

Tribal Energy Training Session

Legislative Update 2011

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Multiple Legislative Proposals

- **Indian Energy Parity Act of 2010 with amendments**
- **Indian Tribal Energy Development and Self Determination Act Amendments of 2011**
- **Indian Energy Tax Act**
- **Miscellaneous amendments to EPACT 05**
- **HEARTH Act, S. 703 (Barrasso, R-WY)**

Administrative Notables

- **US DOE Office of Indian Energy Policy and Programs**
 - **Indian Country Energy & Infrastructure Working Group (ICEIWG)**
- **US DOI Office of Indian Energy and Economic Development**
 - **Stephen Manydeeds, Director**
- **BIA Draft Regulations for Wind and Solar Leases**
 - **25 CFR Part 162**

Judicial Notable

- ***Water Wheel Camp Recreational Area, Inc. v. Larance***, 9th Cir. 09–17349, 09–17357 (June 10, 2011)
 - Colorado River Indian Tribes
 - Sweeping victory, affirming the Tribes' regulatory and adjudicatory jurisdiction over a non-Indian trespasser (both the company and the individual) on tribal land.
 - Lease is outside the *US v. Montana* limitations on tribes authority over non-Indians on tribal lands

Notable Legislative Actors

- **Senate Committee on Indian Affairs**
 - **Chair: Akaka (D-HI)**
 - **Sponsor: Barrasso (R-WY)**
- **House Subcommittee on Indian and Alaska Native Affairs (formerly Subcommittee on Native American Affairs)**
 - **Chair: Young (R-AK)**
 - **Doc Hastings (R-WA), Chair of House Natural Resources Committee, strong supporter of Congressman Young**

Indian Tribal Energy Development and Self Determination Act Amendments of 2011

- **Grants and Technical Assistance**
- **Loans and Loan Guarantee Extension**
- **Federal Purchase Preference**
- **Leases, Business Agreements and Rights of Way**
- **TERA Enhancements**
- **Wind and Hydro Feasibility Studies**
- **Forest, Range and Farmland Management**
- **Biomass Demonstration Project**

TERA Enhancements: Background

- **Under Title V of the 2005 Energy Policy Act, a “tribal energy resource agreement” or “TERA” with the Secretary of the Interior allows tribes to approve mineral or energy-related surface leases, business agreements, and rights-of-way without further approval of the Secretary.**
- **A TERA must include a number of terms and provisions applicable to the tribe’s energy leases, agreements, and rights of way, and the tribe must have its own environmental review laws in place for assessing the impacts of energy development under the TERA.**

TERA Enhancements

- **TERA's would automatically take effect 271 days after it is submitted by an Indian tribe *unless, before then, the Secretary disapproves it.***
- **The Secretary would only have authority to disapprove the TERA if the Secretary finds that the TERA fails to meet one or more of the items on the Title V checklist of TERA requirements.**
- **Limited exception for any provision of the TERA is inconsistent with applicable Federal law.**

TERA Enhancements

- **Title V requires the Secretary to determine whether “the Indian tribe has demonstrated...sufficient capacity to regulate the development of energy resources” within the same 270-day time frame for approving the TERA.**
- **The draft bill would require the capacity determination to be made within 120 days after the TERA is submitted unless the Secretary and the tribe mutually agree to an extension of time.**

TERA Enhancements

- **Indian tribe *has* sufficient capacity if:**
 - **the tribe has a record of operating programs under the Indian Self-Determination and Education Assistance Act (ISDEA) for three consecutive years without material audit exceptions, *or***
 - **the Secretary *fails* to make the capacity determination within the 120-day period or an agreed-to extension of the period.**

TERA Enhancements

- **The draft bill would require the Secretary to make available to the Indian tribe any funding that the Secretary would otherwise have expended to carry out any function, service, or activity that, as a result of the Indian tribe implementing a TERA, the Secretary no longer has to carry out.**
- **Rrequires the Secretary to provide this funding through an annual funding agreement negotiated and entered into apart from the TERA.**

TERA Enhancements

- **Clarifying provision to existing liability limitation for TERA's**
- **Nothing in Title V “absolves, limits, or otherwise affects the liability of the United States, if any, for any term of any lease, business agreement, or right-of-way...that is not a negotiated term” or “any 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 Title V.**

Leasing Authority Without TERA's

- **No Secretarial approval for leases, business agreements with, or grant rights-of-way to, “tribal energy development organizations” that are majority owned and controlled by the Indian tribe if:**
 - **Record of managing programs related to land under the ISDEA for three consecutive years without material audit exceptions, and**
 - **Tribe (or the tribe and 1 or more other tribes) own and control the majority interest in the tribal energy development organization throughout the full term of the lease, business agreement, or right-of-way.**
- **Process for the Secretary to certify that an organization has these requirements.**

Forest and Agricultural Management

- **Amends the National Indian Forest Resources Management Act (25 U.S.C. 3101 *et seq.*) to state that forest management practices conducted pursuant to forest management plans approved by the Secretary of the Interior would be considered sustainable for the purposes of any applicable Federal standard or benefit requiring a demonstration of sustainability.**
- **Similar amendment for *American Indian Agricultural Resource Management Act (25 U.S.C. 3711).***

Biomass Demonstration Projects

- **Amends the Tribal Forest Protection Act of 2004 (*25 U.S.C. 3115a*) to require that the Secretary of the Interior carry out at least four demonstration projects to promote biomass energy production on Indian forest land and in nearby communities.**
- **Authorizes the Secretary to enter into, among other things, 20-year contracts or agreements with Indian tribes to harvest woody biomass from Federal land.**

NCAI Action

- **Comments and recommendations to Barrasso draft submitted**
- **List of legislative recommendations to support tribal energy development**
 - **Ad hoc group of attorneys and lobbyists working with NCAI to develop the recommendations based on tribal input from around the US**
 - **July 14, 2011 draft included with materials**

Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011 or HEARTH Act of 2011

- **Extends authority to lease restricted lands for business, agricultural, public, religious, educational, recreational, or residential (not mining) purposes without the approval of the Secretary of the Interior if Secretary approves tribal lease regulations.**
- **Environmental review process required under tribal lease regulations before those regulations obtain the Secretary's approval. Requires the process to identify and evaluate any significant effects a proposed lease may have on the environment and allow public comment on those effects.**
- **Allows tribes to rely on a federal environmental review process if the project under review is federally funded.**

Indian Energy Tax Act

- **Transfer of production tax credit for electricity produced from renewable resources**
- **Transfer of energy investment tax credit**
- **Permanent extension and enhancement of accelerated depreciation rules for qualifying property on reservations**
- **Expands eligibility of qualified Indians for work opportunity tax credit**
- **Extends ARRA grant funding for tribal renewable energy projects**

The Bad News

- **Legislative proposals with a budget impact will be difficult to maintain**
- **Consensus (at least with the NCAI group) is to put as many of Tribes' needs in front of Congress now, despite the budget realities, and work from there**

The Good News

- **The years of work by the Tribal Energy Community has blossomed in 2011 with thoughtful fixes, reworked concepts and new ideas**
- **Political landscape fertile soil because many of the underlying themes (jobs, self-determination, economic growth) find bipartisan support**
- **Pressure to show results instead of gridlock**

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