periods (50 years altogether); (2) the Secretary approves the lease; and (3) the regulations are followed.

The courts also have regarded such leasing transactions as being, in effect, one continuous lease for the full period when the option is exercised. Skinner v. Davis, 179 Pac. 359 (Kan.) (lease for 1 year with option of 3 years is a 3-year lease when privilege is exercised); Treich v. Doster, 62 S.E. 2d 128 (Ga., 1940) (lease for 4 years and lease for 3 years thereafter, executed simultaneously, is lease for 7 years which cannot be surrendered at end of 4 years).

Leases covering Indian trust and/or restricted lands for two 25-year periods (50 years altogether) are permissible under existing regulations, 25 CFR 131.6(a).

Our field offices are being advised of the contents of this letter.

Sincerely yours,

(Sgd) H. Rex Lee

Acting Commissioner

Release 54-9, 4-20-62

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CHAPTER 6

OIL AND GAS LEASES AND PROSPECTING PERMITS

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CHAPTER 6OIL AND GAS LEASES AND PROSPECTING PERMITS

Section 601. Objectives and Policy. Indian tribes and individual Indians should be encouraged to lease their trust and restricted land for oil and gas development with the aim of obtaining a maximum recovery and income consistent with a sound conservation program.

Section 602. Authority..01 Statutory.

OSAGE RESERVATION, OKLAHOMA

Section 3 of the Act of June 28, 1906 (34 Stat. 539-543)
 Sections 1 and 2 of the Act of March 3, 1921 (41 Stat. 1249)
 Section 1 of the Act of March 2, 1929 (45 Stat. 1478)
 Section 3 of the Act of June 24, 1938 (52 Stat. 1034)
 Act of July 25, 1947 (61 Stat. 459)
 Act of June 15, 1950 (64 Stat. 215)

FIVE CIVILIZED TRIBES ALLOTTED LANDS

Section 2 of the Act of May 27, 1908 (35 Stat. 312)

TRIBAL LANDS

(Except Osage and Crow Reservations and ceded Wind River lands)

Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396 (a-f))

ALLOTTED LANDS

(EXCEPT THE FIVE CIVILIZED TRIBES)

Act of March 3, 1909 (35 Stat. 781-783; 25 U.S.C. 396)

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CEDED WIND RIVER LANDS

Act of August 21, 1916 (39 Stat. 519)

CROW RESERVATION

Section 6 of the Act of June 4, 1920 (41 Stat. 751), as amended by the
Act of May 26, 1926 (44 Stat. 658-659)
Section 2 of the Act of May 19, 1926 (44 Stat. 566)

ADDITION TO THE NAVAJO RESERVATION

Act of March 1, 1933 (47 Stat. 1418)

INDIAN AGENCY AND SCHOOL LANDS

Act of April 17, 1926 (44 Stat. 300; 25 U.S.C. 400a)

RESERVED LANDS,
FORT PECK AND BLACKFEET RESERVATIONS

Act of September 20, 1922 (42 Stat. 875; 25 U.S.C. 400)

.02 Regulations.

- 25 CFR 180 (Osage oil and gas mining)
- 183 (Five Tribes)
- 186 (Tribal lands except Osage and Crow)
- 189 (Allotted lands except Five Tribes)
- 192 (Wind River ceded land)
- 195 (Crow Reservation)

The regulations in 25 CFR, Part 187, are no longer in effect.
See 43 CFR, Part 200, which is administered by the Bureau of Land
Management.

Section 603. Geological Survey Functions. The functions and duties of the Oil and Gas Supervisors of the Geological Survey with respect to oil and gas operations on Indian land except Osage Nation are found in 30 CFR 221. In addition to the functions stated therein the Supervisors act in a general advisory capacity. It is very important that there be close cooperation with the Supervisors. This Manual does not prohibit the continuation of existing local practices. If the practices are contrary to the instructions contained herein, the Central Office should be furnished with a complete report and recommendation.

Section 604. Procedure.

- .01 Applications for Prospecting Permits and Leases. Permits for geological and geophysical prospecting on Indian lands for oil and gas may be granted by the owner with the consent of the Superintendent. Such permits do not grant drilling rights, nor the right to remove oil or gas nor any preferential rights to obtain leases. Each permit should require the filing of two copies of all geologic or geophysical maps within six months with the Supervisor to be retained by him as confidential for a period of two years following termination of permit. The permits should include provisions necessary to safeguard the interest of the Indian land owner, including provisions requiring the permittee to repair all damage that he may cause to the land or improvements owned by the Indians and to restore the surface of the land as nearly as practicable to its original condition in conformity with good conservation practices and to protect all minerals including water horizons. Ordinarily, the permittee should be required to furnish a corporate surety bond.
- .02 Authorization by Lessor. Authorization by the Tribal Council or other authorized body or committee is necessary prior to advertising tribal land for lease (25 CFR 186.3). Prior authorization of the individual Indian owner is not necessary for the advertising of trust or restricted land (25 CFR 189.4). Generally, lands should not be offered for lease without receipt of a prior application from a prospective bidder. However, after consultation with the Supervisor,

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allotted lands in addition to those described in the application may be included in the oil and gas lease sale advertisement. In any case there should not be included in the advertisement any tracts for which there is no application unless such tracts are near lands under application, or such tracts are recommended to be included by the Supervisor.

- .03 Leasing Units. Large areas are usually applied for in unproven and "wildcat" areas in order that the operator may gain the full benefit of any exploratory and discovery work. Each tract of trust or restricted individually-owned land or compact portion thereof must be advertised and leased as a separate unit. Lands in different ownership must not be combined in one unit or one lease. Tribal tracts should be advertised in units recommended by the Supervisor. Each tribal unit must be included in a separate lease. Without prior authority from the Central Office, there should be no requirement in the advertisement that the bidder must bid on more than one unit therein described. The offering of unusually large areas at one lease sale may prevent the Indians from receiving the full benefit of the market for leases. Care should be exercised in this respect.
- .04 Reserved Agency and School Land. All applications to lease lands reserved or used for Agency, school or administrative purposes should be forwarded to the Central Office with an appropriate recommendation including information on the manner and authority by which the lands were acquired, together with citations of the orders which established the reserves.
- .05 Royalty Rates. The royalty rate under the regulations is 12-1/2% except at Osage. Consideration should be given and the recommendation of the Supervisor obtained to offering the land for lease at a higher fixed royalty rate where the land is on a proven structure, or through other like circumstances the possibilities are such that it would appear more advantageous to risk a lower bonus to gain a larger return by an increased royalty. Before offering lands for lease at a higher rate than that prescribed in the regulations, an exception thereto must be first obtained and an appropriate request therefor should be submitted through the Central Office for an exception to the regulations by the Secretary of the Interior. If an

exception is granted by the Secretary the advertisement should state the higher royalty rate and the lease form should be modified to show the increased royalty. In both instances, the statement of the royalty rate should be followed by the words "as an exception by the Secretary of the Interior to the regulations."

- .06 Sealed or Auction Bids. Results have demonstrated in most instances that the sealed bid method of sale is preferable to an oral auction sale. Should it be deemed advisable to use the oral auction sale method or a combination of sealed bids and oral auction sale a justification therefore should be submitted to and authority obtained from the Central Office. The Superintendent shall distribute mimeographed advertisements to prospective bidders. (See Exhibit 1 at the end of this Chapter.) A list of prospective bidders should be compiled and maintained. Request should be made of the Supervisor for the name of prospective bidders. There should also be inserted in two trade journals recommended by the Supervisor a brief advertisement. (See Exhibit 2 at the end of this Chapter.) Press releases should be furnished to the local and the nearest metropolitan newspapers.
- .07 Responsibility for Checking Title. It shall be the responsibility of the Superintendent to check the description and the title to the mineral rights to be advertised for lease and to ascertain that the minerals are in restricted individual or tribal ownership. When the record shows that the lands are in an heirship status, it will not be necessary, prior to advertising, to ascertain the names of the owners. Prior to advertising allotted lands, a survey should be made to ascertain the number of undetermined estates involved and take steps to have the heirs determined promptly so that the land may be leased. (See 25 CFR 189.9). Superintendents and Area Directors are without authority to execute leases covering the interests of absentee Indians, undetermined heirs or heirs who refuse to sign. Where a lease is advertised as covering the entire interest in a particular tract, the bidder is not obligated to take a lease that has not been executed by all of the owners. In cases of small interests owned by absentees or by estates the heirs to which have not been determined, the leases involving such interest may be approved, if acceptable to the lessee, in the following manner:

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"This lease is approved upon condition that it shall be effective only as to the interests of those persons who have executed this lease as lessors and shall become effective as to the interests of the other Indian owners only when executed by said owners or their Indian heirs, such approval to be effective as of this date."

.08 Action by the Superintendent.

- A. After first consulting with the Oil and Gas Supervisor, the Superintendent should require the applicant to advance the estimated cost of advertising.
- B. Prepare advertisement forms (See Exhibits 1 and 2 at the end of this Chapter), and submit them to the Area Director, with appropriate recommendation and a copy of the Supervisor's recommendations and, if tribal land is included, a signed duplicate-original of the tribal governing body's resolution authorizing the advertisement. Should either the Superintendent or the Area Director deem it advisable that the advertisement contain conditions or requirements not stated in the advertisement forms (See Exhibits 1 and 2 at the end of this Chapter), the proposed forms with recommendations shall be forwarded to the Central Office through the Area Director. Unless a shorter time is prescribed by the Central Office, the advertisements should provide for a minimum 30-day period for submission of bids. Any request to the Central Office for a shorter period should be accompanied by a full justification. In any case, in order to enhance competition the last date for submission of bids should be set far enough in advance to enable readers of such advertisements published in a newspaper or trade journal a reasonable time to consider the matter and prepare and submit bids. Five copies of all approved advertisements should be forwarded promptly to the Central Office and a like number should be forwarded promptly to the Area Director and an ample supply should be sent to the Supervisor for distribution. To avoid conflicts all lease sale dates should be cleared with the Supervisor. The Superintendent should invite the Supervisor to attend the sale unless the acreage is small and no special problems appear.

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- C. At the time and place specified in the advertisement, sealed bids shall be publicly opened and read aloud. In the event of tie high bids, the officer in charge of the proceedings shall then and there cause lots to be drawn to determine which of such tie bidders will be deemed high. If the advertisement, with the prior concurrence of the Central Office, authorizes oral bidding, any sealed bids received shall be first opened and read, as above. The presiding officer should then declare that he will receive oral bids. He should also state that any bid tendered must be higher than the highest sealed or oral bid theretofore received during the pending sale for the tract involved. In addition he should announce that unless an oral bid is received within two minutes, the bidding will be closed; that if an oral bid is received within two minutes, the bidding will remain open for two more minutes after the recording of such bid and of each succeeding bid until the bidding is declared closed for lack of further oral bids.

As oral bids are announced by the bidders, they should be recorded and, if convenient, listed on a blackboard. Upon the conclusion of the oral bidding the high bidder should be required to confirm his bid in writing immediately and, before the conclusion of the working day on which the bid is made, to deliver the required deposit to the officer who conducted the auction. Such deposit shall not be deemed to have been delivered until it is actually received at the office of such officer. (See 25 CFR 186.3(a), 189.4(a)).

- D. Abstracts of the bids showing the name of each bidder, the amount of each bid per acre, the acreage of each tract and the total of each bid should be prepared and forwarded promptly to the Supervisor for his recommendation unless his recommendation is received at the time of sale. In the case of tribal lands, the abstract should then be submitted to the Tribal Council with the Supervisor's recommendations for acceptance or rejection of the bids on the tribal land.

The action of the Tribal Council should be evidenced by an appropriate resolution which should authorize designated tribal officers to execute leases for the accepted bids.

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- E. There should be forwarded as promptly as possible to the Area Director the original bids and an abstract thereof with the Superintendent's recommendations and also the Tribal Council Resolution accepting or rejecting the bids on tribal lands and authorizing the execution of leases.
- F. Upon being notified by the Area Director of the rejection of any bids, the Superintendent shall refund the deposits of such bidders except that in cases where the applicant is the unsuccessful bidder, and no other bids are accepted on the sale, a sufficient amount should be retained to pay the cost of advertising. Notice of rejection of bid and return of deposit should be made. (See suggested form Exhibit 4 at the end of this Chapter.)
- G. After the Area Director has notified the Superintendent in writing of the acceptance of bids, the Superintendent shall notify successful bidders on the suggested form (See Exhibit 3 at the end of this Chapter), and cause to be executed six copies of each lease (except in Oklahoma, five are executed) and unless the successful bidder has on file in the Area Office or the Central Office, a collective bond, a supporting bond (one copy) and Evidence of Authority of Officers of corporate lessees. (See Exhibit 12 at the end of this Chapter for instructions on Drafting and executing leases).
- H. Lease forms are required to be completed by the lessee and returned by him to the Superintendent within twenty days after the lessee has been notified that he is the high bidder. Upon application of the high bidder, however, and a showing by him that he has been making diligent efforts in good faith to complete the lease forms but has been unable to do so because of such factors as the large number of heirs involved, the geographic dispersion of the heirs, disagreement among the heirs, or weather conditions which impede access to the lessors, the Superintendent may extend the time for the completion and submission of the lease forms. Such extension normally shall be conditioned upon the immediate receipt of a deposit from the lessee of any remaining sums then due from him, including the remaining 80% of the bonus bid and of the first year's rental.

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- I. The completed lease and supporting papers should be forwarded to the Area Director with an appropriate recommendation on form shown as Exhibit 8 at the end of this Chapter.
- J. Upon return by the Area Director of two approved copies of the lease, one should be delivered to the lessee and the other should be retained in the Agency files.
- .09 Action by the Area Director. The Area Director should consider the abstract of the bids in the light of the report and recommendations of the Superintendent and the Supervisor and promptly notify the Superintendent as to which bids are accepted and which are rejected.

A careful check should be made of all leases submitted by the Superintendent to see that they are in proper form and that all supporting papers are submitted. When the lease is found acceptable, the Area Director should indicate his approval by signing the original and duplicate-original of the proposed lease and the original of the bond, showing on the lease and bond the delegated authority to approve. The remaining copies of the lease should be stamped with signature and delegated authority and all copies dated. The originals and copies are to be distributed as follows:

- A. Original signed copy retained by the Area Director, under the auditing procedure of on-site auditing with proper notification of the General Accounting Office on the Accounting Office Form 197, if necessary. (See Order No. 547--revised, supplement No. 25, dated August 20, 1951-- on-site audit that designated accounting offices.)
- B. The duplicate-original should be retained in the Area Office.
- C. One stamped copy is for the agency.
- D. One stamped copy is for the lessee and should be delivered by the Superintendent.
- E. Two stamped copies should be sent to the proper Geological Survey Supervisor.

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Section 605. Assignments. Assignments must be prepared on Form 5-154e and should be carefully examined to see that all dates, description of land, percentage of interest to be assigned and the name of the assignor and assignee are correct and properly inserted and that the assignor is the present owner of the interest to be assigned. Corporate seals should be affixed, whenever such seals are required by law, and all members of a partnership should sign unless an executed statement signed by all partners designates an individual to sign on behalf of the partners. Unless a corporate assignor or assignee acts through an attorney in fact, the assignment should be signed on behalf of the corporation by an executive officer, either the president or vice-president, and attested by the Secretary or Assistant Secretary and the assignment should be accompanied by Evidence of Authority of Officers, Form 5-154(d) (one copy). Attorneys in Fact, signing on behalf of assignors or assignees, should be properly authorized, as stated in the instructions for drafting and executing leases. (See Exhibit 12 at the end of this Chapter.)

.01 Action by the Superintendent.

- A. When the Superintendent receives the proposed assignment, he will request, using form shown as Exhibit 7 at the end of this Chapter, a report from the Oil and Gas Supervisor for all producible leases.
- B. When the Supervisor's report has been received, there should be submitted to the approving office by form letter (Exhibit 9 at the end of this Chapter) six copies of the executed assignment with the report from the Supervisor.
- C. Unless the assignee has on file in the Area or Central Office an approved collective bond, a separate bond (one copy) should be submitted to the approving office. A consent of surety that a lessee's collective bond shall cover the liability of an assignee is not acceptable.
- D. Three copies of the approved assignment will be returned to the Superintendent, one for his file, one to be delivered to the Assignee, and one to be delivered to the Assignor.

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Where an aliquot part of a lease is assigned, it segregates the assigned portion into a separate leasehold. An assignment is permitted of any aliquot part of a lease or an undivided interest in the entire lease. An assignment is not permitted which would create an undivided interest in less than the entire lease unless the part assigned has been segregated into a separate lease. For example, in the case of a lease covering a section of land, an undivided one-half interest therein may be assigned. But, an undivided one-half interest may not be assigned in the North half of the section unless this tract has been segregated by prior assignment. However, the entire interest in the North half may be assigned, which would result in its segregation into a separate leasehold.

- .02 Action by the Area Director. A careful check should be made of all assignments to see that the necessary supporting papers are submitted and that the proposed assignment and the supporting papers are correct. If all such documents are in proper form and if the proposed assignee appears to be responsible, he shall approve the assignment by signing and dating the original and duplicate-original and showing authority for approval. The other copies should be stamped and dated. The copies of the approved assignment should be distributed as follows:
- A. The original should be attached to the original lease and placed in the proper file for auditing by the General Accounting Office under the on-site auditing procedure.
 - B. The duplicate-original should be properly filed in the Agency Office and considered the official office copy.
 - C. Two copies should be returned to the Superintendent for assignee and the assignor.
 - D. Two copies of the approved assignment and one copy of the letter of submission bearing a stamped approval should be sent to the Supervisor.

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Section 606. Bonds.

- .01 Action by the Superintendent. Every effort should be made to require lessees and assignees to submit bonds with a corporate surety company rather than with personal sureties. The surety companies must hold certificates of authority from the Secretary of the Treasury as shown on Treasury Form 356 - Revised, which is furnished at regular intervals to the Superintendents by the Area Director. The bond form should be fully completed in every respect and care should be exercised to see that the bond accurately refers to and identifies the lease it supports. No erasures should appear in the bond. All amendments and interlineations should be initialled by the principal and the surety who should re-execute the bond and certify that the changes and modifications were made prior to re-execution. Bonds executed by an agent must be supported by a power of attorney certified by the Secretary of the Corporation with a seal affixed if the surety is a corporation. It is preferable that the surety company's bond file number be shown on the face of the bond. (25 CFR 186.6, 189.10). For action on prospecting permit bonds, see Section 604.01 of this Chapter.
- .02 Action by the Area Director. The bond form should be checked very carefully and when satisfactory may be approved by signing the original and showing the authority for such action and the date of approval. The original copy should be filed with the lease and retained by the Area Office. If requested, and additional copies are furnished by the lessee or assignee, they should bear the stamped approval and delegation of authority and should be returned to the principal by the Superintendent, with the lease or assignment involved. If all of the interest owned by lessee in an oil and gas lease is assigned or if a lease is surrendered, the liability under the bond or bonds given to secure performance of the lease is terminated as of the date of the approval of the assignment or the effective date of the surrender of the lease. If the principal or surety requests notice of termination of liability under the bond, the following form should be used:

This bond is terminated only as to liabilities accruing after _____ (the effective date of the surrender of the lease or the date of the approval of the assignment).

Area Director

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Section 607. Surrender of Leases for Cancellation.

- .01 Action by the Superintendent. A close check should be made to ascertain that there has been full compliance with the applicable provisions of the regulations and the lease and that all amounts due have been paid. The lessee shall submit the request for cancellation of the lease to the Superintendent and shall accompany it with the Statement to Accompany Release (See Exhibit 11 at the end of this Chapter) for clearance by the Superintendent with the Supervisor. When leases are submitted to the Area Director for cancellation, the following instruments should be forwarded:
- A. Letter of Transmittal, (See Exhibit 10 at the end of this Chapter).
 - B. Application from Lessee or Assignee for Cancellation.
 - C. Agency's and lessee's, or assignee's copy of the lease. If application is made by the assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.
 - D. Recorded release, if lease has been recorded.
 - E. Statement to Accompany Release (See Exhibit 11 at the end of this Chapter), after the Superintendent has cleared it through the Supervisor.
 - F. The lessee's copy bearing the action taken by the Area Director should be returned to the lessee or assignee requesting cancellation.
 - G. The Superintendent's copy should be filed in the lease file.
- .02 Action by the Area Director. Upon receipt of all necessary papers from the Superintendent the surrender may be approved if there has been compliance with the surrender provisions of the lease and the applicable regulations. If the lessee does not specify in his application a specific date for cancellation, such as the last day of the lease year, then upon approval of the application for surrender of the lease it shall become effective upon the date on which the lessee has complied with the surrender terms of the lease and the applicable

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regulations. The approval of the surrender should indicate the effective date of such approval which is the date on which the lessee has complied with the terms of the lease and the applicable regulations. It is important that the regulations pertaining to the surrender of leases be checked closely and that it be ascertained that there has been full compliance with the regulations and the lease terms with special emphasis upon drilling operations, if any, conditioning of the premises, and payment of rents and royalties. If the lessee has filed an application for surrender of the lease but has not complied with the provisions of the lease and the regulations such as a surrender of the copy of the lease or payment of the \$1.00 fee but does subsequently comply with the regulations after the anniversary date on which rents become due, such cases shall be submitted to the Central Office.

The papers shall be distributed as follows:

- A. The original recorded release, or if none, the original request by the lessee or assignee, to cancel, properly noted as to surrender, should be placed with the original lease for on-site auditing.
- B. The Superintendent's copy should be returned to him with lessee's copy, properly noted.
- C. The Supervisor should be informed of the surrender and the effective date thereof.
- D. The remaining papers shall be filed in the lease file and if the duplicate-original lease is on file in the Area Office, it should be properly noted as to the cancellation.

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Section 608. Cancellation, Delinquent Leases.

- .01 Action by the Superintendent. In cases where the Superintendent is of the opinion that the lease should be cancelled for delinquency, he should submit a complete report of all delinquencies to the Area Director with a recommendation and the justification therefor. Upon being instructed to do so by the Area Director, the Superintendent should send a cancellation notice to the lessee and the surety under the bond by registered mail, with return receipt requested. The notice should state specifically the terms and conditions of the leases that have been violated and should include an itemized statement of any money due and should also quote Section 6 of the lease.

- .02 Action by the Area Director. If, upon receipt of the cancellation notice, a lessee or assignee requests a hearing, the Area Director shall notify him of the date and place at which the lessee may appear before the Area Director and offer oral and written statements as to why the lease should not be cancelled. If possible, a transcript of the hearing should be made. As soon as possible after the conclusion of the hearing or, if there is no hearing, after the expiration of 30 days from the notice of lease violation, the lessee or assignee shall be notified in writing of the Area Director's decision. If his decision is to cancel the lease, the lessee or assignee and the surety under the bond shall be notified by registered mail, return receipt requested, which shall set forth fully the reasons for the action taken. A decision to cancel a tribal lease requires the concurrence of the tribal council. The cancellation should be made without waiver of rentals, royalties, or other obligations due to the date of cancellation. Appropriate notation of the action should be noted on the available copies of the lease. The Supervisor should be notified of the action.

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Section 609. Unit Agreements. As an important aid in exploration, it is becoming an increasingly common practice for lessees to enter into agreements for the unit operation of prospective oil and gas areas. Some of the chief purposes of such agreements are to effect economies of operation, to eliminate wasteful competitive practices which tend to dissipate reservoir content and energy, and to obtain the maximum recovery of oil from the area. Unitization permits a progressive development rate and orderly engineering study of the productive area and makes it possible to take advantage of good operating practices such as proper well-spacing, efficient production rates, and secondary recovery or pressure maintenance operations. The Department has advocated and encouraged unitization for more than 20 years as being beneficial to all interests.

The standard unit agreement form often used for Federal land and with appropriate modifications for Indian lands, is for a term of five years and so long thereafter as oil or gas is produced in paying quantities. It may cover a single structure, pool, field, or area, either already productive or in which there are believed to be prospects for production; and it provides for timely testing and development operations of the area to determine the extent of the productive lands, for the establishment of a participating area as to lands subject to the unit agreement and already proved productive or proved productive by discovery on the unit; and for the expansion of the participating area to include additional lands proved productive by the additional drillings. If the area or structure is unitized prior to discovery, the percentage of participation in the participating area is generally governed by the surface acreage of each tract or parcel within such participating area. If the field is developed prior to unitization, the percentage of participation may be based on the volume of producing formation, or on oil in place, or on other factors reasonably determinable from all available data.

The approved unit agreements, except those in the Osage Nation, are administered by the Geological Survey. The agreements provide for the development and operation of the unit area by a single unit operator as if it were one tract held by a single lessee. Joinder by the owners of both the working and royalty interests in sufficient acreage to afford effective control of unit operations is required before the Department will approve the agreement.

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Where it appears that there is interest in the unitization of lands leased from Indians or tribes, except the Osage Nation, it is desirable that the Superintendent call a meeting of the interested Indians to explain to them the benefits of unitization, to discuss the provisions of their leases and the proposed unit agreement, and to answer questions on the subject. Care should be exercised to see that the provisions of the proposed unit agreement are fully explained to the interested Indians. If desirable and practicable, the Oil and Gas Supervisor should be invited to participate in the meeting for such purpose.

By sections 21 and 22 of Order 551, the Area Directors at Muskogee and Anadarko may exercise the authority of the Commissioner of Indian Affairs in approving and taking other administrative action on unit agreements. By 25 CFR, 180.46 (b) the Superintendent of the Osage Agency may receive and approve unitization for the purpose of development by water flood process and by section 180.60 (a) the Inspector, Osage Agency, may establish a unit area subject to specific requirements for development. There is no other delegation of authority pertaining to unit agreements.

The initial step in unitizing an area is for the proponent to file an application in triplicate with the Oil and Gas Supervisor of the Survey, pursuant to established procedure (30 CFR 226) for designation of an area adjudged to be logical for unitization and for the acceptance or prescription of the number and depth of test wells. Upon application for designation of the unit area or after such designation, whichever proponent elects, six copies of a proposed form of unit agreement, with all deviations from the standard form applicable to public lands (30 CFR 226.12) plainly marked and accompanied by appropriate explanations and justifications therefor, should be submitted by the applicant to the Oil and Gas Supervisor. The Supervisor will then forward with his comments three copies of the proposed form to the Superintendent. The Superintendent will transmit these papers to the Central Office through the Area Director with a report and recommendation.

Preliminary approval of the proposed unit form will be granted in Washington. After such approval, marked copies of the approved form will be distributed to the Area Director and the Oil and Gas Supervisor at the same time as the proponent is advised of its acceptability.

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The next step is the submission of the executed agreement for final approval in Washington. The procurement of lessors' signatures should be left to the lessee and unit operators but reasonable assistance may be rendered by the Superintendents.

If Indian but no Federal lands are involved, a minimum of five copies of the executed agreement are needed for the Government (One copy will be retained in the Central Office and one will be returned to the Superintendent), and a number in excess of that to fit the operator's needs should be filed with the Supervisor who will transmit same to the Superintendent or the Area Director with his report and the Superintendent or Area Director, in turn, will forward all executed copies of the agreement to the Central Office with his recommendations and with the Supervisor's report for final approval and distribution. If both Indian and Federal lands are involved, the executed agreements are filed with the Supervisor for transmittal to his Washington office. However, the Supervisor will inform the Superintendent of the transmittal to Washington in order to afford him an opportunity to report any desired comments in connection therewith to the Central Office. Thereafter, if the agreement is in acceptable condition, both the Director of the Geological Survey and the Commissioner must approve the agreement and the Survey will make distribution to the proponent and proper Bureaus.

After final approval of the unit agreement, all operations connected therewith will be administered by the Geological Survey pursuant to the terms of the unit agreement and the regulations but the Superintendents should feel free to seek the Supervisor's counsel whenever warranted.

Section 610. Maintenance of Records. Each agency or unit issuing Bills and Receipts shall maintain an accurate record of all approved leases, assignments and cancellations. Each new lease requires the preparation of a lessee's card reference on which is shown the contract numbers, a running account of all acreage held by any one lessee and collective bonds. Such cards shall be filed alphabetically by name of holder of lease and should be kept current with the approval of new leases, assignments or cancellations. In addition to the lessee's record card, a lease rental payment card should be prepared for appropriate notation of the annual rental payments and division of proceeds among the respective lessors; such cards shall be filed numerically by contract number. Each agency shall maintain a record of all royalty payments under each separate contract.

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LIST OF EXHIBITS

Exhibit No.

- 1 Form of mimeographed advertisement
- 2 Form of newspaper advertisement
- 3 Successful Bidder Form
- 4 Rejection of bid and return of deposit
- 5 Ownership sheet
- 6 Division of payments between life tenants and remaindermen
- 7 Survey clearance for assignment
- 8 Form of letter transmitting lease to Area Director
- 9 Form of letter transmitting assignment to Area Director
- 10 Form of letter transmitting surrender to Area Director
- 11 Statement to accompany surrender of lease for clearance with survey
- 12 Instruction for drafting and executing leases

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BIAM REISSUE
FEBRUARY 1984

NOTICE
SALE OF OIL AND GAS MINING LEASES
TRIBAL AND ALLOTTED INDIAN LANDS

Department of the Interior
Bureau of Indian Affairs
_____ Indian Agency

SEALED BIDS will be received until _____ M
_____ Standard Time _____, and opened at that time in the
Office of the _____ Indian Agency, _____
_____, for the leasing of _____ units of Tribal land
comprising _____ acres and _____ acres of
individually owned trust or restricted Indian lands, described on the attached
sheets, located in _____ and _____
_____ Counties, _____, for oil and gas mining
purposes.

The sale will be conducted under regulations promulgated by the
Secretary of the Interior, 25 CFR 186 (Act of May 11, 1938; 52 Stat. 347;
25 U.S.C. 396a-f), as to tribal lands, and 25 CFR 189 (Act of March 3, 1909;
35 Stat. 781-783; 25 U.S.C. 396), as to individually owned land. The right
is reserved to reject any and all bids and to disapprove any lease submitted
on an accepted bid. The units of land are being offered subject to the approval
of the individual Indian owners, and a separate lease will be drawn on the
applicable forms for each unit of land.

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Subject to the foregoing, leases will be sold to the bidder who offers the highest money bonus upon an acreage basis. Conditional or alternate bids will not be considered. No drilling propositions will be considered as a part of the bonus offer. Each bid must be accompanied by a deposit of at least 20 per cent of the bonus and 20 per cent of the first year's rental, at the rate of \$1.25 per acre. All deposits are to be made by certified check or bank draft on a solvent bank made payable to the Treasurer of the United States. The successful bidder or bidders will be required to pay their proportionate share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted, the cost of advertising will be assessed against the applicant who requested that the lands be advertised. In the event two or more bids are in the same amount and such bids are the high bids, the bidders submitting such bids may be required to draw lots to determine the successful bidder.

The leases must be completed and filed with the Superintendent within 20 days from the date on which lease forms are delivered to the successful bidder for execution together with the bond as described below and the balance of the bonus and rental due and the filing fee of \$5.00 for each lease. The Superintendent may, however, for good and sufficient reasons extend the period for completing and filing the lease. As a condition precedent to the granting of an extension for the filing of a completed lease, the

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Superintendent may require the deposit of any remaining sums due including the 80% of the bonus bid and the first year's rental.

Lessees shall furnish with each lease a surety bond, with surety acceptable to the United States, in amount as follows: For 80 acres and less than 120 acres, \$1,500; for 120 acres and not more than 160 acres \$2,000; and for each additional 40 acres or part thereof above 160 acres, \$500: Provided, that a lessee may file one bond (Form 5-154f) in the sum of \$15,000, covering all Indian land leases in any one State, up to 10,240 acres, to which the lessee is or may become a party.

IMPORTANT NOTICE: All successful bidders will be required to prepare their own leases and obtain the signatures of all Indian lessors of allotted lands. Leases will be drawn on the approved forms (Form 5-157 for tribal land and 5-154h for allotted land) and will be for a term of ten years from the date of approval by the Commissioner of Indian Affairs or his authorized representative and as long thereafter as oil and/or gas is produced in paying quantities. The rate of royalty will be 12-1/2 per cent on all leases. The rental of \$1.25 per acre paid for any one year will be credited on the royalty for that year. A charge of \$1.00 will be made for each set of forms.

The responsibility of complying with any requirement of the Federal Documentary Stamp Statutes is that of the successful lessee.

In addition to all other remedies provided by law, failure of the successful bidder to comply with the terms of the sale will render all deposits theretofore made by or due from him subject to forfeiture without further action on the part of this Office.

Each of the allotted units and each of the Tribal units are offered separately to qualified bidders.

All bids should be addressed to the Superintendent, _____
_____ Indian Agency, _____,
in a plain envelope marked: Bid for Oil and Gas Mining Lease, Not to be
Opened until _____ M. _____ Standard Time,
_____.

Superintendent

TRIBAL LANDS

<u>TRACT NO.</u>	<u>DESCRIPTION</u>	<u>ACRES</u>
1		
2		
3		
4		
	Total	_____

ALLOTTED LANDS

<u>Tract No.</u>	<u>Description</u>	<u>Allottee</u>	<u>Allot. No.</u>	<u>Acres</u>
1				
2				
3				
4				
	Total			_____

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SPECIAL PARAGRAPHS IN CONNECTION WITH EXHIBIT 1

If the sale includes only tribal or only allotted land omit reference to inapplicable regulations and leasing act.

If unsurveyed lands are to be leased, the advertisement should include the following two paragraphs

This land is offered on a tract basis and the bids shall not be on an acreage basis.

Each lease will include the following:

The acreage herein stated is for the sole purpose of computing the annual rental. If a survey of the land is made acceptable to the Commissioner of Indian Affairs or his authorized representative, thereafter, the rental shall be computed on the acreage as shown by the survey. No refund or additional payment of past rental shall be required to be made because of the difference in the acreage stated and that shown by the survey. Neither shall such a difference in acreage be grounds for any adjustment of the bonus. Prior to the commencement of the drilling of a well the lessee shall have the leased premises surveyed by a registered land surveyor, boundaries posted with substantial monuments, and a tie established with the nearest United States Public Land Survey. Certified copies of the survey plats must be filed in duplicate with the Superintendent, and in duplicate with the Supervisor, U.S. Geological Survey. Failure to comply with this provision will render the lease subject to cancellation in the discretion of the Commissioner of Indian Affairs. Permission to drill will not be granted by Supervisor prior to receipt of certified copy of survey plat.

Where it is deemed advisable to require the lessee to condition wells for water wells and employ Indian labor the advertisement should include the following paragraphs:

If so required by the Commissioner or his authorized representative, the lessee shall condition under the direction of the Supervisor of the U.S. Geological Survey, any wells drilled, which do not produce oil or gas in paying quantities as determined by said Supervisor, but which are capable of producing water satisfactory for domestic, agricultural or

livestock use by the lessor. Adjustment of costs for conditioning of the well and for value of casing and equipment left in or on the well will be made in said cases where it is determined that the well will produce water satisfactorily as aforesaid.

Lessees shall employ Indian labor in all positions for which they are qualified, including truck drivers, and shall protect the Indian grazing rights and other Indian rights to the surface of the lands.

Appropriate modifications should be made in the advertisement form Exhibit 1, for advertising proposed leases at Osage, Crow tribal lands, Wind River ceded lands, and Five Civilized Tribes allotted lands. Care should be exercised to see that the provisions of the advertisements adequately protect the interests of the Indian landowners. If aside from the modifications of the advertisement form Exhibit 1, authorized at Crow, Osage, Wind River, and the Five Tribes, additional language is deemed necessary, the Area Director should submit an appropriate recommendation to the Central Office with a justification.

NOTICE
SALE OF OIL AND GAS MINING LEASES
TRIBAL AND ALLOTTED INDIAN LANDS

Department of the Interior
Bureau of Indian Affairs
_____ Indian Agency

SEALED BIDS will be received until _____ .M. _____
Standard Time, and opened at that time in the Office of the _____
_____ Indian Agency, _____
for the leasing of _____ acres of Tribal land and _____
acres of allotted Indian land, located in Township _____
Range _____, County _____, _____
(Insert State)
for oil and gas mining purposes. The details of the lease offering and how
and where to file bids may be obtained by addressing the inquiry to the
Superintendent of the _____ Indian Agency, at _____
_____.

BIAM REISSUE
FEBRUARY 1984

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Washington 25, D. C.

Dear Sir:

Your bonus bid of _____ per acre was the high bid received for an oil and gas lease on Tract No. _____, upon which bids were invited by an advertisement dated _____.

There are enclosed _____ copies of lease forms and one lease bond form and an ownership sheet showing the names and addresses of the lessors. You are required to have all copies of the lease and bond completed, including the signatures of the lessors and return to this office before the expiration of twenty days from the date of this letter. Within the same time there must also be submitted to this office the balance of your bonus bid and of the first year's rental, a filing fee of \$5 and \$ _____ for the forms. In addition, within the same period of time you are also required to furnish a surety bond with a surety acceptable to the United States in an amount as follows:

For 80 acres and less than 120 acres, \$1,500; for 120 acres and not more than 160 acres \$2,000; and for each additional 40 acres or part thereof above 160 acres, \$500: Provided, that a lessee may file one bond (Form 5-154f) in the sum of \$15,000, covering all Indian land leases in the State, up to 10,240 acres to which the lessee is or may become a party.

You are responsible for compliance with any requirements of the Federal Documentary Stamp Statutes.

Enclosure

BIAM REISSUE
FEBRUARY 1984

See 200

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Washington 25, D. C.

Date _____

You are hereby notified that the bids tendered by you on
_____ for the purchase of oil and gas leases on the
(date stamp)
tracts listed below are hereby rejected and the deposits made by you with
your bids are enclosed.

Superintendent

<u>Tract No.</u>	<u>Amount of Deposit</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BIAM REISSUE
FEBRUARY 1984

OFFICE

(Insert Address)

OWNERSHIP SHEET

Allottee's Name _____

Tribe _____ Allotment No. _____ County _____

Description _____

_____ Acres _____

Probate & Deed
File Reference Nos. _____

PRESENT OWNERS

<u>Acct. No.</u>	<u>Name and Address</u>	<u>Year of Birth</u>	<u>Shares</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Sale Date _____

Sale Tract Number _____

DIVISION OF PAYMENTS FROM OIL AND GAS

LEASE NO. _____

It is hereby understood and agreed by and between the lessors that during the lifetime of _____ who holds a (here insert "homestead right" or a "life estate" as the case may be) on the land described in the lease, the income received from the lease, including bonus, rental and royalty is to be divided among the lessors in the following manner:

(Here set our manner of division by stating the name of each lessor and the proportionate share each is to receive)

It is further agreed that after the death of the owner of the (here insert "homestead right" or "life tenant" as the case may be) all monies derived from this lease will be divided in accordance with the applicable provisions of law.

Witnesses:

Signature of lessors:

BIAM REISSUE
FEBRUARY 1984

(Submit in Triplicate)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of Indian Affairs

(Date)

MEMORANDUM FOR: Supervisor, U. S. Geological Survey

The following assignment has been filed. Please report whether your office has any objection to the assignment.

Lease No. _____ Lessor _____

Assignor _____

Assignee _____

Address of Assignee _____

Description _____

Interest Assigned _____ Date Assignment filed _____

Remarks: _____

_____ Agency

(This form is to be used only on producing leases. The form does not apply to Osage assignments.)

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Area Director, _____

Sir:

There is transmitted herewith oil and gas mining lease, Contract

No. _____ in favor of _____

Description of land _____

Acres _____ Allottee _____ Allottee No. _____

Age _____ Reservation _____ Lease dated _____

Lease filed _____ Period of Lease _____ Royalty _____

Bonus paid lessor _____ Bonus on deposit _____ Advance

rental on deposit _____ Fees collected _____ Corporate papers _____

_____ Bond _____

Remarks:

It is recommended that the lease be _____ approved. _____

Sincerely yours,

Department of the Interior
Bureau of Indian Affairs

Superintendent

Approved by:

Approved under authority delegated
by Secretarial Order No. 2508
January 11, 1949 (14 F.R. 258-260),
and Order No. 551, Amendment No. _____
_____ F.R. _____

Area Director

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Chapter 6
Exhibit 9
(Submit in triplicate)

Area Director, _____

Sir:

There is submitted herewith for your consideration assignment of
_____ interest in _____ mining lease, Contract
No. _____ from _____ to _____

The assignment covers the following land: _____

Lessor: _____

The lands are restricted and all royalties and rentals due to date
have been paid. Bond _____

\$ _____ assignment fee has been collected. Remarks:

It is recommended that the assignment be _____ approved.

Sincerely yours,

Superintendent.

Department of the Interior
Bureau of Indian Affairs

Assignment approved by:

Area Director

Approved under authority delegated
by Secretarial Order No. 2508
January 11, 1949, (14 F.R. 258-260),
and Order No. 551, Amendment _____
_____ F.R. _____

BIAM REISSUE
FEBRUARY 1984

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Lease No. _____

Lessor _____

Lessee _____

Area Director, _____

Sir:

There is transmitted herewith for cancellation oil and gas lease listed above. Ownership of the lease is vested as follows:

_____	Interest _____	Bond _____
_____	Interest _____	Bond _____
_____	Interest _____	Bond _____

(a) To be cancelled on written application of lessee dated _____ and received at Agency _____ Release filed at Agency _____ All advance royalties and rentals paid to _____ Surrender fee paid _____ Lease surrendered _____ Geological Survey report dated _____

(b) To be cancelled for delinquency of lessee.
Lessee notified of delinquency _____ Surety notified of delinquency _____

<u>Advance Royalty Due and Unpaid</u>	<u>Annual Rental Due and Unpaid</u>
_____ year, \$ _____, due _____	\$ _____, due _____
_____ year, \$ _____, due _____	\$ _____, due _____

Remarks:

It is recommended that lease be cancelled as to _____

Department of the Interior
Bureau of Indian Affairs

Sincerely yours,

BIAM REISSUE
FEBRUARY 1984

Superintendent

Lease Cancelled

Approved under authority delegated
by Secretarial Order No. 2508
January 11, 1949 (14 F.R. 258-260),
and Order No. 551, Amendment _____
_____ F.R. _____

Area Director _____

Rel 200

STATEMENT TO ACCOMPANY RELEASE
(Submit in triplicate)

The undersigned _____, lessee (assignee), in a certain oil and gas mining lease executed by _____, lessor, in connection with the release, relinquishment, and surrender of all right, title, and interest in and to the foregoing lease on the following described land, to-wit: _____

_____ of Sec. _____ T. _____ R. _____, containing _____ acres, more or less, hereby furnishes the following information with respect to conservation and protection of the property described herein:

1. Number of wells drilled by lessee. _____
2. Number of unabandoned wells existing at time lease rights were acquired, if obtained by assignment. _____
3. Have all wells on lands surrendered been properly plugged and abandoned, including wells drilled by lessee and wells drilled prior to acquiring lease rights, if obtained by assignment? _____
4. Has the surface of the land been restored to its original condition insofar as practicable? _____
5. Are there any productive oil or gas wells on adjoining property not offset by wells drilled on the land surrendered? _____
6. Has the lease been recorded? _____
7. Have the lessors asserted any unliquidated or unsettled claim against the lessee or assignee's operations on the lands described above? _____

Dated _____ 19 _____

Lessee or record holder

Ref 200

INSTRUCTIONS
for
DRAFTING AND EXECUTING LEASES

OWNERSHIP SHEET

When the lease form is to be completed by the bidder, the Superintendent should furnish him with an ownership sheet showing the name of each lessor exactly as it is shown in the probate orders or deeds in which the lessor obtained his interest in the land. (See Exhibit 5).

FORMS

To avoid unnecessary checking, all documents to be executed by the lessee should, if possible, be on approved printed, or mimeographed departmental forms. Unless authorized herein, no change should be made in the forms listed in the regulations or listed herein without prior approval of the Central Office. If the forms listed herein are not appropriate for the particular reservation, the applicable forms should be used.

DATE

The date to be inserted on page 1 of the lease form should be the date on which the lessor or lessors sign the lease. When they sign on different dates, use the date the first lessor has signed.

DESIGNATION OF INDIVIDUAL LESSORS AND ADDRESSES

The space following the date is for the purpose of naming or designating the lessor or lessors. When the lessor is shown in the chain of title under more than one name, the lessor should be designated in the body of the lease as "John Smith also known as William Pinkerton." Otherwise, an affidavit of identity should be attached to each copy of the lease. Care should be exercised to see that all lessors are fully identified. In those instances where ample space is not available for all of the lessors' names on page 1 of the lease form or for the signatures at the bottom of page 3 thereof, riders may be affixed. Where the lands are in an heirship status or otherwise held in common ownership and there is insufficient space in the lease form, the addresses of the lessors may be omitted. The undivided interest of each tenant in common should not be stated in the lease.

DESIGNATION OF TRIBAL LESSOR

When the lessor is a Tribe, it should be designated in the following form:

Blackfeet Tribe of the Blackfeet Indian Reservation, Montana.

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DESIGNATION OF LESSEE

The lessee's full name and address should be shown. If it is a partnership, or corporation it should be so designated.

LAND DESCRIPTION

Show the name of the county and State in which the land is situated. The description of the land should be accurate and should correspond to the description shown in the sale advertisement. It is important that the allotment number of the original allottee be accurate. The acreage should be stated.

SIGNATURE BY LESSOR

Care should be exercised to see that all adult owners execute the allotted leases and that such leases are executed on behalf of the minor and mentally incompetent owners, 25 CFR 189.5, 189.9, and 189.26. The age of majority is covered by the State laws except when in conflict with Federal statutes. The signatures should be in ink and should be spelled the same as in the designation of the lessor on page 1 of the lease form.

Tribal leases should be executed in the following form:

Blackfeet Tribe of the Blackfeet Indian Reservation, Montana

By _____
Chairman, Blackfeet Tribal Council

Attest _____
Secretary

If the Tribe has a seal, it should be affixed to the lease.

ACKNOWLEDGMENT

The individual lessor's name in the acknowledgment should be the same as that shown in the body of the lease and in the same form as his signature. The certificate of acknowledgment must show the notary's seal and the date of the expiration of his commission. Except in jurisdictions where thumb print signatures require a special notary's acknowledgment, acknowledgment on page 4 of the lease form should be used. However, additional acknowledgments may be prepared when required and properly affixed to the printed lease form. All forms of acknowledgment are governed by the law of the State where the land is located. Special attention should be given to obtaining proper acknowledgments on signatures by mark and by thumb print.

RESOLUTION AUTHORIZING TRIBAL LEASES

Resolution of the tribal governing body authorizing the signing of the lease on behalf of the tribe should be attached to the lease.

SIGNATURE IF LESSEE IS A PARTNERSHIP

All partners should sign unless an executed statement signed by all partners designates an individual to sign on behalf of the partners.

SIGNATURE BY CORPORATE LESSEE

Unless corporate lessees act through an attorney in fact, the lease should be signed on behalf of the corporation by an executive officer, either the president or vice-president of the corporation and by the secretary, and the corporate seal should be affixed. The lease should be accompanied by evidence of authority of officers, Form 154d (one copy).

EXECUTION BY ATTORNEY IN FACT

Where a lease is executed by an attorney in fact, it should be accompanied by a statement signed by or on behalf of the lessor or lessee, stating the extent of the authority of the attorney in fact, and, if such authority is granted on behalf of the corporation, it should be accompanied by an authenticated copy of a resolution passed by the Board of Directors granting such authority. Unless the resolution states that the authority will stay in effect until notice of revocation is furnished, the power of attorney can be used on only one lease. When a lease is executed by an attorney in fact a copy of the Power of Attorney must be furnished together with a certification indorsed thereon or attached thereto, by the principal, that the Power of Attorney was in effect on the date of the execution of the lease.

ERASURES AND MODIFICATIONS

No erasures should appear in the forms. All amendments and interlineations should be initialed by the lessor, lessee, assignor and assignee, as the case may be and also by the surety.

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