

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE XXX

OVERRIDING ROYALTY INTEREST CODE

Article 1. GENERAL PROVISIONS

XXX-1-101. Purposes of Code.

The purposes of this Overriding Royalty Interest Code (“ORRI Code”) are as follows:

- (1) To require the consent of the Southern Ute Indian Tribe (“Tribe”) before overriding royalty interests (“ORRIs”) may be validly created and become applicable to any existing or future lease of non-renewable tribal energy minerals (“Tribal Minerals”) within the Southern Ute Indian Reservation (“Reservation”);
- (2) To protect the Tribe from the burden that ORRIs pose to the timely and diligent development of Tribal Minerals;
- (3) To prevent the premature abandonment of Tribal Leases of Tribal Minerals or Minerals Agreements (collectively, “Tribal Mineral Leases”) and make viable the mining of economically marginal mineral deposits and resources; and
- (4) To protect the interests of the Tribe in Tribal Mineral Leases against unapproved lease interest burdens through review and consent procedures that are at least as strong as protections found in leases of federal non-oil and gas minerals.

XXX-1-102. Authority.

Enactment of this ORRI Code is authorized by Article VII, Sections 1(c) and 1(n) of the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991. Enactment of this ORRI Code is further authorized by 25 C.F.R. § 211.29.

XXX-1-103. Definitions.

When used in this ORRI Code, the following words and terms shall be interpreted as follows, unless the context clearly indicates a different meaning:

- (1) **Designated Representative** – the Southern Ute Indian Tribe Department of Energy or any other party or entity later designated by the Tribal Council.
- (2) **Effective Date** – the date described in § XXX-2-210 of this ORRI Code.

(3) **Minerals Agreement** - any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the Act of May 11, 1938, as amended), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing or other development of minerals in which the Tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or the products of such minerals.

(4) **overriding royalty interest or ORRI** – a royalty created out of the lessee’s interest which is in addition to the base royalty reserved by the lessor in the original lease, including, without limitation, payments out of production.

(5) **ORRI Applicant** – the party seeking to create an ORRI in a Tribal Mineral Lease.

(6) **Proposed ORRI** – an ORRI proposed to be created from or attached to a Tribal Mineral Lease.

(7) **Reservation** – the real property located within the exterior boundaries of the Southern Ute Indian Reservation confirmed by Congress in Public Law No. 98-290.

(8) **Tribal Lease** – a lease granted by the Tribe pursuant to the Act of May 11, 1938, as amended, providing for the exploration for, or extraction, processing or other development of Tribal Minerals.

(9) **Tribal Minerals** – non-renewable energy minerals within the boundaries of the Reservation that the Tribe owns or in which the Tribe holds a beneficial or restricted interest for which the United States holds legal title as trustee.

(10) **Tribal Minerals Lease** – a Tribal Lease or Minerals Agreement.

Article 2. TRIBAL CONSENT REQUIREMENT

XXX-2-201. Tribal Consent Required.

Upon and after the Effective Date, ORRIs may be created from Tribal Mineral Leases only with the consent of the Tribal Council or its Designated Representative. Such consent may be provided or withheld in the sole discretion of the Tribal Council or its Designated Representative.

XXX-2-202. Scope of ORRIs Subject to ORRI Code.

This ORRI Code applies to all ORRIs sought to be created from Tribal Minerals Leases after the Effective Date. This ORRI Code does not apply to ORRIs in effect prior to the Effective Date. If a contractual agreement entered into prior to or after the Effective Date provides for the

future assignment or reservation of an ORRI provided certain conditions are met, the contracting parties may seek pre-approval of the ORRI by submitting their contractual agreement for review and approval to the Tribe or its Designated Representative.

XXX-2-203 Conditions of Approval & Records Production.

(1) The Tribal Council or its Designated Representative may condition its approval of any ORRI subject to this ORRI Code. Such conditions may include, but are not limited to:

- a. commitments by the ORRI Applicant to ensure the timely and diligent development of the subject Tribal Mineral Lease;
- b. certification by the ORRI Applicant that it is in compliance with all Tribal Mineral Lease terms and regulations;
- c. payment of fees by the ORRI Applicant to compensate the Tribe for costs associated with review of the Proposed ORRI; and
- d. compensation to the Tribe for royalty and other revenues that may be lost as a consequence of the Proposed ORRI, if approved.

(2) In evaluating a Proposed ORRI, the Tribal Council or its Designated Representative may require production of records and other information to aid its decision-making process. Such records and other information may include, but are not limited to:

- a. documents associated with the Tribal Mineral Lease from which the Proposed ORRI would be created;
- b. records, such as production and marketing records, evidencing the profitability of the Tribal Mineral Lease;
- c. documents evidencing the ORRI Applicant's compliance with the terms of the subject Tribal Mineral Lease, as well as other Tribal Mineral Leases in which it maintains interests; and
- d. a division of interest statement with respect to the subject Tribal Mineral Lease.

XXX-2-204. Notice.

The Southern Ute Indian Tribe Department of Energy shall publish notice of this ORRI Code notifying the public, including designated operators of Tribal Mineral Leases, prior to the Effective Date. The effectiveness of this ORRI Code and the obligation to comply with this ORRI Code are not contingent upon receipt of such notice.

XXX-2-205. Penalties.

Should any person or entity subject to the provisions of this ORRI Code fail to comply with this ORRI Code - for example, by executing an ORRI in the absence of the consent required under § XXX-2-201 - then the Tribal Council may commence an action in the Southern Ute Indian Tribal Court seeking a declaratory judgment that such person is in material violation of this ORRI Code. In addition, the Tribe may seek, and the Tribal Court is empowered to grant, such further relief as may be reasonable or necessary to obtain and maintain compliance with provisions of this ORRI Code, including, but not limited to the:

- (1) assignment to the Tribe of proceeds associated with an un-approved ORRI;
- (2) assessment of damages associated with a failure to timely and diligently develop the subject Tribal Mineral Lease as a consequence of an un-approved ORRI;
- (3) exclusion or removal of said non-complying party or parties from within the territorial jurisdiction of the Tribe; and
- (4) forfeiture of interests in Tribal Mineral Leases.

The Tribe may also commence any actions in foreign jurisdictions necessary for recognition and enforcement orders issued by the Southern Ute Tribal Court.

XXX-2-206. Consent to Suit.

Should an ORRI Applicant be adversely affected by the unlawful application of this ORRI Code by the Tribal Council or its Designated Representative, said adversely affected party may seek declaratory or injunctive judicial relief against the Tribe in the Southern Ute Tribal Court, and the Tribe hereby consents to such a suit; provided, however, that such relief shall not include an award of monetary damages. The decision of the Tribal Court may be appealed to the Tribe's appellate court.

XXX-2-207. Rules and Regulations.

The Tribal Council or its Designated Representative is hereby specifically empowered to promulgate such rules and regulations and to prescribe such forms or reports as may be reasonably necessary in carrying out the purposes of the provisions contained in this ORRI Code.

XXX-2-208. Audits and Records Requests.

The Tribal Council or its Designated Representative shall have the authority to conduct audits and internal desk reviews to ensure compliance with this ORRI Code. In exercise of this authority, the Tribal Council or its Designated Representative may request records from any entity involved in producing, transporting, treating, marketing or processing Tribal Minerals.

XXX-2-209. Severability and Liberal Construction.

If any provision of this ORRI Code, or the application of any provision of this ORRI Code to any person or circumstance, is held invalid, the remainder of this ORRI Code and the application of such provision to other persons or circumstances shall remain unaffected. This ORRI Code shall be liberally construed for the benefit of the Tribe consistent with its purposes.

XXX-2-210. Effective Date.

The effective date of this ORRI Code shall be the first day of the month following its approval by the Tribal Council and, if required, the Secretary of the Interior or her authorized representative.

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