

GTH UPDATE Energy

INTERIOR DEPARTMENT PROPOSES RULES FOR LEASING ON INDIAN LANDS, WITH SPECIAL RULES FOR RENEWABLE ENERGY PROJECTS

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On November 29, 2011, the Department of Interior's Bureau of Indian Affairs ("BIA") issued proposed rules that will greatly streamline leasing of property on tribal lands. The proposed rule includes special provisions for wind and solar developments on tribal lands. If adopted, these rules promise to expedite BIA decision-making on tribal land leases and to place greater weight on internal tribal decisions concerning lease terms.

Generally, tribal lands are held in trust by the federal government for the benefit of the tribes. This means tribal lands cannot be sold to non-tribal entities, but can only be leased. In the past, the BIA has often been criticized for long delays in approving leases and for overruling tribal decisions on lease terms.

The proposed rules would limit BIA review of commercial leases to sixty days, and would deem leases approved if BIA does not act within that period. The proposed rules would also require BIA to defer to tribal decisions concerning the desirability of specific lease terms such as lease payments.

For wind projects on tribal lands, the proposed rules would allow for short-term exploration leases, allowing the placement of meteorological equipment in order to characterize potential wind resources. The proposed rules would also provide for long-term leases (generally up to 25 years, but 99 years if tribes have independent authority for longer lease terms) for full-scale development of wind and solar resources on tribal lands.

The attorneys at Gordon Thomas Honeywell have extensive experience assisting clients in operating businesses on tribal lands, and in all areas of the energy and utility industries, including regulatory matters, project development, renewable energy, power purchase agreements, REC purchase agreements, transmission, taxation, municipal law, cooperative law, public records requests and general operations. www.gth-law.com

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