

Committee on Natural Resources

Rob Bishop, Chairman

Markup Memorandum

September 9, 2015

To: Natural Resource Committee Members

From: Majority Committee Staff, Sub. on Indians, Insular and Alaska Native Affairs,
Ken Degenfelder x6-9725

Subject: Full Committee Markup on H.R. 538 (Rep. Don Young-AK), the “*Native American Energy Act*”

Summary of the Bill

H.R. 538 was introduced by Rep. Don Young on January 26, 2015 and has been referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. The bill promotes energy development by Indian tribes and Alaska Native Corporations (“ANCs”) by reducing bureaucratic burdens; expediting, streamlining, and standardizing the process for obtaining appraisals and permits; deterring frivolous lawsuits which reduce the competitiveness of Indian tribes and Alaska Native Corporation energy development; lowering the cost of federal permitting on tribal trust lands; increasing the opportunity for tribes to govern more aspects of energy development on their lands.

Background

Obstacles to Indian Energy Development

Tribes and individual Indian landowners regularly encounter obstacles not encountered on leases of private and state lands. In general, federal law requires the approval of the Interior Department before a lease a tribe enters into with an energy developer is valid. For example, Under the Indian Land Mineral Leasing Act of 1982¹, a tribe or individual Indian may only lease their trust lands for mineral development “*subject to the approval of the Secretary.*” Pursuant to this authority, the Department developed sprawling rules for the approval of leases of Indian lands. The rules often trigger National Environmental Policy Act (“NEPA”) reviews, lengthy appraisals, expensive applications for permits to drill, and numerous other layers of dilatory bureaucratic review often involving multiple agencies. Each layer of review gives a federal or private special interest an opportunity to meddle, interfere, delay, appeal, or sue to slow or stop permitting of development on Indian lands.

The current federal regulatory scheme obstructs historically impoverished tribes from fully realizing the huge economic potential of developing their natural resources. Because tribes with large energy resources tend to be located in rural areas, development of these resources

¹ 25 U.S.C. 2101 et seq.

offers one of the few non-government means available for them to create jobs and a revenue stream to meet member demands for tribal services or activities, investment in the local community, and new energy supply to meet consumer demand.

In June of 2015, the Government Accountability Office (“GAO”) released a report titled **“INDIAN ENERGY DEVELOPMENT: Poor Management by BIA Has Hindered Energy Development on Indian Lands.”**² In its report, the GAO documented and described serious shortcomings in the Department’s administration of energy development on Indian lands, shortcomings that “can increase costs and project development times, resulting in missed development opportunities, lost revenue, and jeopardized viability of projects.”

For example, the GAO described how one tribe estimated it had lost more than \$95 million in revenues it could have earned due to delays. Further, as the report states, “According to Interior officials, while the potential for oil and gas development can be identical regardless of the type of land ownership --- such as state, private or Indian --- the added complexity of the federal process stops many developers from pursuing Indian oil and gas resources for development.”

Recent Changes in Federal Indian Law Concerning Energy

The Energy Policy Act of 2005³ authorized tribes to enter into Tribal Energy Resource Agreements (“TERA”) with the Secretary of the Interior. Under a TERA, a tribe would develop energy leasing rules that, after review and approval by the Secretary of the Interior, would govern the tribe’s leasing of its lands for energy development purposes. Under a TERA approved by the Secretary, a tribe could execute energy leases on its lands without review and approval by the BIA and without day-to-day supervision of the lease by the government except for certain duties for the Secretary to monitor the tribe’s compliance with the TERA.

After a decade since passage, no tribe has successfully entered into a TERA with the Secretary. The GAO cited a few reasons, which include: (1) uncertainty about TERA regulations, (2) limited tribal capacity and costs associated with assuming activities currently conducted by federal agencies, and (3) a complex application process⁴.

Energy Resources on Indian Lands

The Department of the Interior holds 56 million acres of land in trust or restricted status for the benefit of American Indian tribes and individual Indians. In Alaska, Alaska Native Corporations own 44 million acres of fee land (not under the jurisdiction of the Department of the Interior). The Corporations obtained these lands in settlement of their aboriginal land claims under the Alaska Native Claims Settlement Act of 1971⁵.

A number of Indian reservations contain large accumulations of known and prospective mineral resources. In 2013 alone, royalty revenues paid to Indian tribes and individual Indian

² <http://www.gao.gov/products/GAO-15-502>.

³ 25 U.S.C. 3501 et seq.

⁴ See GAO Report GAO-15-502 at 32.

⁵ 43 U.S.C. 1617 et seq.

allottees from mineral development was in excess of \$970 million⁶. The two largest components of this amount came from the sale of nearly 30 million barrels of oil and more than 200 billion cubic feet of gas.

In Alaska, several ANCs are actively engaged in leasing their fee lands for mineral development, and in operating or servicing oil and gas facilities on State lands and in the National Petroleum Reserve-Alaska. Kaktovik Inupiat Corporation, which owns fee lands in the 1002 Area (coastal plain) of the Arctic National Wildlife Refuge (“ANWR”), seeks to develop its prospective oil and gas resources; however, it is prohibited from doing so until Congress lifts the current federal restriction on leasing in the coastal plain of ANWR.

Breakthroughs in the use of hydraulic fracturing to produce oil and gas from large hydrocarbon-bearing shale formations have given several historically impoverished tribes a major economic opportunity.

There are high wind and solar prospects in a number of Indian reservations. In 2013, the Department issued a final rule⁷ revising surface (non-mineral) leasing of Indian trust lands, including streamlining for approval of wind and solar projects. Also, wind and solar industries have been heavily subsidized by the government. In spite of these efforts, only one significant wind project is generating power on tribal lands.⁸ As noted previously in this memorandum, the GAO report cited that in 2011, the Rosebud Sioux Tribe reported that it took 18 months for the BIA to review a wind lease.

Hydraulic Fracturing

One of the major threats to oil and gas development on Indian lands is the Bureau of Land Management (“BLM”) rule to regulate hydraulic fracturing (“HF”) on public lands. The BLM is deeming public lands to include land held in trust for Indians. While title to Indian trust lands is owned by the federal government in a technical legal sense, the beneficial interest in such lands is vested *exclusively* in the Indian beneficiaries. In other words, the public does not have a legal right to the use of Indian trust lands. The BLM’s rule turns this fundamental tenet of federal Indian policy on its head.

In an April 19, 2012, Subcommittee on Indian and Alaska Native Affairs oversight hearing, tribal leaders testified that the proposed HF rule could drive oil and gas operators from Indian lands and deprive historically impoverished tribes of a needed source of private investment, tribal royalty revenues, and high-wage jobs. Tribes opposed to the proposed rule lodged three basic objections: (1) the Department wrongly considers land it holds in trust for Indians to be “public lands” for the purpose of the draft rule; (2) the BLM did not adequately consult with tribes in violation of Administration policy and a Secretarial Order; (3) the rule will result in new delays and paperwork burdens and will thus drive industry away from leasing Indian lands. As one tribal witness explained, “BLM’s proposed rule to address public outcry

⁶ FY 2016 Budget Justification. Bureau of Indian Affairs at IA-CED-8.

⁷ 25 C.F.R. Part 162.

⁸ <https://www.hcn.org/articles/federal-agency-shortcomings-stalling-solar-wind-tribal-winds>

for activities on public lands overreaches its goal and infringes on tribal sovereign authority to make decisions concerning development on reservation lands.”⁹

Moreover, the BLM HF rule would reduce the competitiveness of Indian tribes in energy markets. On reservations where Indian trust lands and non-Indian fee lands are intermixed in a “checker board” pattern, an oil and gas operator would have no incentive to produce oil on an Indian lease if he could simply move his operation a few feet away to the non-Indian fee land, where more reasonable State rules govern.

More recently, on July 15, 2015 the Natural Resources Committee—Subcommittee on Energy and Mineral Resources held an oversight hearing to contemplate the impacts of BLM’s final rule¹⁰ regulating hydraulic fracturing on Federal lands.¹¹ In the hearing, a tribal leader testified that the final rule wrongly fails to separate tribal lands from public lands.

Previous Committee Actions on Indian Energy

In the 112th Congress, the Subcommittee on Indian and Alaska Native Affairs held five¹² Indian energy related hearings. In the 113th Congress, the Natural Resources Committee reported H.R. 1548, and included an amended version as part of a larger energy packages which passed the House¹³.

Major Provisions of H.R. 538

The Native American Energy Act addresses concerns various Native American leaders brought to the attention of the Subcommittee in previous hearings and consultations. The bill helps tribes and Alaska Natives expedite and streamline the leasing and development of energy and other natural resources in cases where federal laws or policies are a hindrance to them.

Section 1. Short Title. “Native American Energy Act.”

Section 2. Appraisals. Allows an appraisal of Indian land, at the option of a tribe, to be conducted by the Secretary of the Interior, the tribe, or a certified third-party appraiser.

Section 3. Standardization. Directs the Secretary of the Interior to standardize the way the seven bureaus of the Department of Interior track oil and gas activities on Indian lands.

Section 4. Environmental Reviews of Major Federal Actions on Indian Lands. Amends Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) to provide that

⁹ <http://naturalresources.house.gov/uploadedfiles/showtestimony04.19.12.pdf>

¹⁰ 80 Fed. Reg. 16128.

¹¹ <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398963>

¹² <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=229900>

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=278663>

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=286987>

<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=289030>

¹³ See H.R. 2, the American Energy Solutions for Lower Costs and More American Jobs Act, 113th Congress (2014), and H.R. 1965, Federal Lands Jobs and Energy Security Act of 2013 (2013).

for any environmental impact statement required for a major federal action on a tribe's lands, such statement shall be available for public review and comment only by members of the Indian tribe and by any other individual residing within the affected area. Under Sec. 4, the Chairman of the Council on Environmental Quality shall develop regulations to implement this section. This amendment addresses complaints from tribes that certain federal laws – including NEPA – treat Indian-owned lands as public lands.

Section 5. Judicial Review. Section 5 would deter the filing of a frivolous lawsuit intended to slow or stop federal permitting, licensing, or other federal permission relating to Indian or Alaska Native energy development. In this context, a frivolous lawsuit is one whose purpose is not to prevail on the merits but to use the time delays and high costs inherent in a federal lawsuit process to stymie federal agency permission or approvals for an Indian tribe or Alaska Native Corporation (ANC) to develop energy resources.

Section 5 expedites the time of filing and resolving lawsuits against Indian or ANC-related development, and provides that such lawsuits must be brought in the U.S. District Court for the District of Columbia Circuit. Under this section, no taxpayer funds may be used to reimburse fees or expenses for plaintiffs filing these frivolous lawsuits, and the plaintiffs must pay fees and expenses to a defendant (other than the United States) unless they ultimately prevail, or unless the court finds the position of the plaintiff was substantially justified or special circumstances make an award unjust.

Section 6. Tribal Biomass Demonstration Project. Amends the Tribal Forest Protection Act of 2004 to create a demonstration project for Indian tribes to promote biomass energy production on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

Section 7. Tribal Resource Management Plans. Treats a tribe's forest practices to be "sustainable" for all federal purposes if the tribe's land is managed under a tribal resource management plan or an integrated resource management plan. This addresses a problem in which third-party groups charge an entity substantial, recurring fees to claim a certification that the entity's forest plan is "sustainable."

Section 8. Leases of Restricted Lands for the Navajo Nation. Enhances Navajo Nation leasing authority. The Indian Long-Term Leasing Act¹⁴ requires separate review and approval for each non-mineral lease of a tribe's land, triggering a lengthy, detailed review by the federal bureaucracy, and the potential preparation of an environmental review under the National Environmental Policy Act. In the 112th Congress, the HEARTH Act¹⁵ was enacted to allow any tribe to develop non-mineral leasing rules, and when such rules are approved by the Secretary, the tribe may then execute leases without further Departmental involvement.

¹⁴ 25 U.S.C. 415.

¹⁵ See P.L. 112-151, the *Helping Expedite and Advance Responsible Tribal Homeownership Act* (2012).

Section 8 of H.R. 538 allows the Navajo Nation to execute mineral and geothermal leases in a manner similar to the HEARTH Act¹⁶. The terms of such leases may be for 25 years with an option to renew for one term of up to 25 years.

Section 8 also amends 25 U.S.C. 415(e) to permit the Navajo to execute 99-year leases for business or agricultural purposes.

Section 9. Nonapplicability of Certain Rules. Provides that no rule promulgated by the Department of the Interior regarding hydraulic fracturing used in the development or production of oil or gas resources shall have any effect on any Indian trust land except with the express consent of the Indian owner.

Administration Position

In the 113th Congress, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 1548, a nearly identical bill, on April 23, 2013. The Bureau of Indian Affairs testified in opposition to the bill despite strong tribal endorsements.

Effect on Current Law

Ramseyer: http://naturalresources.house.gov/uploadedfiles/ramseyer_report_hr_538_final.pdf

Cost

There is no estimate for the cost of the legislation available at this time.

¹⁶ Id.

RAMSEYER REPORT
Current Law as amended by H.R. 538

25 U.S.C §3501 et seq. – Chapter 37 Indian Energy

§3501. Definitions

In this chapter:

- (1) The term "Director" means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.
- (2) The term "Indian land" means—
 - (A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;
 - (B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—
 - (i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;
 - (ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or
 - (iii) by a dependent Indian community; and
 - (C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.
- (3) The term "Indian reservation" includes—
 - (A) an Indian reservation in existence in any State or States as of August 8, 2005;
 - (B) a public domain Indian allotment; and
 - (C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—
 - (i) on original or acquired territory of the community; or
 - (ii) within or outside the boundaries of any State or States.
- (4)(A) The term "Indian tribe" has the meaning given the term in section 450b of this title.
(B) For the purpose of paragraph (12) and sections 3503(b)(1)(C) and 3504 of this title, the term "Indian tribe" does not include any Native Corporation.
- (5) The term "integration of energy resources" means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.
- (6) The term "Native Corporation" has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).
- (7) The term "organization" means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.
- (8) The term "Program" means the Indian energy resource development program established under section 3502(a) of this title.
- (9) The term "Secretary" means the Secretary of the Interior.

(10) The term "sequestration" means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

(11) The term "tribal energy resource development organization" means an organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 3502 of this title.

(12) The term "tribal land" means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under laws of the United States.

§3502. Indian tribal energy resource development

(a) Department of the Interior program

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations in achieving the purposes of this chapter.

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land;

(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources; and

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this chapter, including—

(i) training programs for tribal environmental officials, program managers, and other governmental representatives;

(ii) the development of model environmental policies and tribal laws, including tribal environmental review codes, and the creation and maintenance of a clearinghouse of best environmental management practices; and

(iii) recommended standards for reviewing the implementation of tribal environmental laws and policies within tribal judicial or other tribal appeals systems.

(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.

(b) Department of Energy Indian energy education planning and management assistance program

(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;

(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

(3)(A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including—

(i) geologic sequestration;

(ii) forest sequestration;

(iii) agricultural sequestration; and

(iv) any other sequestration opportunities the Director considers to be appropriate.

(B) The activities carried out under subparagraph (A) shall be—

(i) coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;

(ii) conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse gases sequestered in projects that may be implemented on Indian land; and

(iii) reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.

(4)(A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to any application received from an Indian tribe with inadequate electric service (as determined by the Director).

(C) In providing a grant under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Director shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Director determines to be appropriate.

(5) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

(6) There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2006 through 2016.

(c) Department of Energy loan guarantee program

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 661a of title 2) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe for energy development.

(2) In providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Secretary of Energy shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Secretary determines to be appropriate.

(3) A loan guarantee under this subsection shall be made by—

(A) a financial institution subject to examination by the Secretary of Energy; or

(B) an Indian tribe, from funds of the Indian tribe.

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed \$2,000,000,000.

(5) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(7) Not later than 1 year after August 8, 2005, the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) Preference

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

(A) pay more than the prevailing market price for an energy product or byproduct; or

(B) obtain less than prevailing market terms and conditions.

§3503. Indian tribal energy resource regulation

(a) Grants

The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) Use of funds

Funds from a grant provided under this section may be used—

(1)(A) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(B) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(C) by an Indian tribe (other than an Indian Tribe in the State of Alaska, except the Metlakatla Indian Community) for—

(i) the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development; and

(ii) the development of technical infrastructure to protect the environment under applicable law; or

(D) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(2) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) Other assistance

(1) In carrying out the obligations of the United States under this chapter, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that on the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

(2) The Secretary may carry out paragraph (1)—

(A) directly, through the use of Federal officials; or

(B) indirectly, by providing financial assistance to an Indian tribe to secure independent assistance.

§3504. Leases, business agreements, and rights-of-way involving energy development or transmission

(a) Leases and business agreements

In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land; or

(B) construction or operation of—

(i) an electric generation, transmission, or distribution facility located on tribal land; or

(ii) a facility to process or refine energy resources developed on tribal land; and

(2) a lease or business agreement described in paragraph (1) shall not require review by or the approval of the Secretary under section 81 of this title, or any other provision of law, if—

(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

(B) the term of the lease or business agreement does not exceed—

(i) 30 years; or

(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subsection (e)(2)(D)(i)).

(b) Rights-of-way for pipelines or electric transmission or distribution lines

An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary if—

(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

(2) the term of the right-of-way does not exceed 30 years;

(3) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission, or distribution facility located on tribal land; or

(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under an agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

(c) Renewals

A lease or business agreement entered into, or a right-of-way granted, by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

(d) Validity

No lease, business agreement, or right-of-way relating to the development of tribal energy resources under this section shall be valid unless the lease, business agreement, or right-of-way is authorized by a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

(e) Tribal energy resource agreements

(1) On the date on which regulations are promulgated under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

(2)(A) Not later than 270 days after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(C) (or a later date, as agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

(iii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

(III) address amendments and renewals;

(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

(V) address technical or other relevant requirements;

(VI) establish requirements for environmental review in accordance with subparagraph (C);

(VII) ensure compliance with all applicable environmental laws, including a requirement that each lease, business agreement, and right-of-way state that the lessee, operator, or right-of-way grantee shall comply with all such laws;

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

(X) establish a process for consultation with any affected States regarding off-reservation impacts, if any, identified under subparagraph (C)(i);

(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

(XII) require each lease, business agreement, and right-of-way to include a statement that, if any of its provisions violates an express term or requirement of the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed—

(aa) the provision shall be null and void; and

(bb) if the Secretary determines the provision to be material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations promulgated under paragraph (8);

(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary under paragraph (7)(B);

(XV) specify the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in implementation of the tribal energy resource agreement, including environmental review of individual projects; and

(XVI) in accordance with the regulations promulgated by the Secretary under paragraph (8), require that the Indian tribe, as soon as practicable after receipt of a notice by the Indian tribe, give written notice to the Secretary of—

(aa) any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way entered into under the tribal energy resource agreement; and

(bb) any activity or occurrence under a lease, business agreement, or right-of-way that constitutes a violation of Federal or tribal environmental laws.

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for, at a minimum—

(i) the identification and evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources;

(ii) the identification of proposed mitigation measures, if any, and incorporation of appropriate mitigation measures into the lease, business agreement, or right-of-way;

(iii) a process for ensuring that—

(I) the public is informed of, and has an opportunity to comment on, the environmental impacts of the proposed action; and

(II) responses to relevant and substantive comments are provided, before tribal approval of the lease, business agreement, or right-of-way;

(iv) sufficient administrative support and technical capability to carry out the environmental review process; and

(v) oversight by the Indian tribe of energy development activities by any other party under any lease, business agreement, or right-of-way entered into pursuant to the tribal energy resource agreement, to determine whether the activities are in compliance with the tribal energy resource agreement and applicable Federal environmental laws.

(D) A tribal energy resource agreement between the Secretary and an Indian tribe under this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources under the tribal energy resource agreement; and

(ii) if a periodic review and evaluation, or an investigation, by the Secretary of any breach or violation described in a notice provided by the Indian tribe to the Secretary in accordance with subparagraph (B)(iii)(XVI), results in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take actions determined by the Secretary to be necessary to protect the asset, including reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and any condition that caused the jeopardy are corrected.

(E) Periodic review and evaluation under subparagraph (D) shall be conducted on an annual basis, except that, after the third annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation under subparagraph (D) to be conducted once every 2 years.

(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement shall be limited to activities specified by the provisions of the tribal energy resource agreement.

(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

(A) notify the Indian tribe in writing of the basis for the disapproval;

(B) identify what changes or other actions are required to address the concerns of the Secretary; and

(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

(5) If an Indian tribe executes a lease or business agreement, or grants a right-of-way, in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements under regulations promulgated under paragraph (8), provide to the Secretary—

(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the Indian tribe under, the lease, business agreement, or right-of-way.

(6)(A) In carrying out this section, the Secretary shall—

(i) act in accordance with the trust responsibility of the United States relating to mineral and other trust resources; and

(ii) act in good faith and in the best interests of the Indian tribes.

(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe.

(C) The Secretary shall continue to fulfill the trust obligation of the United States to ensure that the rights and interests of an Indian tribe are protected if—

(i) any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

(ii) any provision in a lease, business agreement, or right-of-way violates the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

(D)(i) In this subparagraph, the term "negotiated term" means any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

(ii) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2).

(7)(A) In this paragraph, the term "interested party" means any person (including an entity) that has demonstrated that an interest of the person has sustained, or will sustain, an adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

(B) After exhaustion of any tribal remedy, and in accordance with regulations promulgated by the Secretary under paragraph (8), an interested party may submit to the Secretary a petition to review the compliance by an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

(C)(i) Not later than 20 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall—

(I) provide to the Indian tribe a copy of the petition; and

(II) consult with the Indian tribe regarding any noncompliance alleged in the petition.

(ii) Not later than 45 days after the date on which a consultation under clause (i)(II) takes place, the Indian tribe shall respond to any claim made in a petition under subparagraph (B).

(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—

(I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or

(II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).

(D)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including—

(I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is in compliance with the approved tribal energy resource agreement; or

(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsection (a) or (b).

(E) Before taking an action described in subparagraph (D)(iii), the Secretary shall—

(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

(iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

(F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.

(8) Not later than 1 year after August 8, 2005, the Secretary shall promulgate regulations that implement this subsection, including—

(A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

(B) a process and requirements in accordance with which an Indian tribe may—

(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

(ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection;

(C) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

(D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

(f) No effect on other law

Nothing in this section affects the application of—

(1) any Federal environmental law;

(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(3) except as otherwise provided in this chapter, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.

§3505. Federal power marketing administrations

(a) Definitions

In this section:

(1) The term "Administrator" means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

(2) The term "power marketing administration" means—

(A) the Bonneville Power Administration;

(B) the Western Area Power Administration; and

(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

(b) Encouragement of Indian tribal energy development

Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.

(c) Action by Administrators

In carrying out this section, in accordance with laws in existence on August 8, 2005—

(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

(3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

(4) each Administrator shall not—

(A) pay more than the prevailing market price for an energy product; or

(B) obtain less than prevailing market terms and conditions.

(d) Assistance for transmission system use

(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

(2) The costs of technical assistance provided under paragraph (1) shall be funded—

(A) by the Secretary of Energy using nonreimbursable funds appropriated for that purpose;

or

(B) by any appropriate Indian tribe.

(e) Power allocation study

Not later than 2 years after August 8, 2005, the Secretary of Energy shall submit to Congress a report that—

(1) describes the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and

(2) identifies—

(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

(B) the quantity of power sold to Indian tribes by any other power marketing administration; and

(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$750,000, non-reimbursable, to remain available until expended.

§3506. Wind and hydropower feasibility study

(a) Study

The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) Scope of study

The study shall—

(1) determine the economic and engineering feasibility of blending wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers, including an assessment of the costs and benefits of blending wind energy and hydropower compared to current sources used for firming power to the Western Area Power Administration;

(2) review historical and projected requirements for, patterns of availability and use of, and reasons for historical patterns concerning the availability of firming power;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation and identify costs associated with these activities;

(5) include an independent tribal engineer and a Western Area Power Administration customer representative as study team members; and

(6) incorporate, to the extent appropriate, the results of the Dakotas Wind Transmission study prepared by the Western Area Power Administration.

(c) Report

Not later than 1 year after August 8, 2005, the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis and comparison of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

(2) an economic and engineering evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal energy resource development organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and

(4) an identification of—

(A) the economic and environmental costs of, or benefits to be realized through, a Federal-tribal-customer partnership; and

(B) the manner in which a Federal-tribal-customer partnership could contribute to the energy security of the United States.

(d) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$1,000,000, to remain available until expended.

(2) Nonreimbursability

Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

SEC. 2607. APPRAISAL REFORMS.¹

(a) Options to Indian Tribes- With respect to a transaction involving Indian land or the trust assets of an Indian tribe that requires the approval of the Secretary, any appraisal relating to fair market value required to be conducted under applicable law, regulation, or policy may be completed by--

- (1) the Secretary;
- (2) the affected Indian tribe; or
- (3) a certified, third-party appraiser pursuant to a contract with the Indian tribe.

(b) Time Limit on Secretarial Review and Action- Not later than 30 days after the date on which the Secretary receives an appraisal conducted by or for an Indian tribe pursuant to paragraphs (2) or (3) of subsection (a), the Secretary shall--

- (1) review the appraisal; and
- (2) provide to the Indian tribe a written notice of approval or disapproval of the appraisal.

(c) Failure of Secretary To Approve or Disapprove- If, after 60 days, the Secretary has failed to approve or disapprove any appraisal received, the appraisal shall be deemed approved.

(d) Option to Indian Tribes To Waive Appraisal-

(1) An Indian tribe wishing to waive the requirements of subsection (a), may do so after it has satisfied the requirements of paragraphs (2) and (3).

(2) An Indian tribe wishing to forego the necessity of a waiver pursuant to this section must provide to the Secretary a written resolution, statement, or other unambiguous indication of tribal intent, duly approved by the governing body of the Indian tribe.

(3) The unambiguous indication of intent provided by the Indian tribe to the Secretary under paragraph (2) must include an express waiver by the Indian tribe of any claims for damages it might have against the United States as a result of the lack of an appraisal undertaken.

(e) Definition- For purposes of this subsection, the term `appraisal' includes appraisals and other estimates of value.

(f) Regulations- The Secretary shall develop regulations for implementing this section, including standards the Secretary shall use for approving or disapproving an appraisal.

¹ (b) Conforming Amendment- The table of contents of the Energy Policy Act of 1992 (42 U.S.C. 13201 note) is amended by adding at the end of the items relating to title XXVI the following:
`Sec. 2607. Appraisal reforms.'.

Section 102 of the National Environmental Policy Act of 1969
42 U.S.C. §4332

**§4332. Cooperation of agencies; reports; availability of information; recommendations;
international and national coordination of efforts**

The Congress authorizes and directs that, to the fullest extent possible:

(a) In General-

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and

(2) all agencies of the Federal Government shall-

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(b) Review of Major Federal Actions on Indian Lands-

(1) IN GENERAL- For any major Federal action on Indian lands of an Indian tribe requiring the preparation of a statement under subsection (a)(2)(C), the statement shall only be available for review and comment by the members of the Indian tribe and by any other individual residing within the affected area.

(2) REGULATIONS- The Chairman of the Council on Environmental Quality shall develop regulations to implement this section, including descriptions of affected areas for specific major Federal actions, in consultation with Indian tribes.

(3) DEFINITIONS- In this subsection, each of the terms `Indian land' and `Indian tribe' has the meaning given that term in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

(4) CLARIFICATION OF AUTHORITY- Nothing in the Native American Energy Act, except section 6 of that Act, shall give the Secretary any additional authority over energy projects on Alaska Native Claims Settlement Act lands.

TRIBAL FOREST PROTECTION ACT OF 2004
25 U.S.C. § 3115a

§3115a. Tribal forest assets protection

(a) Definitions

In this section:

(1) Federal land

The term "Federal land" means-

(A) land of the National Forest System (as defined in section 1609(a) of title 16) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 1702 of title 43), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) Indian forest land or rangeland

The term "Indian forest land or rangeland" means land that-

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 3103 of this title); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) Indian tribe

The term "Indian tribe" has the meaning given the term in section 450b of this title.

(4) Secretary

The term "Secretary" means-

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(b) Authority to protect Indian forest land or rangeland

(1) In general

Not later than 120 days after the date on which an Indian tribe submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c) of this section, the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).

(2) Environmental analysis

Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) Activities

Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is-

(A) under the jurisdiction of the Secretary; and

(B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(c) Selection criteria

The criteria referred to in subsection (b) of this section, with respect to an Indian tribe, are whether-

(1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe-

(A) poses a fire, disease, or other threat to-

(i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) Notice of denial

If the Secretary denies a tribal request under subsection (b)(1) of this section, the Secretary may issue a notice of denial to the Indian tribe, which-

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) Proposal evaluation and determination factors

In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1) of this section, the Secretary may-

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including-

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) No effect on existing authority

Nothing in this section-

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this section; or

(2) invalidates any agreement or contract under that authority.

(g) Report

Not later than 4 years after July 22, 2004, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this section.

SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.

(a) In General- For each of fiscal years 2016 through 2020, the Secretary shall enter into stewardship contracts or other agreements, other than agreements that are exclusively direct service contracts, with Indian tribes to carry out demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

(b) Definitions- The definitions in section 2 shall apply to this section.

(c) Demonstration Projects- In each fiscal year for which projects are authorized, the Secretary shall enter into contracts or other agreements described in subsection (a) to carry out at least 4 new demonstration projects that meet the eligibility criteria described in subsection (d).

(d) Eligibility Criteria- To be eligible to enter into a contract or other agreement under this subsection, an Indian tribe shall submit to the Secretary an application--

(1) containing such information as the Secretary may require; and

(2) that includes a description of--

(A) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; and

(B) the demonstration project proposed to be carried out by the Indian tribe.

(e) Selection- In evaluating the applications submitted under subsection (c), the Secretary--

- (1) shall take into consideration the factors set forth in paragraphs (1) and (2) of section 2(e) of Public Law 108-278; and whether a proposed demonstration project would--
- (A) increase the availability or reliability of local or regional energy;
 - (B) enhance the economic development of the Indian tribe;
 - (C) improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;
 - (D) improve the forest health or watersheds of Federal land or Indian forest land or rangeland; or
 - (E) otherwise promote the use of woody biomass; and
- (2) shall exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.
- (f) Implementation- The Secretary shall--
- (1) ensure that the criteria described in subsection (c) are publicly available by not later than 120 days after the date of enactment of this section; and
 - (2) to the maximum extent practicable, consult with Indian tribes and appropriate intertribal organizations likely to be affected in developing the application and otherwise carrying out this section.
- (g) Report- Not later than one year subsequent to the date of enactment of this section, the Secretary shall submit to Congress a report that describes, with respect to the reporting period--
- (1) each individual tribal application received under this section; and
 - (2) each contract and agreement entered into pursuant to this section.
- (h) Incorporation of Management Plans- In carrying out a contract or agreement under this section, on receipt of a request from an Indian tribe, the Secretary shall incorporate into the contract or agreement, to the extent practicable, management plans (including forest management and integrated resource management plans) in effect on the Indian forest land or rangeland of the respective Indian tribe.
- (i) Term- A stewardship contract or other agreement entered into under this section--
- (1) shall be for a term of not more than 20 years; and
 - (2) may be renewed in accordance with this section for not more than an additional 10 years.

25 USCS § 415: Leases of restricted lands

§ 415. Leases of restricted lands

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, 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, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so

granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians,,¹ the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the the 1 lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, land held in trust for the Coquille Indian Tribe, land held in trust for the Confederated Tribes of Siletz Indians, land held in trust for the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, land held in trust for the Klamath Tribes, and land held in trust for the Burns Paiute Tribe, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, lands held in trust for the Pueblo of Santa Clara, land held in trust for the Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, and lands held in trust for Ohkay Owingeh Pueblo 2 which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of

any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Leases involving Tulalip Tribes

Any lease by the Tulalip Tribes, the Puyallup Tribe of Indians, the Swinomish Indian Tribal Community, or the Kalispel Tribe of Indians under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).

(c) Leases involving Hopi Tribe and Hopi Partitioned Lands Accommodation Agreement
Notwithstanding subsection (a) of this section, a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

(d) Definitions

For purposes of this section-

(1) the term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on October 11, 1996);

(2) the term "Navajo Indians" means members of the Navajo Tribe;

(3) the term "individually owned Navajo Indian allotted land" means a single parcel of land that-

(A) is located within the jurisdiction of the Navajo Nation;

(B) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(C) was-

(i) allotted to a Navajo Indian; or

(ii) taken into trust or restricted status by the United States for an individual Indian;

(4) the term "interested party" means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by an applicable Indian tribe;

(5) the term "Navajo Nation" means the Navajo Nation government that is in existence on August 9, 1955, or its successor;

(6) the term "petition" means a written request submitted to the Secretary for the review of an action (or inaction) of an Indian tribe that is claimed to be in violation of the approved tribal leasing regulations;

(7) the term "Secretary" means the Secretary of the Interior;

- (8) the term "tribal regulations" means regulations enacted in accordance with applicable tribal law and approved by the Secretary;
- (9) the term "Indian tribe" has the meaning given such term in section 479a of this title; and
- (10) the term "individually owned allotted land" means a parcel of land that-
- (A)(i) is located within the jurisdiction of an Indian tribe; or
 - (ii) is held in trust or restricted status by the United States for the benefit of an Indian tribe or a member of an Indian tribe; and
 - (B) is allotted to a member of an Indian tribe.

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a) of this section, and any amendments thereto, ~~except a lease for~~, including leases for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed-

(A) in the case of a business or agricultural lease, 25 99 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations; ~~;~~ and

(C) in the case of a lease for the exploration, development, or extraction of mineral resources, including geothermal resources, 25 years, except that any such lease may include an option to renew for one additional term not to exceed 25 years.

(2) Paragraph (1) shall not apply to individually owned Navajo Indian allotted land.

(3) The Secretary shall have the authority to approve or disapprove tribal regulations referred to under paragraph (1). The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a) of this section, and any amendments thereto, and provide for an environmental review process. The Secretary shall review and approve or disapprove the regulations of the Navajo Nation within 120 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. Such 120-day period may be extended by the Secretary after consultation with the Navajo Nation.

(4) If the Navajo Nation has executed a lease pursuant to tribal regulations under paragraph (1), the Navajo Nation shall provide the Secretary with-

(A) a copy of the lease and all amendments and renewals thereto; and

(B) in the case of regulations or a lease that permits payment to be made directly to the Navajo Nation, documentation of the lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5).

(5) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1), including the Navajo Nation. Nothing in this paragraph shall be construed to diminish the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in furtherance of the trust obligation of the United States to the Navajo Nation.

(6)(A) An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases for Navajo Nation tribal trust lands.

(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall-

- (i) make a written determination with respect to the regulations that have been violated;
- (ii) provide the Navajo Nation with a written notice of the alleged violation together with such written determination; and
- (iii) prior to the exercise of any remedy or the rescission of the approval of the regulation involved and the reassumption of the lease approval responsibility, provide the Navajo Nation with a hearing on the record and a reasonable opportunity to cure the alleged violation.

(f) Leases involving Gila River Indian Community Reservation; arbitration of disputes
Any contract, including a lease or construction contract, affecting land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of "commerce" as defined and subject to the provisions of section 1 of title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of title 28.

(g) Lease of tribally-owned land by Assiniboine and Sioux Tribes of the Fort Peck Reservation

(1) In general

Notwithstanding subsection (a) of this section and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

(2) Conditions

A lease entered into under paragraph (1)-

- (A) shall commence during fiscal year 2011 for an initial term of 25 years;
- (B) may be renewed for an additional term of 25 years; and
- (C) shall specify in the terms of the lease an annual rental rate-
 - (i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and
 - (ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).

(h) Tribal approval of leases

(1) In general

At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary, if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed-

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years, if such a term is provided for by the regulations issued by the Indian tribe.

(2) Allotted land

Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

(3) Authority of Secretary over tribal regulations

(A) In general

The Secretary shall have the authority to approve or disapprove any tribal regulations issued in accordance with paragraph (1).

(B) Considerations for approval

The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations-

(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

(ii) provide for an environmental review process that includes-

(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

(II) a process for ensuring that-

(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

(C) Technical assistance

The Secretary may provide technical assistance, upon request of the Indian tribe, for development of a regulatory environmental review process under subparagraph (B)(ii).

(D) Indian Self-Determination Act

The technical assistance to be provided by the Secretary pursuant to subparagraph (C) may be made available through contracts, grants, or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 3 et seq.).

(4) Review process

(A) In general

Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

(B) Written documentation

If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

(C) Extension

The deadline described in subparagraph (A) may be extended by the Secretary, after consultation with the Indian tribe.

(5) Federal environmental review

Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

(6) Documentation

If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with-

(A) a copy of the lease, including any amendments or renewals to the lease; and

(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

(7) Trust responsibility

(A) In general

The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

(B) Authority of Secretary

Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

(8) Compliance

(A) In general

An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

(B) Violations

If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.

(C) Documentation

If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall-

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with-

(I) a hearing that is on the record; and

(II) a reasonable opportunity to cure the alleged violation.

(9) Savings clause

Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.