

The following is a redline discussion draft of an Indian energy bill that Senator Barrasso is considering for introduction. This draft is meant to encourage comments, suggestions and ideas from stakeholders for a bill that would facilitate the development of tribal energy resources. The Senator is seeking further input before deciding what ultimately should or should not be included in the bill.

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

**I. Amendments to 25 U.S.C. 3501-3506 (Indian Energy)**

§ 3501. Definitions

In this title [25 USCS §§ 3501 et seq.]:

(1) The term "Director" means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

(2) The term "Indian land" means--

(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held--

(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(iii) by a dependent Indian community; and

(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

(3) The term "Indian reservation" includes--

(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph [enacted Aug. 8, 2005];

(B) a public domain Indian allotment; and

(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located--

(i) on original or acquired territory of the community; or

(ii) within or outside the boundaries of any State or States.

(4) (A) The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(B) For the purpose of paragraph (12) and sections 2603(b)(1)(C) and 2604 [25 USCS §§ 3503(b)(1)(C) and 3504], the term "Indian tribe" does not include any Native Corporation.

(5) The term "integration of energy resources" means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

(6) The term "Native Corporation" has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(7) The term "organization" means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

(8) The term "Program" means the Indian energy resource development program established under section 2602(a) [25 USCS § 3502(a)].

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

as reforestation or an underground reservoir.

(11) The term "~~tribal energy resource development organization~~tribal energy development organization" means an organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 2602 [25 USCS § 3502] or to enter into a lease or business agreement with, or acquire a right-of-way from, an Indian tribe pursuant to subsection (a)(2)(A)(ii) or (b)(2)(A)(ii) of section 2604.

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

§ 3502. Indian tribal energy resource development

(a) Department of the Interior program.

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and ~~tribal energy resource development organization~~tribal energy development organizations in achieving the purposes of this title [25 USCS §§ 3501 et seq.].

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

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

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

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

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this title [25 USCS §§ 3501 et seq.], including--

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

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

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

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

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

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

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

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

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

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

~~(3)~~(4) (A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including--

(i) geologic sequestration;

(ii) forest sequestration;

(iii) agricultural sequestration; and

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

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

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

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

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

~~(4)~~(5) (A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

determines to be appropriate.

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

~~(6)(7)~~ There is authorized to be appropriated to carry out this subsection \$ 20,000,000 for each of fiscal years 2006 through 2016.

(c) Department of Energy loan guarantee program.

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe or a tribal energy development organization for energy development.

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

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

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

(B) an Indian tribe, from funds of the Indian tribe; or

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

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

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

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

(7) Not later than 1 year after the date of enactment of this section [enacted Aug. 8, 2005], the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) Preference.

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

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

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

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

§ 3503. Indian tribal energy resource regulation

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

(b) Use of funds. Funds from a grant provided under this section may be used--

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

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

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

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

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

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

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

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

(B) are responsible for protecting the environment.

(c) Other assistance.

(1) In carrying out the obligations of the United States under this title [25 USCS §§ 3501 et seq.], the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that ~~on the request of an Indian tribe, the Indian tribe~~ on the request of an Indian tribe or a tribal energy development organization, the Indian tribe or tribal energy development organization shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

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

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

(B) indirectly, by providing financial assistance to an Indian tribe or tribal energy development organization to secure independent assistance.

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

(a) Leases and business agreements. In accordance with this section--

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

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

(B) construction or operation of--

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

(ii) a facility to process or refine energy resources, at least a portion of which have been

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

developed on or produced from tribal land; and

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

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

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

~~(i) 30 years; or~~

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

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

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

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

(ii)(I) pursuant to an application from the Indian tribe, the Secretary has determined that the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and, for a period of not less than 3 consecutive years ending on the date on which the Indian tribe requests a certification pursuant to subsection (h), that contract or compact—

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

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

(II) the other party to the lease or business agreement is, and continues to be throughout the full term or renewal term (if any) of the lease or business agreement, a tribal energy development organization, the majority of the interest in which is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes); and

(B) the lease or business agreement has a term that does not exceed—

(i) 30 years; or

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

~~(b) Rights of way for pipelines or electric transmission or distribution lines. An Indian tribe may grant a right of way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary if—~~

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

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

~~(A) an electric generation, transmission, or distribution facility located on tribal land; or  
(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and~~

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

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

~~(1) the right-of-way serves—~~

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

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

~~(C) the purposes, or facilitates in carrying out the purposes, of any lease or business agreement entered into for energy resource development on tribal land; and~~

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

~~(ii)(I) pursuant to an application from the Indian tribe, the Secretary has determined that the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and, for a period of not less than 3 consecutive years ending on the date on which the Indian tribe requests a certification pursuant to subsection (h), that contract or compact—~~

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

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

~~(II) the grantee of the right-of-way is, and continues to be throughout the full term or renewal term (if any) of the right-of-way, a tribal energy development organization, the majority of the interest in which is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes); and~~

~~(3) the right-of-way has a term that does not exceed 30 years.~~

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

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

(e) Tribal energy resource agreements.

~~(1) On the date~~

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

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

~~(2) PROCEDURE.—~~

~~(A) EFFECTIVE DATE.—~~

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

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

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

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

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

~~(i) the Secretary determines that the Indian tribe has not demonstrated that the Indian tribe has sufficient capacity to regulate the development of the specific 1 or more energy resources identified for development under the tribal energy resource agreement submitted by the Indian tribe;~~

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

~~(ii) a provision of the tribal energy resource agreement would violate applicable Federal law (including regulations) or a treaty applicable to the Indian tribe;~~

~~(iii) the tribal energy resource agreement does not include 1 or more provisions required under subparagraph (D); or~~

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

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

(II) address the term of the lease or business agreement or the term of conveyance of the

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

right-of-way;

(III) address amendments and renewals;

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

(V) address technical or other relevant requirements;

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

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

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

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

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

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

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

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

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

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

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

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

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

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

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

(ii) the identification of mitigation measures, if any, that, in the discretion of the Indian tribe, the Indian tribe might propose and the incorporation of any such measures into the lease, business agreement, or right-of-way;

(iii) a process for ensuring that--

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

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

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

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

(vi) the identification of specific classes or categories of actions, if any, determined by the Indian tribe not to have significant environmental effects.

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

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

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

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

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

(i) rescinded by the Secretary pursuant to paragraph (7)(D)(iii)(II); or

(ii) voluntarily rescinded by the Indian tribe pursuant to the regulations promulgated under paragraph (8)(B) (or successor regulations).

(G)(i) The Secretary shall make a capacity determination under subparagraph (B)(i) not later than 120 days after the date on which the Indian tribe submits to the Secretary the tribal energy resource agreement of the Indian tribe pursuant to paragraph (1), unless the Secretary and the

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

Indian tribe mutually agree to an extension of the time period for making the determination.

(ii) Any determination that the Indian tribe lacks the requisite capacity shall be treated as a disapproval under paragraph (4) and, not later than 10 days after the date of the determination, the Secretary shall provide to the Indian tribe—

(I) a detailed, written explanation of each reason for the determination; and

(II) a description of the steps that the Indian tribe should take to demonstrate sufficient capacity.

(H) Notwithstanding any other provision of this section, an Indian tribe shall be considered to have demonstrated sufficient capacity under subparagraph (B)(i) to regulate the development of the specific 1 or more energy resources of the Indian tribe identified for development under the tribal energy resource agreement submitted by the Indian tribe pursuant to paragraph (1) if—

(i) the Secretary determines that the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) without material audit exceptions for a period of not less than 3 consecutive years ending on the date on which the Indian tribe submits the tribal energy resource agreement of the Indian tribe pursuant to paragraph (1) (or without any such exceptions that were not corrected within the 3-year period); or

(ii) the Secretary fails to make the determination within the time allowed under subparagraph (G)(i) (including any extension of time agreed to under that subparagraph).

~~(3) The Secretary~~

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

~~(4) If the Secretary~~

(4) ACTION IN CASE OF DISAPPROVAL.—If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the ~~date of disapproval—date of disapproval~~, provide the Indian tribe with—

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

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

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

(A) a detailed, written explanation of—

(i) each reason for the disapproval; and

(ii) the revisions or changes to the tribal energy resource agreement necessary to address each reason; and

(B) an opportunity to revise and resubmit the tribal energy resource agreement.

~~(5) If an Indian tribe~~

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

~~(6) (A) In carrying out~~

~~(6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION.—~~

~~(A) In carrying out~~ this section, the Secretary shall--

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

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

~~(B) Subject to~~

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

(C) The Secretary shall continue to fulfill the trust obligation of the United States to perform the obligations of the Secretary under this section and to ensure that the rights and interests of an Indian tribe are protected if--

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

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

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

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

~~(iii) Nothing in this subparagraph absolves, limits, or otherwise affects the liability of the United States, if any, for any—~~

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

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

~~(7) (A) In this paragraph~~

~~(7) PETITIONS BY INTERESTED PARTIES.—~~

~~(A) In this paragraph~~, the term "interested party" means any person (including an entity) that has demonstrated that an interest of the person has sustained, or will sustain, an adverse

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe ~~approved by the Secretary~~ in effect under paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

(II) rescinding ~~approval of~~ all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in ~~subsection (a) or (b)~~ subsection (a)(2)(A)(i) or (b)(2)(A)(i).

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

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

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

compliance with the tribal energy resource agreement.

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

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

(8) Not later than 1 year after the date of enactment of the Energy Policy Act of 2005 [enacted Aug. 8, 2005], the Secretary shall promulgate regulations that implement this subsection, including--

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

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

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

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

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

(D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).<sup>1</sup>

---

<sup>1</sup> The proposed bill will include the following free-standing subsection requiring the Secretary to promulgate regulations related to the amendments to 25 U.S.C. 3504:

*(b) Regulations.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, the Secretary shall promulgate or update any regulations that are necessary to implement this section, including provisions to implement—*

*(1) subsections (a)(2)(A)(ii)(I) and (b)(2)(A)(ii)(I) of section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504);*

*(2) section 2604(g) of the Energy Policy Act of 1992 (25 U.S.C. 3504(g)) including the manner in which the Secretary, at the request of an Indian tribe, shall—*

*(A) identify the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) that the Secretary will not have to operate or carry out as a result of the Indian tribe carrying out activities under a tribal energy resource agreement;*

*(B) identify the amounts that the Secretary would have otherwise expended to operate or carry out each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (A); and*

*(C) provide to the Indian tribe a list of the programs, functions, services, and activities (or any portions of programs, functions, services, or activities) identified pursuant subparagraph (A) and the amounts associated with each program, function, service, and activity (or any portion of a program, function, service, or activity) identified pursuant to subparagraph (B);*

*(3) section 2604(h) of the Energy Policy Act of 1992 (25 U.S.C. 3504(h)), including the process to be followed by, and any applicable criteria and documentation required for, an Indian tribe to request and obtain the certification.*

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

- (f) No effect on other law. Nothing in this section affects the application of--
- (1) any Federal environmental law;
  - (2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or
  - (3) except as otherwise provided in this title [25 USCS §§ 3501 et seq.], the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(g) Financial Assistance in Lieu of Activities by the Secretary.—

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

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

(3) Effect of appropriations.—Notwithstanding paragraph (1)—

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

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

(h) Certification of Indian Tribe and Tribal Energy Development Organization.—

(1) In general.—Not later than 90 days after the date on which an Indian tribe submits an application in accordance with regulations promulgated under section 103(b) of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, the Secretary shall determine whether—

(A) the Indian tribe meets the requirements described in subsections (a)(2)(A)(ii)(I) or (b)(2)(A)(ii)(I); and

(B) the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes).

(2) Action by secretary.—If the Secretary determines that the Indian tribe meets the requirements described in subsections (a)(2)(A)(ii)(I) or (b)(2)(A)(ii)(I) and that the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes), the Secretary shall, not more than 10 days after making the determination—

(A) issue a certification stating that the Indian tribe meets those requirements and that the majority of the interest in the tribal energy development organization is owned and controlled by the Indian tribe (or the Indian tribe and 1 or more other Indian tribes);

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

(C) publish the certification in the Federal Register.

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

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

§ 3505. Federal power marketing administrations (**no amendments**)

§ 3506. Wind and hydropower feasibility study

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

(b) Scope of study. The study shall--

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

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

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

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

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

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

(c) Report. Not later than 1 year after the date of enactment of the Energy Policy Act of 2005 [enacted Aug. 8, 2005], the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including--

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

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

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

(4) an identification of--

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

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

(d) Funding.

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

(2) Nonreimbursability. Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

**II. Amendments to 25 U.S.C. 3101 et seq. (National Indian Forest Resources Management Act) (amended by adding at the end the following)**

**§ 3121. Treatment of Certain Activities and Resources as Sustainable Management Practices**

Unless otherwise specifically exempted by Federal law, any activity conducted, or resource harvested or produced, pursuant to a forest management plan, including a tribal integrated resource management plan, approved by the Secretary under this Act shall be considered a sustainable management practice for the purposes of any applicable Federal standard, benefit, or requirement that requires a demonstration of sustainability.

**III. Amendments to 25 U.S.C. 3115a (Sec. 2 of the Tribal Forest Protection Act of 2004)**

§ 3115a. Tribal forest assets protection

(a) Definitions. ~~In this section~~ **In this Act:**

(1) Federal land. The term "Federal land" means--

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) Indian forest land or rangeland. The term "Indian forest land or rangeland" means land that—

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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

(B) (i) (I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

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

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

(3) Indian tribe. The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) Secretary. The term "Secretary" means--

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

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

(b) Authority to protect Indian forest land or rangeland.

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

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

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

(A) under the jurisdiction of the Secretary; and

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

(c) Selection criteria. The criteria referred to in subsection (b), with respect to an Indian tribe, are whether--

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

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

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

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

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

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

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

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;  
(2) identifies potential courses of action for overcoming specific issues that led to the denial;  
and

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

(e) Proposal evaluation and determination factors. In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may--

(1) use a best-value basis; and  
(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including--  
(A) the status of the Indian tribe as an Indian tribe;  
(B) the trust status of the Indian forest land or rangeland of the Indian tribe;  
(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;  
(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;  
(E) the indigenous knowledge and skills of members of the Indian tribe;  
(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;  
(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and  
(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) No effect on existing authority. Nothing in this Act [this section]--

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

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

(g) Report. Not later than 4 years after the date of enactment of this Act [enacted July 22, 2004], the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act [this section].

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”  
STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

§ 3115b. Tribal Biomass Demonstration Project

(a) In General.—For each of fiscal years 2013 through 2017, the Secretary shall enter into contracts or other agreements with Indian tribes to carry out demonstration projects to promote biomass energy production (including biofuel, heat, and electricity generation) on Indian forest land and in nearby communities by providing reliable supplies of woody biomass from Federal land.

(b) Demonstration Projects.—In each fiscal year for which amounts 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 (c).

(c) 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.

(d) Selection.—In evaluating the applications submitted under subsection (c), the Secretary shall take into consideration—

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

(2) 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 of Federal land or Indian forest land or rangeland; or

(E) otherwise promote the use of woody biomass.

(e) Implementation.—The Secretary shall—

(1) ensure that the criteria described in subsection (c) are publicly available by not later than 120 days after the date of enactment of this section; and

(2) to the maximum extent practicable, consult with Indian tribes and appropriate intertribal organizations likely to be affected in developing the application and otherwise carrying out this section.

(f) Report.—Not later than September 20, 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.

(g) Incorporation of Management Plans.—In carrying out a contract or agreement under this section, on receipt of a request from an Indian tribe, the Secretary shall incorporate into the

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”  
STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

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.

(h) Term.—A contract or agreement entered into under this section—

(1) shall be for a term of not more than 20 years; and

(2) may be renewed in accordance with this section for not more than an additional 10 years.

**IV. Amendments to 25 U.S.C. 3711 (Sec. 101 of the American Indian Agricultural Resource Management Act)**

§ 3711. Management of Indian rangelands and farmlands

(a) Management objectives. Consistent with the provisions of the Indian Self-Determination and Education Assistance Act, the Secretary shall provide for the management of Indian agricultural lands to achieve the following objectives:

(1) To protect, conserve, utilize, and maintain the highest productive potential on Indian agricultural lands through the application of sound conservation practices and techniques. These practices and techniques shall be applied to planning, development, inventorying, classification, and management of agricultural resources.

(2) To increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians and Alaska Natives, through the development of agricultural resources on Indian lands.

(3) To manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion.

(4) To enable Indian farmers and ranchers to maximize the potential benefits available to them through their land by providing technical assistance, training, and education in conservation practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas.

(5) To develop Indian agricultural lands and associated value-added industries of Indians and Indian tribes to promote self-sustaining communities.

(6) To assist trust and restricted Indian landowners in leasing their agricultural lands for a reasonable annual return, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

(b) Indian agricultural resource management planning program.

(1) To meet the management objectives of this section, a 10-year Indian agriculture resource management and monitoring plan shall be developed and implemented as follows:

(A) Pursuant to a self-determination contract or self-governance compact, an Indian tribe may develop or implement an Indian agriculture resource plan. Subject to the provisions of subparagraph (C), the tribe shall have broad discretion in designing and carrying out the planning process.

(B) If a tribe chooses not to contract the development or implementation of the plan, the

“INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT  
AMENDMENTS OF 2011”

STAFF DRAFT—FOR DISCUSSION ONLY—APRIL 12, 2011

Secretary shall develop or implement, as appropriate, the plan in close consultation with the affected tribe.

(C) Whether developed directly by the tribe or by the Secretary, the plan shall--

- (i) determine available agriculture resources;
- (ii) identify specific tribal agricultural resource goals and objectives;
- (iii) establish management objectives for the resources;
- (iv) define critical values of the Indian tribe and its members and provide identified holistic management objectives;
- (v) identify actions to be taken to reach established objectives;
- (vi) be developed through public meetings;
- (vii) use the public meeting records, existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities; and
- (viii) be completed within three years of the initiation of activity to establish the plan.

(2) Indian agriculture resource management plans developed and approved under this section shall govern the management and administration of Indian agricultural resources and Indian agricultural lands by the Bureau and the Indian tribal government.

(c) Treatment of Certain Activities and Resources as Sustainable Management Practices. Unless otherwise specifically exempted by Federal law, any activity conducted, or resource harvested or produced, pursuant to an agricultural resource management plan, including an integrated resource management plan, approved by the Secretary under this section shall be considered to be a sustainable management practice for the purposes of any applicable Federal standard, benefit, or requirement that requires a demonstration of sustainability.