

NATIVE AMERICAN ENERGY ACT

NOVEMBER 12, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1548]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1548) to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Native American Energy Act”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Appraisals.
- Sec. 4. Standardization.
- Sec. 5. Environmental reviews of major Federal actions on Indian lands.
- Sec. 6. BLM oil and gas fees.
- Sec. 7. Bonding requirements and nonpayment of attorneys’ fees to promote Indian energy projects.
- Sec. 8. Tribal biomass demonstration project.
- Sec. 9. Tribal resource management plans.
- Sec. 10. Leases of restricted lands for the Navajo Nation.
- Sec. 11. Nonapplicability of certain rules.

**SEC. 3. APPRAISALS.**

(a) AMENDMENT.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding at the end the following:

**“SEC. 2607. APPRAISAL REFORMS.**

“(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 subsections (2) and (3) below.

“(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.”.

(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.”.

**SEC. 4. STANDARDIZATION.**

As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior shall implement procedures to ensure that each agency within the Department of the Interior that is involved in the review, approval, and oversight of oil and gas activities on Indian lands shall use a uniform system of reference numbers and tracking systems for oil and gas wells.

**SEC. 5. ENVIRONMENTAL REVIEWS OF MAJOR FEDERAL ACTIONS ON INDIAN LANDS.**

Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is amended by inserting “(a) **IN GENERAL.**—” before the first sentence, and by adding at the end the following:

“(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 7 of that Act, shall give the Secretary any additional authority over energy projects on Alaska Native Claims Settlement Act lands.”.

**SEC. 6. BLM OIL AND GAS FEES.**

The Secretary of the Interior, acting through the Bureau of Land Management, shall not collect any fee for any of the following:

- (1) For an application for a permit to drill on Indian land.
- (2) To conduct any oil or gas inspection activity on Indian land.
- (3) On any oil or gas lease for nonproducing acreage on Indian land.

**SEC. 7. BONDING REQUIREMENTS AND NONPAYMENT OF ATTORNEYS' FEES TO PROMOTE INDIAN ENERGY PROJECTS.**

(a) **IN GENERAL.**—A plaintiff who obtains a preliminary injunction or administrative stay in an energy related action, but does not ultimately prevail on the merits of the energy related action, shall be liable for damages sustained by a defendant who—

- (1) opposed the preliminary injunction or administrative stay; and
- (2) was harmed by the preliminary injunction or administrative stay.

(b) **BOND.**—Unless otherwise specifically exempted by Federal law, a court may not issue a preliminary injunction and an agency may not grant an administrative stay in an energy related action until the plaintiff posts with the court or the agency a surety bond or cash equivalent—

- (1) in an amount the court or agency decides is 30 percent of that amount that the court or agency considers is sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages, including but not limited to preliminary development costs, additional development costs, and reasonable attorney fees, that each defendant may sustain as a result of the preliminary injunction or administrative stay;
- (2) written by a surety licensed to do business in the State in which the Indian Land or other land where the activities are undertaken is situated; and
- (3) payable to each defendant opposing the preliminary injunction or administrative stay, in the event that the plaintiff does not prevail on the merits of the energy related action, *Provided*, that, if there is more than one plaintiff, the court or agency shall establish the amount of the bond required by this subsection for each plaintiff in a fair and equitable manner.

(c) **LIMITATION ON CERTAIN PAYMENTS.**—Notwithstanding section 1304 of title 31, United States Code, no award may be made under section 504 of title 5, United States Code, or under section 2412 of title 28, United States Code, and no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay any fees or other expenses under such sections to any plaintiff related to an energy related action.

(d) **DEFINITIONS.**—For the purposes of this section, the following definitions apply:

(1) **ADMINISTRATIVE STAY.**—The term “Administrative Stay” means a stay or other temporary remedy issued by a Federal agency, including the Department of the Interior, the Department of Agriculture, the Department of Energy, the Department of Commerce, and the Environmental Protection Agency.

(2) **INDIAN LAND.**—The term “Indian Land” has the same meaning given such term in section 203(c)(3) of the Energy Policy Act of 2005 (Public Law 109–58; 25 U.S.C. 3501), including lands owned by Native Corporations under the Alaska Native Claims Settlement Act (Public Law 92–203; 43 U.S.C. 1601).

(3) **ENERGY RELATED ACTION.**—The term “energy related action” means a cause of action that—

- (A) is filed on or after the effective date of this Act; and
- (B) seeks judicial review of a final agency action (as defined in section 702 of title 5, United States Code), to issue a permit, license, or other form of agency permission allowing:

- (i) any person or entity to conduct activities on Indian Land, which activities involve the exploration, development, production or transportation of oil, gas, coal, shale gas, oil shale, geothermal resources, wind or solar resources, underground coal gasification, biomass, or the generation of electricity, or

- (ii) any Indian Tribe, or any organization of two or more entities, at least one of which is an Indian tribe, to conduct activities involving the exploration, development, production or transportation of oil, gas, coal, shale gas, oil shale, geothermal resources, wind or solar resources, underground coal gasification, biomass, or the generation of electricity, regardless of where such activities are undertaken.

(4) **ULTIMATELY PREVAIL ON THE MERITS.**—The phrase “Ultimately prevail on the merits” means, in a final enforceable judgment on the merits, the court rules in the plaintiff’s favor on at least one cause of action which is an underlying rationale for the preliminary injunction, and does not include circumstances where the final agency action is modified or amended by the issuing agency unless such modification or amendment is required pursuant to a final enforceable judgment of the court or a court-ordered consent decree.

(5) **INDIAN TRIBE.**—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native vil-

lage or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**SEC. 8. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

The Tribal Forest Protection Act of 2004 is amended by inserting after section 2 (25 U.S.C. 3115a) the following:

**“SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

“(a) **IN GENERAL.**—For each of fiscal years 2014 through 2018, 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 September 20, 2015, 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.”.

**SEC. 9. TRIBAL RESOURCE MANAGEMENT PLANS.**

Unless otherwise explicitly exempted by Federal law enacted after the date of the enactment of this Act, any activity conducted or resources harvested or produced pursuant to a tribal resource management plan or an integrated resource management plan approved by the Secretary of the Interior under the National Indian For-

est Resources Management Act (25 U.S.C. 3101 et seq.) or the American Indian Agricultural Resource Management Act (25 U.S.C. 3701 et seq.), shall be considered a sustainable management practice for purposes of any Federal standard, benefit, or requirement that requires a demonstration of such sustainability.

**SEC. 10. LEASES OF RESTRICTED LANDS FOR THE NAVAJO NATION.**

Subsection (e)(1) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(e)(1); commonly referred to as the “Long-Term Leasing Act”), is amended—

- (1) by striking “, except a lease for” and inserting “, including leases for”;
- (2) in subparagraph (A), by striking “25” the first place it appears and all that follows and inserting “99 years;”;
- (3) in subparagraph (B), by striking the period and inserting “; and”; and
- (4) by adding at the end the following:

“(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.”

**SEC. 11. NONAPPLICABILITY OF CERTAIN RULES.**

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 land held in trust or restricted status for the benefit of Indians except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

**PURPOSE OF THE BILL**

The purpose of H.R. 1548 is to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands.

**BACKGROUND AND NEED FOR LEGISLATION**

H.R. 1548 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 aimed at stopping tribal/ANC energy activities; lowering the cost of federal permitting on tribal trust lands; and increasing the opportunity for tribes to govern more aspects of energy development on their lands.

For the second Congress in a row, the Native American Energy Act has been introduced and vetted with Indian tribes and others. Indeed, each of the nine substantive sections (sections 3–11) contained in the bill reduce a real-world barrier that one or more Indian tribes has faced in its efforts to develop its energy resources.

Despite the support of mature energy-producers such as the Southern Ute Indian Tribe and the Navajo Nation (and the Navajo Nation Oil and Gas Company), as well as the U.S. Chamber of Commerce, the Department of the Interior found nothing in the bill to support. See “Testimony of Mike Black, Director of the Bureau of Indian Affairs, United States Department of the Interior Before the Subcommittee on Indian and Alaska Native Affairs, House Natural Resources Committee, U.S. House of Representatives, on H.R. 1548, Native American Energy Act,” April 26, 2013.

**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, ANCs own fee title to 44 million acres of land; this land is not under the jurisdiction of the Depart-

ment of the Interior. The ANCs obtained these lands in settlement of their aboriginal land claims under the Alaska Native Claims Settlement Act of 1971.

A number of Indian reservations contain large accumulations of known and prospective mineral resources. In Fiscal Year (FY) 2012, revenues paid to Indian tribes and individual Indian allottees from the mineral development of their trust lands totaled approximately \$700 million. 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. The Department has estimated that undiscovered fossil fuel resources in Indian Country are valued at approximately \$800 billion.

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.

Recent advancements 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 opportunity to create jobs for their members and revenue for their governments and enterprises. In FY 2011, the amount of oil and gas produced from Indian lands was approximately 87 percent greater than the annual average from FY 2000–2010.

There are also high wind and solar prospects on a number of Indian reservations. Early this year, the Department issued a final rule revising surface (non-mineral) leasing of Indian trust lands, including streamlining for approval of wind and solar projects. Wind and solar industries have also benefited from large subsidies granted by the Obama Administration. Despite these efforts, few if any commercial projects have been successfully developed on Indian lands to date.

#### FACTS ON THE GROUND REQUIRE LEGISLATIVE ACTION

While many Indian tribes and ANCs have made great strides in building businesses and strengthening their economies, tribal communities remain at the bottom of nearly every economic and social indicator. The sad fact is that in 21st century America, severe poverty wears a Native face.

At the same time, in an effort to address their weak economies, Indian tribes and ANCs have worked for decades to reform federal laws and regulations preventing the responsible development of their energy and other natural resources.

The Southern Ute Indian Tribe in Colorado and the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota are prodigious producers of natural gas and oil, respectively, and energy development on their lands has made them the economic drivers of their regions. Three other tribes—the Navajo Nation, the Crow Tribe, and the Hopi Tribe—own billions of tons of developable coal deposits and are keenly interested in using coal to address economic and social conditions most Americans would find unimaginable.

Recent articles indicate several tribes are undertaking new energy projects. See articles published on June 5, 2013, in the Durango Herald entitled “Tribe seeks to expand shale-oil drilling,” discussing the Tribe’s plans to develop some 12,000 acres of tribal

land atop the Mancos Shale formation, and an article published on June 20, 2013, in the Seattle Times entitled “Feds approve 1.4B ton coal deal with Crow tribe.”

While these two tribes are actively embracing energy development, it is noteworthy that the projects they are pursuing require federal review and approval, and this approval arguably brings little to no value to the tribes involved. If federal review and approval of energy leases created any economic value, then private landowners and state governments would be clamoring to have their projects reviewed and approved by the federal government, too.

#### LEGAL AND OTHER BARRIERS ARE WELL KNOWN

Because Indian tribal and individual Indian-owned land is held in trust by the United States for the benefit of the tribe or individual owner, federal laws and regulations govern in large part energy development on these lands. Over the years, federal laws have evolved along with federal Indian policy to promote Indian self-determination and foster and respect tribal decision-making. From the Indian Mineral Leasing Act (1938) to the Indian Mineral Development Act (1982) to the Indian Tribal Energy Development and Self Determination Act (2005), Congress has sought to increase and promote tribal involvement in the negotiation and approval of leases and other business agreements related to energy development on their lands.

Despite these trends, the federal government continues to be the main inhibitor to energy resource development on Indian lands. As recently as September 2012, the Interior Department’s Office of Inspector General (IG) issued a report entitled “Oil and Gas Leasing in Indian Country: An Opportunity for Economic Development,” (Report No. CR-EV-BIA-001-2011). The Report notes that American Indian lands hold 10 percent of the nation’s energy resources, and that oil and gas leases on Indian land generated some \$450 million in fiscal year 2011 alone. The IG’s Report discussed the many impediments to more vigorous oil and gas production on Indian lands, and concluded that “Indian oil and gas leasing is not achieving its full economic potential. Numerous problems contribute to a general industry preference to conduct business on private, Federal, and state lands before considering Indian lands.”

Of the major barriers to greater development of Indian oil and gas reserves, five can be traced to the workings of the Bureau of Indian Affairs or other agencies within the Department of the Interior. They include: no coordinated strategy and organizational structure to manage the Bureau of Indian Affairs’ (BIA) oil and gas activities; inconsistent policies and procedures among BIA regions; extra layers of environmental review; fractionated ownership of allotted lands; and high well permit fees assessed by the Bureau of Land Management.

#### HYDRAULIC FRACTURING

A clear and present danger to tribal production of oil and gas development is the rule proposed by the Bureau of Land Management (BLM) to regulate hydraulic fracturing (HF) on public lands. The BLM rule, if finalized, would impose new, additional costs to an already burdensome federal regulatory process for tribal lands.

As explained by the Chairman of the Blackfeet Nation (Montana) in an oversight hearing in the 112th Congress, “The Blackfeet Tribe is concerned that BLM’s proposed rule on Hydraulic Fracturing, if adopted, will create additional burdens to an already burdensome process that will likely delay and possibly prevent beneficial development of Blackfeet oil resources.” (T.J. Show, Chairman of the Blackfeet Tribal Business Council, Testimony on the Bureau of Land Management’s Hydraulic Fracturing Rule’s Impact on Indian Tribal Energy Development, House Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs, April 19, 2012).

The BLM drafted a proposed rule to address what it said was a public demand for HF regulation of public lands. For reasons not fully explained by BLM, for the purposes of the HF rule, Indian lands are deemed to be the same as public lands. While title to Indian trust land is technically owned by the federal government, the beneficial interest in such lands is vested exclusively in the Indians themselves. Trust lands enjoy the same protection under the Fifth Amendment as private property. The BLM’s proposed rule turns this fundamental tenet of federal Indian policy on its head.

Tribal leaders who testified against the proposed HF 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; and (3) the rule will result in new delays and paperwork burdens and will thus drive industry away from leasing Indian lands.

With the BLM HF rule in place on reservations where Indian trust lands and non-Indian fee lands are intermixed in a checkerboard 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 land, where more reasonable State rules govern.

The recently revised rule is still under analysis by affected tribes; however, as a general matter, tribes want the BLM to defer to tribal regulatory standards. In the absence of tribal rules, private operators on leased tribal lands generally adhere to State HF rules, which have proven over many years to be satisfactory.

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. During Full Committee consideration of the bill, the committee adopted a technical amendment offered by Congressman Don Young (R-AK) that would provide a definition of “Indian tribe” in Section 7.

#### COMMITTEE ACTION

H.R. 1548 was introduced on April 12, 2013, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Energy and Mineral Resources and Indian and Alaska Native Affairs. On April 26, 2013, the Subcommittee on Indian and Alaska Native Affairs held a hearing on the bill. On June 12, 2013, the

Full Natural Resources Committee met to consider the bill. The Subcommittees on Energy and Mineral Resources and Indian and Alaska Native Affairs were discharged by unanimous consent. Congressman Young offered an amendment designated #1 to the bill; the amendment was adopted by voice vote. Delegate Eni Faleomavaega (D-AS) offered an amendment designated .021; the amendment was withdrawn. No further amendments were offered, and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 25 to 15, as follows:

## Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: June 12, 2013

Recorded Vote #: 12

Meeting on / Amendment on: H.R. 1548 - To adopt and favorably report the bill to the House, as amended, agreed to by a vote of 25 yeas to 15 nays

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA, Chairman</b>	X			<b>Mr. Duncan of SC</b>	X		
<i>Mr. Markey, MA, Ranking</i>				<i>Ms. Hanabusa, HI</i>		X	
<b>Mr. Young, AK</b>	X			<b>Mr. Tipton, CO</b>	X		
<i>Mr. Defazio, OR</i>		X		<i>Mr. Cardenas, CA</i>		X	
<b>Mr. Gohmert, TX</b>	X			<b>Mr. Gosar, AZ</b>	X		
<i>Mr. Faleomavaega, AS</i>	X			<i>Mr. Horsford, NV</i>		X	
<b>Mr. Bishop, UT</b>	X			<b>Mr. Labrador, ID</b>			
<i>Mr. Pallone, NJ</i>		X		<i>Mr. Huffman, CA</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Southerland, FL</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Mr. Holt, NJ</i>		X		<i>Ms. Shea-Porter, NH</i>		X	
<b>Mr. Broun, GA</b>	X			<b>Mr. Runyan, NJ</b>	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
<b>Mr. Fleming, LA</b>	X			<b>Mr. Amodei, NV</b>			
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Mullin, OK</b>	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>		X	
<b>Mr. Thompson, PA</b>	X			<b>Mr. Stewart, UT</b>	X		
<i>Mr. Sablan, CNMI</i>				<b>Mr. Daines, MT</b>	X		
<b>Ms. Lummis, WY</b>	X			<b>Mr. Cramer, ND</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. LaMalfa, CA</b>			
<b>Mr. Benishek, MI</b>	X			<b>Mr. Smith, MO</b>	X		
<i>Mr. Pierluisi, PR</i>							
				<b>TOTALS</b>	25	15	

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section designates the title of the bill to be the Native American Energy Act.

*Section 2. Table of contents*

This section provides a table of contents for the Act.

*Section 3. Appraisals*

This section 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 4. Standardization*

This section directs the Secretary of the Interior to standardize the way the seven bureaus of the Department of the Interior track oil and gas activities on Indian lands.

*Section 5. Environmental reviews of major Federal actions on Indian lands*

This section provides that for any environmental impact statement required under the National Environmental Policy Act of 1969 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.

*Section 6. BLM oil and gas fees*

This section provides that the Department of the Interior deems Indian land it holds in trust to be public land for the purpose of assessing various oil and gas fees. Under current law, the BLM charges \$6,500 to process an APD fee. Section 6 prohibits the Bureau of Land Management from collecting any fees on Indian land for APDs, for conducting any oil or gas inspection activity, or for oil and gas leases for nonproducing acreage.

*Section 7. Bonding requirements and nonpayment of attorneys' fees to promote Indian energy projects*

Section 7 is intended to deter frivolous legal actions filed by those seeking to block energy development on Indian or Alaska Native Corporation (ANC) land, or energy development by an Indian tribe or ANC on any land. This provision does not affect anyone's ability to file a legal action (such as a lawsuit in federal court or administrative appeal at an agency). Rather, it makes a plaintiff liable for damages sustained by a defendant when the plaintiff obtains a preliminary injunction or administrative stay but does not ultimately prevail on the merits of his legal action. Section 7 also prohibits a federal court or agency from issuing a preliminary injunction or administrative stay unless the plaintiff posts a bond representing 30% of the amount sufficient to compensate the defendant for damages. Finally, Section 7 prohibits taxpayer dollars from being used to pay costs and fees of those who file legal actions against energy development benefitting Native Americans.

*Section 8. Tribal Biomass Demonstration Project*

This section 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 9. Tribal resource management plans*

This section 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 10. Leases of restricted lands for the Navajo Nation*

This section enhances Navajo Nation leasing authority. The Indian Long-Term Leasing Act (25 U.S.C. 415) 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 impact statement under the National Environmental Policy Act.

In the 112th Congress, the HEARTH Act (Public Law 112-151) 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.

Section 10 of H.R. 1548 allows the Navajo Nation to execute mineral and geothermal leases in a manner similar to the HEARTH Act. The terms of such leases may be for 25 years with an option to renew for one term of up to 25 years.

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

*Section 11. Hydraulic fracturing*

This section 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.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under sec-

tion 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1548—Native American Energy Act*

Summary: H.R. 1548 would make several changes related to environmental laws, energy programs, and the management of mineral resources on Native American reservations. CBO estimates that implementing the bill would cost \$29 million over the 2014–2018 period, assuming appropriation action consistent with the bill.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. However, CBO estimates that the effect on direct spending would be insignificant in each year over the 2014–2023 period. Enacting H.R. 1548 would not affect revenues.

H.R. 1548 would impose an intergovernmental and private-sector mandate by requiring plaintiffs, including public and private entities, to post a bond when seeking a preliminary injunction to stop Native American energy projects. Based on the number of injunctions that would require bonds and the aggregate value of the bonds required to reach the annual thresholds, CBO estimates that the costs for public and private entities would probably fall below the annual thresholds established in the Unfunded Mandates Reform Act (UMRA) (\$75 million and \$150 million, respectively, in 2013, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1548 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	6	6	6	6	6	29
Estimated Outlays .....	6	6	6	6	6	29

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2013.

The bill would prohibit the Bureau of Land Management (BLM) from collecting fees for: applications for a permit to drill (APD) for oil or gas on tribal lands, oil or gas inspections on tribal lands, or nonproducing oil or gas leases on tribal lands. Under current law, BLM charges \$6,500 to process each APD. In 2012, BLM collected about \$6 million in APD fees for projects on Indian lands. BLM does not currently collect fees for oil or gas inspections or for non-producing leases on tribal lands.

Those fees are authorized to be collected in annual appropriation acts, and therefore, the fee amounts are an offset to discretionary spending. CBO estimates that this provision of H.R. 1548 would reduce collections by \$6 million a year over the 2014–2018 period. That reduction in future collections for drilling permits would have the effect of increasing future net discretionary spending, assuming that future appropriation acts are consistent with the provisions of H.R. 1548.

CBO estimates that implementing other provisions of H.R. 1548 would have an insignificant impact on federal spending. Those provisions would:

- Require the Department of the Interior (DOI) to act on any appraisal of energy projects required under current law within 30 days and allow tribes to waive the requirement for appraisals under specified circumstances.
- Require DOI to use a uniform reference system for tracking oil and gas wells. DOI currently uses the American Petroleum Institute well-numbering system to identify and track oil and gas wells.
- Restrict the review of and comments on environmental impact statements of projects on tribal lands to members of the tribe and residents of the area.
- Make plaintiffs who obtain injunctions against energy projects on tribal lands but do not prevail on the merits of the case liable to the defendant for damages. Under the bill, plaintiffs would be required to post a bond with the court for 30 percent of the amount required to compensate defendants before the court could issue an injunction.
- Require DOI to enter into contracts for energy demonstration projects using timber from federal forests that is not marketable.
- Authorize the Navajo Nation to enter into commercial and agricultural leases for up to 99 years. Under the bill, the Navajo Nation also would be authorized to enter into mineral resource leases without DOI approval for 25 years. Any income resulting from those leases would be paid directly to the tribal owners or to the appropriate tribal government and would have no significant impact on the federal budget.

**Pay-As-You-Go-Considerations:** Enacting H.R. 1548 would affect direct spending; therefore, pay-as-you-go procedures apply. The legislation would prohibit payments of attorneys' fees under the Equal Access to Justice Act for lawsuits regarding energy projects on tribal lands. A portion of those payments comes from the Treasury Department's Judgment Fund and is recorded in the budget as direct spending. Based on information about the history of such payments provided by the Government Accountability Office, CBO estimates that any reduction in direct spending as a result of the bill would be insignificant. Enacting H.R. 1548 would not affect revenues.

**Intergovernmental and Private-Sector Impact:** H.R. 1548 would impose an intergovernmental and private-sector mandate by requiring plaintiffs, including public and private entities, to post a bond when seeking a preliminary injunction to stop Native American energy projects. Preliminary injunctions are issued rarely and only in cases where compensation awarded by the court could not equal the potential personal damage or damage to property. The amount of the bond would be determined by the court and would be based on potential losses incurred by the defendant as a result of the injunction. The cost of the mandate would be the purchase price of bonds required to obtain a preliminary injunction under the legislation. Based on the number of injunctions that would require bonds and the aggregate value of the bonds required to reach the annual thresholds, CBO estimates that the costs for public and private entities would probably fall below the annual thresholds established in UMRA (\$75 million and \$150 million, respectively, in 2013, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Martin von Gnechten; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the bill would cost \$29 million over the 2014–2018 period, assuming appropriation action consistent with the bill.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands.

#### EARMARK STATEMENT

This bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman estimates that this bill directs the Secretary of the Interior to conduct one rulemaking, and the Council on Environmental Quality to conduct one rulemaking.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

#### PREEMPTIONS OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

**ENERGY POLICY ACT OF 1992**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) \* \* \*

(b) TABLE OF CONTENTS.—

\* \* \* \* \*

**TITLE XXVI—INDIAN ENERGY RESOURCES**

Sec. 2601. Definitions.

\* \* \* \* \*

Sec. 2607. Appraisal reforms.

\* \* \* \* \*

**TITLE XXVI—INDIAN ENERGY**

\* \* \* \* \*

**SEC. 2607. APPRAISAL REFORMS.**

(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 subsections (2) and (3) below.

(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.*

\* \* \* \* \*

**NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**

\* \* \* \* \*

**TITLE I—DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

\* \* \* \* \*

SEC. 102. (a) *IN GENERAL.*—The Congress authorizes and directs that, to the fullest extent possible: (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 Act, 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 decision-making 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 title II of this Act, 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, United States Code, 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 Act; 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 title II of this Act.

*(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 7 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**

\* \* \* \* \*

**SEC. 3. TRIBAL BIOMASS DEMONSTRATION PROJECT.**

(a) *IN GENERAL.*—For each of fiscal years 2014 through 2018, 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 September 20, 2015, 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.

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### ACT OF AUGUST 9, 1955

AN ACT To authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) 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 Kalispel Indian Reservation and land held in trust for the Kalispel Tribe of Indians, the Puyallup Tribe of Indians, 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 Reservations, 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 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 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 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 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 ap-

proval 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) 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 THE HOPI TRIBE AND THE HOPI PARTITIONED LANDS ACCOMMODATION AGREEMENT.—Notwithstanding subsection (a), 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 the date of enactment of this subsection);

(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 the date of enactment of this Act 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 In-

dian 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 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a); 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)(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), 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 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** *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 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), 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) 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, United States Code. 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, United States Code, 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, United States Code.

(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

(1) IN GENERAL.—Notwithstanding subsection (a) 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 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.

## DISSENTING VIEWS

Tribal lands hold great potential for domestic energy production. Yet tribes often cannot harness the full economic development potential of their natural resources because of longstanding bureaucratic hurdles. H.R. 1548 aims to address some of these hurdles by proposing a number of changes to existing law or agency practice, all purportedly aimed at fostering energy development on Indian lands. While we agree that development of tribal natural resources provides an opportunity for significant economic benefits in Indian country, H.R. 1548 goes far beyond the reforms necessary to achieve tribal self-determination in energy development. H.R. 1548 contravenes existing environmental protections and eliminates the critical check of the judiciary on the exercise of power by other branches of government.

H.R. 1548 is flawed in three significant ways. First, H.R. 1548 overreaches by limiting informed decision-making at the federal level through misguided curtailment of the National Environmental Policy Act (NEPA). Section 5 of the bill would amend one of the Nation's bedrock environmental laws to limit review and comment on proposed projects to members of the affected Indian tribe and other individuals residing within an undefined "affected area." This limitation severely restricts public involvement in proposed federal projects that may affect the environment—a central tenet of NEPA—thus contributing to uninformed decision making at the federal level. Moreover, artificially limiting such review and comment would prevent even other Indian tribes with cultural ties in these so-called affected areas from commenting on a proposed project.

Because "affected area" is undefined in the bill, uniform application of the term is doubtful and invites legal scrutiny by those individuals who may be negatively impacted by a proposed project but who are artificially excluded from review and comment. Application could therefore lead to lawsuits that further delay development of tribal energy projects—an outcome that is contrary to the stated goal of this legislation. Notably, Section 5 is applicable to more than energy projects; it applies to any major project on Indian lands by an Indian tribe, including but not limited to, proposed mining contracts, proposed water development projects, construction of solid waste facilities, and even construction of tribal class III gaming facilities. The negative impact of this provision's waiver of NEPA protections for any type of federal action on Indian lands cannot be overstated.

Second, Section 7 of the bill weakens important legal devices for those seeking environmental justice. It requires a claimant to post a significant surety bond in order to bring claims, prevents recovery of attorneys' fees in cases challenging energy projects, and makes a claimant who fails to succeed on the merits of a suit liable

to the defendant in attorneys' fees and costs. These requirements make it extremely difficult, if not impossible, for members of the public—even tribal members whose homelands may be impacted by a major federal action of any kind—to prevent or seek judicial redress for environmental harm caused by an energy project on Indian land. Members of the Navajo Nation, for example, experienced firsthand the destruction caused by environmental disaster near Gallup, New Mexico, when United Nuclear Corporation's Church Rock uranium mill tailings disposal pond breached its dam and over 1000 tons of radioactive mill waste and approximately 93 million gallons of mine effluent flowed into a nearby river. Widespread radioactive contamination from this disaster near Navajo lands persist to this day; if H.R. 1548 had been law at the time of this disaster, tribal victims without the financial capacity to file suit would have been barred from the courthouse door. We cannot support a bill that prevents legitimate claims from being brought by victims of environmental disasters caused by energy development projects simply because they cannot afford their day in court.

Furthermore, Section 7 even applies to *non-Indian land* when a tribe partners with an energy company to develop natural resources *anywhere in the United States*. This troubling provision incentivizes energy companies to partner with tribes simply for the benefit of skirting NEPA and profiting from restricted judicial review, thus creating a significant loophole for virtually unregulated development.

Lastly, Section 11 of the bill specifically prevents any fracking rule promulgated by the Department of the Interior from applying to Indian lands without the express consent of the owner. In practice, this provision would create an immediate regulatory void—a concern even the Majority has acknowledged since State laws that regulate hydraulic fracturing cannot be imposed on the tribe itself and, in any event, tribes oppose such application on their lands. Adequate protection of human health and the environment in hydraulic fracturing activities on tribal lands is therefore a serious concern when tribal owners do not consent.

In the Subcommittee hearing on H.R. 1548, a number of tribal witnesses indicated a strong desire to work with the Bureau of Land Management on drafting hydraulic fracturing regulations that properly reflect the unique characteristics of Indian country, preserve tribal autonomy, and incorporate appropriate environmental safeguards. H.R. 1548 would instead leave it up to tribes and their members with impacted interests to consent, which the Administration testified would be difficult to obtain, particularly when consent from owners of fractionated interests in land is required in order for federal regulations to apply.

Finally, according to CBO estimates, H.R. 1548 would cost \$29 million through 2014–2018, assuming appropriations are consistent with the bill. H.R. 1548 would prohibit the Bureau of Land Management (BLM) from collecting fees for applications for a permit to drill for oil or gas on tribal lands. The fees are authorized to be collected in annual appropriations acts and are offsets to discretionary spending. That reduction in future fee collections would subsequently increase discretionary spending and would apply pay-as-you-go procedures thus requiring an offset.

Democrats offered an amendment during Full Committee markup to improve the bill, despite its serious flaws. Representative Faleomavaega (D-AS), on behalf of Subcommittee Ranking Member Hanabusa (D-HI), offered an amendment that would have provided a fix to the misguided *Carcieri v. Salazar* decision by clarifying the Secretary of the Interior's authority to take land into trust for all federally recognized Indian tribes when the acquisitions are made for energy development purposes. This targeted *Carcieri* fix amendment was withdrawn only after Subcommittee Chairman Young pledged to work with Republican leadership to move comprehensive *Carcieri* fix legislation in the 113th Congress. As Indian country's highest legislative priority, Committee Democrats look forward to working with Chairman Young to advance a bipartisan bill that restores the Secretary's authority to take land into trust for all federally recognized Indian tribes, regardless of when they were recognized.

In sum, the judicial review limitations contained in H.R. 1548 are clearly intended to chill litigation to the detriment of bona fide claimants and undermine the real "teeth" of NEPA by making the availability of injunctive relief when an agency fails to fulfill the statute's procedural requirements all but disappear. Any legislation that would keep legitimate claims from being brought by victims of environmental disasters simply because they lack financial resources and prevent full application of NEPA, as H.R. 1548 would, should not be allowed to advance in the House.

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