

Showing Current Law as Amended by S 245

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Energy Policy Act of 1992 (Public Law 102-486)

Section 2601 (25 U.S.C. 3501)

§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 rancharia;

(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, 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 5304 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 "qualified Indian tribe" means an Indian tribe that has--

(A) carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits

the application without material audit exception (or without any material audit exceptions that were not corrected within the 3-year period) relating to the management of tribal land or natural resources; or

(B) substantial experience in the administration, review, or evaluation of energy resource leases or agreements or has otherwise substantially participated in the administration, management, or development of energy resources located on the tribal land of the Indian tribe.

[(9)] (10) The term "Secretary" means the Secretary of the Interior.

[(10)] (11) 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 energy development organization" means--

(A) any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to section 17 of the Act of June 18, 1934 (25 U.S.C. 5124) (commonly known as the `Indian Reorganization Act') or section 3 of the Act of June 26, 1936 (49 Stat. 1967, chapter 831) (commonly known as the `Oklahoma Indian Welfare Act')); and

(B) any 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 2602 or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(B) of section 2604.

[(12)] (13) 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.

Section 2602 (25 U.S.C. 3502)

§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] tribal energy 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] tribal energy development organizations or 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] tribal energy 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] tribal energy 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.]; and

(E) consult with each applicable Indian tribe before adopting or approving a well spacing program or plan applicable to the energy resources of that Indian tribe or the members of that Indian tribe.

(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.

(4) PLANNING-

(A) IN GENERAL- In carrying out the program established by paragraph (1), the Secretary shall provide technical assistance to interested Indian tribes to develop energy plans, including--

(i) plans for electrification;

(ii) plans for oil and gas permitting, renewable energy permitting, energy efficiency, electricity generation, transmission planning, water planning, and other planning relating to energy issues;

(iii) plans for the development of energy resources and to ensure the protection of natural, historic, and cultural resources; and

(iv) any other plans that would assist an Indian tribe in the development or use of energy resources.

(B) COOPERATION- In establishing the program under paragraph (1), the Secretary shall work in cooperation with the Office of Indian Energy Policy and Programs of the Department of Energy.

(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, intertribal organization, or tribal energy resource development organization tribal energy development organizations 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) activities to increase the capacity of Indian tribes to manage energy development and energy efficiency programs;

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

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

(3) TECHNICAL AND SCIENTIFIC RESOURCES- In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects.

[(3)] (4)(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)] (5)(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)] (6) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

[(6)] (7) 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 or a tribal energy development organization 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; or

(C) a tribal energy development organization, from funds of the tribal energy development organization.

(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] Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, the Secretary of Energy shall 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.

Section 2603 (25 U.S.C. 3503)

§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] on the request of an Indian tribe or a tribal energy development organization, the Indian tribes or tribal energy development organization 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 or tribal energy development organization to secure independent assistance.

Section 2604 (25 U.S.C. 3504)

§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]

(i) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land; or

(ii) a facility to process or refine energy resources, at least a portion of which have been developed on or produced from tribal land; [and] or

(C) pooling, unitization, or communitization of the energy mineral resources of the Indian tribe located on tribal land with any other energy mineral resource (including energy mineral resources owned by the Indian tribe or an individual Indian in fee, trust, or restricted status or by any other persons or entities) if the owner, or, if appropriate, lessee, of the resources has consented or consents to the pooling, unitization, or communitization of the other resources under any lease or agreement; 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)).]

(2) a lease or business agreement described in paragraph (1) shall not require review by, or the approval of, the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), or any other provision of law (including regulations), if the lease or business agreement--

(A) was executed--

(i) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or

(ii) by the Indian tribe and a tribal energy development organization for which the Indian tribe has obtained a certification pursuant to subsection (h); and

(B) has a term that 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.

[(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)).]

(b) Rights-of-Way- An Indian tribe may grant a right-of-way over tribal land without review or approval by the Secretary if the right-of-way--

(1) serves--

(A) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;

(B) a facility located on tribal land that extracts, produces, processes, or refines energy resources; or

(C) the purposes, or facilitates in carrying out the purposes, of any lease or agreement entered into for energy resource development on tribal land; (2) was executed--

(A) in accordance with the requirements of a tribal energy resource agreement in effect under subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); or

(B) by the Indian tribe and a tribal energy development organization for which the Indian tribe has obtained a certification pursuant to subsection (h); and

(3) has a term that does not exceed 30 years.

(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).]

(d) Validity- No lease or business agreement entered into, or right-of-way granted, pursuant to this section shall be valid unless the lease, business agreement, or right-of-way is authorized by subsection (a) or (b).

(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.]

(1) IN GENERAL-

(A) AUTHORIZATION- On or after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, a qualified Indian tribe may submit to the Secretary a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

(B) NOTICE OF COMPLETE PROPOSED AGREEMENT- Not later than 60 days after the date on which the tribal energy resource agreement is submitted under subparagraph (A), the Secretary shall--

(i) notify the Indian tribe as to whether the agreement is complete or incomplete;

(ii) if the agreement is incomplete, notify the Indian tribe of what information or documentation is needed to complete the submission; and

(iii) identify and notify the Indian tribe of the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in the

implementation of the tribal energy resource agreement, including the environmental review of individual projects.

(C) EFFECT- Nothing in this paragraph precludes the Secretary from providing any financial assistance at any time to the Indian tribe to assist in the implementation of the tribal energy resource agreement.

[(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.]

(2) PROCEDURE-

(A) EFFECTIVE DATE-

(i) IN GENERAL- On the date that is 271 days after the date on which the Secretary receives a tribal energy resource agreement from a qualified Indian tribe under paragraph (1), the tribal energy resource agreement shall take effect, unless the Secretary disapproves the tribal energy resource agreement under subparagraph (B).

(ii) REVISED TRIBAL ENERGY RESOURCE AGREEMENT- On the date that is 91 days after the date on which the Secretary receives a revised tribal energy resource agreement from a qualified Indian tribe under paragraph (4)(B), the revised tribal energy resource agreement shall take effect, unless the Secretary disapproves the revised tribal energy resource agreement under subparagraph (B).

[(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]

(B) DISAPPROVAL- The Secretary shall disapprove a tribal energy resource agreement submitted pursuant to paragraph (1) or (4)(B) only if--

(i) a provision of the tribal energy resource agreement violates applicable Federal law (including regulations) or a treaty applicable to the Indian tribe;

(ii) the tribal energy resource agreement does not include one or more provisions required under subparagraph (D); or

(iii) the tribal energy resource agreement [includes provisions that, with respect to a lease, business agreement, or right-of-way under this section-] does not include provisions that, with respect to any lease, business agreement, or right-of-way to which the tribal energy resource agreement applies--

[(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)] (I) address amendments and renewals;

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

[(V)] address technical or other relevant requirements;

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

[(VII)] (IV) 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)] (V) provide for public notification of final approvals;

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

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

[(XII)] (VIII) 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)] (IX) 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)] (X) 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)] (XI) 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[.];

(XII) include a certification by the Indian tribe that the Indian tribe has—

(aa) carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application without material audit exception (or without any material audit exceptions that were not corrected within the 3-year period) relating to the management of tribal land or natural resources; or

(bb) substantial experience in the administration, review, or evaluation of energy resource leases or agreements or has otherwise substantially participated in the administration, management, or development of energy resources located on the tribal land of the Indian tribe; and

(XIII) at the option of the Indian tribe, identify which functions, if any, authorizing any operational or development activities pursuant to a lease, right-of-way, or business agreement approved by the Indian tribe, that the Indian tribe intends to conduct.

(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;]

(i) a process for ensuring that--

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

(II) the Indian tribe provides responses to relevant and substantive public comments on any impacts described in subclause (I) before the Indian tribe approves the lease, business agreement, or right-of-way;

[(iii)] (ii) 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)] (iii) sufficient administrative support and technical capability to carry out the environmental review process; and

[(v)] (iv) 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)] (iv)(XI), 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.

(F) EFFECTIVE PERIOD- A tribal energy resource agreement that takes effect pursuant to this subsection shall remain in effect to the extent any provision of the tribal energy resource agreement is consistent with applicable Federal law (including regulations), unless the tribal energy resource agreement is--

- (i) rescinded by the Secretary pursuant to paragraph (7)(D)(iii)(II); or
- (ii) voluntarily rescinded by the Indian tribe pursuant to the regulations promulgated under paragraph (8)(B) (or successor regulations).

[(3) The Secretary]

(3) NOTICE AND COMMENT: SECRETARIAL REVIEW.—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]

(4) ACTION IN CASE OF DISAPPROVAL.—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.]

date of disapproval, provide the Indian tribe with--

- (A) a detailed, written explanation of--
 - (i) each reason for the disapproval; and
 - (ii) the revisions or changes to the tribal energy resource agreement necessary to address each reason; and
- (B) an opportunity to revise and resubmit the tribal energy resource agreement.

[(5) If an Indian tribe]

(5) PROVISION OF DOCUMENTS TO SECRETARY.—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]

(6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION.—

- (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] (B) Subject only 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] in effect** under this section, and the provisions of subparagraphs **(C) and (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 perform the obligations of the Secretary under this section and** 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] a tribal energy resource agreement in effect under this section.**

(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] in effect** under paragraph (2).

(iii) **Nothing in this section absolves, limits, or otherwise affects the liability, if any, of the United States for any--**

(I) term of any lease, business agreement, or right-of-way under this section that is not a negotiated term; or

(II) losses that are not the result of a negotiated term, including losses resulting from the failure of the Secretary to perform an obligation of the Secretary under this section.

[(7)(A) In this paragraph]

(7) PETITIONS BY INTERESTED PARTIES.--

(A) In this paragraph, the term "interested party" means any person (including an entity) that **[has demonstrated] the Secretary determines has demonstrated with substantial evidence** 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] in effect** under paragraph (2).

(B) After exhaustion of **[any tribal remedy] all remedies (if any) provided under the laws of the Indian tribe**, 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] in effect** 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.] determine—**

(I) whether the petitioner is an interested party; and

(II) if the petitioner is an interested party, whether the Indian tribe is not in compliance with the tribal energy resource agreement as alleged in the petition.

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination^s 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-]** agreement pursuant to clause (i), the Secretary shall only take such action as the Secretary determines necessary to address the claims of noncompliance made in the petition, 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)] (a)(2)(A)(i) or (b)(2)(A).**

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

(i) make a written determination that describes **[the manner in which]**, with respect to each claim made in the petition, **how** 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.

(G) Notwithstanding any other provision of this paragraph, the Secretary shall dismiss any petition from an interested party that has agreed with the Indian tribe to a resolution of the claims presented in the petition of that party.

(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) 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; **and**

(iii) amend an approved tribal energy resource agreement to assume authority for approving leases, business agreements, or rights-of-way for development of another energy resource that is not included in an approved tribal energy resource agreement without being required to apply for a new tribal energy resource agreement;

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

(9) EFFECT- Nothing in this section authorizes the Secretary to deny a tribal energy resource agreement or any amendment to a tribal energy resource agreement, or to limit the effect or implementation of this section, due to lack of promulgated regulations.

(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) Financial Assistance in Lieu of Activities by the Secretary-

(1) IN GENERAL- Any amounts that the Secretary would otherwise expend to operate or carry out any program, function, service, or activity (or any portion of a program, function, service, or activity) of the Department that, as a result of an Indian tribe carrying out activities under a tribal energy resource agreement, the Secretary does not expend, the Secretary shall, at the request of the Indian tribe, make available to the Indian tribe in accordance with this subsection.

(2) ANNUAL FUNDING AGREEMENTS- The Secretary shall make the amounts described in paragraph (1) available to an Indian tribe through an annual written funding agreement that is negotiated and entered into with the Indian tribe that is separate from the tribal energy resource agreement.

(3) EFFECT OF APPROPRIATIONS- Notwithstanding paragraph (1)--

(A) the provision of amounts to an Indian tribe under this subsection is subject to the availability of appropriations; and

(B) the Secretary shall not be required to reduce amounts for programs, functions, services, or activities that serve any other Indian tribe to make amounts available to an Indian tribe under this subsection.

(4) DETERMINATION-

(A) IN GENERAL- The Secretary shall calculate the amounts under paragraph (1) in accordance with the regulations adopted under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.

(B) APPLICABILITY- The effective date or implementation of a tribal energy resource agreement under this section shall not be delayed or otherwise affected by--

(i) a delay in the promulgation of regulations under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017;

(ii) the period of time needed by the Secretary to make the calculation required under paragraph (1); or

(iii) the adoption of a funding agreement under paragraph (2).

(h) Certification of Tribal Energy Development Organization-

(1) IN GENERAL- Not later than 90 days after the date on which an Indian tribe submits an application for certification of a tribal energy development organization in accordance with regulations promulgated under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, the Secretary shall approve or disapprove the application.

(2) REQUIREMENTS- The Secretary shall approve an application for certification if--

(A)(i) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.); and

(ii) for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the application, the contract or compact--

(I) has been carried out by the Indian tribe without material audit exceptions (or without any material audit exceptions that were not corrected within the 3-year period); and

(II) has included programs or activities relating to the management of tribal land; and

(B)(i) the tribal energy development organization is organized under the laws of the Indian tribe;

(ii)(I) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian

tribe and one or more other Indian tribes) the tribal land of which is being developed; and

(II) the organizing document of the tribal energy development organization requires that the Indian tribe with jurisdiction over the land maintain at all times the controlling interest in the tribal energy development organization;

(iii) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and one or more other Indian tribes) the tribal land of which is being developed own and control at all times a majority of the interest in the tribal energy development organization; and

(iv) the organizing document of the tribal energy development organization includes a statement that the organization shall be subject to the jurisdiction, laws, and authority of the Indian tribe.

(3) ACTION BY SECRETARY- If the Secretary approves an application for certification pursuant to paragraph (2), the Secretary shall, not more than 10 days after making the determination--

(A) issue a certification stating that--

(i) the tribal energy development organization is organized under the laws of the Indian tribe and subject to the jurisdiction, laws, and authority of the Indian tribe;

(ii) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and one or more other Indian tribes) the tribal land of which is being developed;

(iii) the organizing document of the tribal energy development organization requires that the Indian tribe with jurisdiction over the land maintain at all times the controlling interest in the tribal energy development organization;

(iv) the organizing document of the tribal energy development organization requires that the Indian tribe (or the Indian tribe and one or more other Indian tribes the tribal land of which is being developed) own and control at all times a majority of the interest in the tribal energy development organization; and

(v) the certification is issued pursuant this subsection;

(B) deliver a copy of the certification to the Indian tribe; and

(C) publish the certification in the Federal Register.

(i) Sovereign Immunity- Nothing in this section waives the sovereign immunity of an Indian tribe.

[(g)] (j) 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.

Section 2606 (25 U.S.C. 3506)

§3506. Wind and hydropower feasibility study

* * * * *

(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.

* * * * *

(at end of law)

SEC. 2607. APPRAISALS.

(a) In General- For any transaction that requires approval of the Secretary and involves mineral or energy resources held in trust by the United States for the benefit of an Indian tribe or by an Indian tribe subject to Federal restrictions against alienation, any appraisal relating to fair market value of those resources required to be prepared under applicable law may be prepared 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) Secretarial Review and Approval- Not later than 45 days after the date on which the Secretary receives an appraisal prepared by or for an Indian tribe under paragraph (2) or (3) of subsection (a), the Secretary shall--

(1) review the appraisal; and

(2) approve the appraisal unless the Secretary determines that the appraisal fails to meet the standards set forth in regulations promulgated under subsection (d).

(c) Notice of Disapproval- If the Secretary determines that an appraisal submitted for approval under subsection (b) should be disapproved, the Secretary shall give written notice of the disapproval to the Indian tribe and a description of--

(1) each reason for the disapproval; and

(2) how the appraisal should be corrected or otherwise cured to meet the applicable standards set forth in the regulations promulgated under subsection (d).

(d) Regulations- The Secretary shall promulgate regulations to carry out this section, including standards the Secretary shall use for approving or disapproving the appraisal described in subsection (a).

Section 7 of the Federal Power Act (7 U.S.C. 800)

§800. Issuance of preliminary permits or licenses

(a) Preference

In issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued, the Commission shall give preference to applications therefor by [States and municipalities] States, Indian tribes, and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

* * * * *

Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a et seq.)

Section 2 (25 U.S.C. 3115a)

§3115a. Tribal forest assets protection

(a) Definitions

[In this section]

* * * * *

At the end:

SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.

(a) Stewardship Contracts or Similar Agreements- For each of fiscal years 2017 through 2021, the Secretary shall enter into stewardship contracts or similar agreements (excluding 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) Demonstration Projects- In each fiscal year for which projects are authorized, at least 4 new demonstration projects that meet the eligibility criteria described in subsection (c) shall be carried out under contracts or agreements described in subsection (a).

(c) Eligibility Criteria- To be eligible to enter into a contract or agreement under this section, 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.

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

(1) take into consideration--

(A) the factors set forth in paragraphs (1) and (2) of section 2(e); and

(B) whether a proposed project would--

(i) increase the availability or reliability of local or regional energy;

(ii) enhance the economic development of the Indian tribe;

(iii) result in or improve the connection of electric power transmission facilities serving the Indian tribe with other electric transmission facilities;

(iv) improve the forest health or watersheds of Federal land or Indian forest land or rangeland;

(v) demonstrate new investments in infrastructure; or

(vi) otherwise promote the use of woody biomass; and

(2) exclude from consideration any merchantable logs that have been identified by the Secretary for commercial sale.

(e) 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.

(f) Report- Not later than September 20, 2019, 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.

(g) 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 maximum 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.

(h) Term- A contract or 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.

Section 413 of the Energy Conservation and Production Act (42 U.S.C. 6863)

§6863. Weatherization program

* * * * *

(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds

[(1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.]

(1) RESERVATION OF AMOUNTS-

(A) IN GENERAL- Subject to subparagraph (B) and notwithstanding any other provision of this part, the Secretary shall reserve from amounts that would otherwise be allocated to a State under this part not less than 100 percent, but not more than 150 percent, of an amount which bears the same proportion to the allocation of that State for the applicable fiscal year as the population of all low-income members of an Indian tribe in that State bears to the population of all low-income individuals in that State.

(B) RESTRICTIONS- Subparagraph (A) shall apply only if--

(i) the tribal organization serving the low-income members of the applicable Indian tribe requests that the Secretary make a grant directly; and

(ii) the Secretary determines that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly than a grant made to the State in which the low-income members reside.

(C) PRESUMPTION- If the tribal organization requesting the grant is a tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) that has operated without material audit exceptions (or without any material audit exceptions that were not corrected within a 3-year period), the Secretary shall presume that the low-income members of the applicable Indian tribe would be equally or better served by making a grant directly to the tribal organization than by a grant made to the State in which the low-income members reside.

(2) ADMINISTRATION.--The [sums] amounts reserved by the Secretary [on the basis of his determination] under this subsection shall be granted to the tribal organization serving the [individuals for whom such a determination has been made] low-income members of the Indian tribe, or, where there is no tribal organization, to such other entity as [he] the Secretary determines has the capacity to provide services pursuant to this part.

(3) APPLICATION.--In order for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 6864 of this title.

* * * * *

The first section of the Act of August 9, 1955 (commonly known as the Long-Term Leasing Act)(25 U.S.C. 415)

§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, the pueblo of Cochiti, Ohkay Owingeh pueblo, the pueblo of Pojoaque, the pueblo of

Santa Clara, 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 land 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, 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, **land held in trust for the Crow Tribe of Montana** and 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.

* * * * *

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), and any amendments thereto, **[except a lease for]** **including 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 two additional terms, each of which may not exceed 25 years; and

(A) in the case of a business or agricultural lease, 99 years;

(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 any mineral resource (including geothermal resources), 25 years, except that--

(i) any such lease may include an option to renew for 1 additional term of not to exceed 25 years; and

(ii) any such lease for the exploration, development, or extraction of an oil or gas resource shall be for a term of not to exceed 10 years, plus such additional period as the Navajo Nation determines to be appropriate in any case in which an oil or gas resource is produced in a paying quantity.

(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), 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.