# 1NC

### T Restriction

#### Restrictions on production must mandate a decrease in the quantity produced

Anell 89

Chairman, WTO panel "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6445 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2." 3. On 3 April 1989, the Council was informed that agreement had been reached on the following composition of the Panel (C/164): Composition Chairman: Mr. Lars E.R. Anell Members: Mr. Hugh W. Bartlett Mrs. Carmen Luz Guarda CANADA - IMPORT RESTRICTIONS ON ICE CREAM AND YOGHURT Report of the Panel adopted at the Forty-fifth Session of the CONTRACTING PARTIES on 5 December 1989 (L/6568 - 36S/68) http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf

The United States argued that Canada had failed to demonstrate that it effectively restricted domestic production of milk. The differentiation between "fluid" and "industrial" milk was an artificial one for administrative purposes; with regard to GATT obligations, the product at issue was raw milk from the cow, regardless of what further use was made of it. The use of the word "permitted" in Article XI:2(c)(i) required that there be a limitation on the total quantity of milk that domestic producers were authorized or allowed to produce or sell. The provincial controls on fluid milk did not restrict the quantities permitted to be produced; rather dairy farmers could produce and market as much milk as could be sold as beverage milk or table cream. There were no penalties for delivering more than a farmer's fluid milk quota, it was only if deliveries exceeded actual fluid milk usage or sales that it counted against his industrial milk quota. At least one province did not participate in this voluntary system, and another province had considered leaving it. Furthermore, Canada did not even prohibit the production or sale of milk that exceeded the Market Share Quota. The method used to calculate direct support payments on within-quota deliveries assured that most dairy farmers would completely recover all of their fixed and variable costs on their within-quota deliveries. The farmer was permitted to produce and market milk in excess of the quota, and perhaps had an economic incentive to do so. 27. The United States noted that in the past six years total industrial milk production had consistently exceeded the established Market Sharing Quota, and concluded that the Canadian system was a regulation of production but not a restriction of production. Proposals to amend Article XI:2(c)(i) to replace the word "restrict" with "regulate" had been defeated; what was required was the reduction of production. The results of the econometric analyses cited by Canada provided no indication of what would happen to milk production in the absence not only of the production quotas, but also of the accompanying high price guarantees which operated as incentives to produce. According to the official publication of the Canadian Dairy Commission, a key element of Canada's national dairy policy was to promote self-sufficiency in milk production. The effectiveness of the government supply controls had to be compared to what the situation would be in the absence of all government measures.

#### B Violation- TERA process just makes it harder- does not prohibit the development of renewables

Fosland 2012

[Benjamin J., Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011–¶ 2012; J.D., cum laude, Gonzaga University School of Law, 2011; B.A., honors, University of ¶ Montana, 2008. “A CASE OF NOT-SO-FATAL FLAWS: ¶ RE-EVALUATING THE INDIAN TRIBAL ¶ ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT” Idaho Law Review, Vol. 48 ¶ p. 453-4]

There have been many different criticisms leveled at ITEDSA and ¶ the tribal energy resource agreement system. Perceived challenges facing the resource agreement system include: (1) the lack of financial,¶ technical, and scientific resources available to tribes; (2) the effects of ¶ public input requirements on tribal decision making; and, (3) the uncertain state of the federal government’s trust responsibility in regard to ¶ tribes that enter into tribal energy resource agreements (TERAs).¶ 64¶ On ¶ close examination, however, the notion that the new statute’s flaws will ¶ prevent tribes from taking advantage of the system lacks merit. Many of ¶ the challenges outlined above are by no means insurmountable. As such, ¶ TERAs should be seen for what they are: the best option for tribes who ¶ want to maximize their control over the development of tribal energy ¶ resources.

#### Voting issue –

#### 1. Including regulations is a limits disaster.

Doub 76

Energy Regulation: A Quagmire for Energy Policy Annual Review of Energy Vol. 1: 715-725 (Volume publication date November 1976) DOI: 10.1146/annurev.eg.01.110176.003435LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street NW, Washington, DC 20036 Mr. Doub is a principal in the law firm of Doub and Muntzing, which he formed in 1977. Previously he was a partner in the law firm of LeBoeuf, Lamb, Leiby and MacRae. He was a member of the U.S. Atomic Energy Commission in 1971 - 1974. He served as a member of the Executive Advisory Committee to the Federal Power Commission in 1968 - 1971 and was appointed by the President of the United States to the President's Air Quality Advisory Board in 1970. He is a member of the American Bar Association, Maryland State Bar Association, and Federal Bar Association. He is immediate past Chairman of the U.S. National Committee of the World Energy Conference and a member of the Atomic Industrial Forum. He currently serves as a member of the nuclear export policy committees of both the Atomic Industrial Forum and the American Nuclear Energy Council. Mr. Doub graduated from Washington and Jefferson College (B.A., 1953) and the University of Maryland School of Law in 1956. He is married, has two children, and resides in Potomac, Md. He was born September 3, 1931, in Cumberland, Md. http://0-www.annualreviews.org.library.lausys.georgetown.edu/doi/pdf/10.1146/annurev.eg.01.110176.003435

FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy selfsufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question. With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives. More than 40 agencies were found to be involved with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could significantly affect the availability and/or cost of energy. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

#### 2. Precision – A distinction between regulation and restrictions is key.

Sinha 6

http://www.indiankanoon.org/doc/437310/ Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus: "It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

#### Extra Topical- they remove all of the secretary of the interiors authority not just those limited to topic energies- voter for fairness

### T U.S.

#### Tribal governments are not in the U.S. they are sovereign

Masterson ‘09

Crystal is a J.D. Candidate at Oklahoma University school of Law, “Wind-Energy Ventures in Indian Country: Fashioning a Functional Paradigm,” 34 A.M. Law Review 317, lexis

The appeal of constructing a wind farm on tribal lands is bolstered by the fact that "tribes constitute sovereign governments within the federal system," making it possible for them to evade onerous zoning restrictions mandated by local governments. n87 As a component of their inherent sovereignty, tribal governments have the authority to craft their own regulations. n88 This benefits all parties to a wind transaction, because not only are they exempt from local or state regulation, but their sovereign status also allows them to bypass many federal guidelines and procedures customarily imposing "complexity and delay" on industrial projects. n89 Where a wind-energy project is erected in Indian Country and tribally managed, modern case law suggests that "the scale will likely tip in favor of preserving tribal sovereignty and not subjecting such project to federal regulations." n90 In some instances, tribes have even succeeded in gaining complete regulatory control over environmental matters for utilities built on their lands, allowing for the circumvention of further arduous administrative constraints. n91 The federal government's hands-off approach suggests to private investors that investing in tribal wind projects in Indian Country lessens "the nuisance of government intervention." n92¶ A related issue concerns community reaction to a proposed wind project. The development of wind energy in rural and residential communities has triggered a string of nuisance litigation. n93 The "not in my backyard" attitude n94 has stifled wind production when local governments have acquiesced to the sentiments of complaining residents. But it is unlikely that such local opposition will hamper tribal wind projects. Investors launching renewable- energy ventures on tribal lands do not face intervention from various echelons of government and private-interest groups. In tribally managed wind-energy projects, the only governing body is a single tribal council, allowing project investors substantially to lower the financial and political risks associated with [\*329] financing a renewable-energy venture. n95 A notable correlative is that approval on the part of the tribal council is "usually accompanied by the approval of the community." n96 Equipped with inherent tribal sovereignty and its attendant advantages, "'only the availability of the resource and the creativity of the individuals involved limit the options available to tribal governments.'" n97

#### Voting Issue

#### 1 Limits- Thousands of areas outside the United States they could read as aff’s making Disad and CP links impossible.

#### 2 Ground- No Disad ground to territories, tribes and other areas.

### CP

**CP Text:**

**The United States federal government should:**

**· Reinstate federal liability in Tribal Energy Resource Agreements.**

**· Allow identification and incorporation of environmental mitigation measures at the discretion of individuals entering into Tribal Energy Resource Agreements.**

**· Acknowledge successful Public Law 638 compacts and contracts as equivalent to demonstrated capacity.**

**· Stream-line approval of Tribal Energy Resource Agreements and automatically approve Tribal Energy Resource Agreement proposals pending 271 days if inaction is taken on behalf of the Secretary of the Interior.**

**Changing the Secretary’s approval process solves the whole case—spurs wind development and balances self-determination with the trust doctrine**

**Royster**, Co-Director – Native American Law Center @ University of Tulsa, **‘12**

(Judith V., “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91)

Nonetheless, there are steps that can be taken to tighten up the approval process and make it friendlier to renewable energy development. The **two amendments** to the IMDA **proposed here** [\*133] would provide that the Secretary's failure to act within the time allotted constitutes approval, and that in determining whether a minerals agreement is in the tribe's best interest, the Secretary will defer to the tribe's decision.¶ Under the IMDA, the Secretary has 180 days to approve or disapprove a minerals agreement, or 60 days after compliance with the National Environmental Policy Act (NEPA), whichever is later. n189 The statute specifically provides that the Secretary's failure to meet the deadline is enforceable by a mandamus action in federal court. n190 Making the Secretary's deadline mandatory is useful, but authorizing enforcement by court action is not. Civil suits proceed slowly through the federal courts, and it is unlikely that a writ of mandamus would be issued before the Secretary reached a decision on the minerals agreement. Waiting two years for the court's decision is no better than waiting two years for the Secretary's.¶ A better approach would borrow from the proposed statutory amendments to the TERA process. The proposed TERA amendments would replace a provision giving the Secretary 270 days to approve a TERA, with a provision that 271 days after the tribe submits its TERA application, the TERA "shall" become effective if the Secretary has not disapproved it. n191 A similar amendment to the IMDA could provide that 181 days after the tribe submits a proposed minerals agreement, or 61 days after compliance with NEPA, whichever is later, the agreement "shall" take effect if the Secretary has not disapproved it or has not provided the tribe with written findings of the intent to approve or disapprove the agreement. n192 As with the proposed TERA [\*134] amendment, this would put substantial additional pressure on the Department of the Interior to act quickly. But the benefit to tribes of knowing whether their minerals agreements have been approved, and being able to implement their agreements within a reasonable time, outweigh those concerns.¶ The second way to streamline the approval process for renewable energy resources is to address the substance of the Secretary's **review of mineral agreements.** The IMDA provides that the Secretary must determine whether a proposed agreement "is in the best interest of the Indian tribe." n193 In so doing, the Secretary "shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement." n194 The statute expressly provides, however, that the Secretary is not responsible for preparing any studies regarding "environmental, socioeconomic, or cultural effects" other than the environmental studies required by NEPA. n195¶ The regulations, on the other hand, require that the Secretary determine both that the minerals agreement is in the tribe's best interest and that any adverse cultural, social, or environmental impacts do not outweigh the benefits of the agreement. n196 The "best interest" standard is further defined as requiring "the Secretary [to] consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects." n197 The regulations further specify that the "best interest" standard is based on information supplied by the parties "and any other [\*135] information considered relevant by the Secretary." n198 That information may include comparisons to other contracts or offers for similar resources, "insofar as that information is readily available." n199¶ These standards, derived from judicial determinations that the Secretary must consider all relevant factors in reviewing mineral leases under the IMLA, n200 place considerable decision-making power with the Secretary. During the rulemaking process, in fact, the Department of the Interior rejected a commenter's suggestion that minerals agreements should be approved if the agreements were in compliance with law. The Department noted that the law itself "allows the Secretary the discretion to weigh relevant factors and requires the Secretary to make, on the basis of the Secretary's judgement, a best interest determination." n201¶ At the time the IMDA was enacted in 1982, federal Indian policy had only recently focused on tribal self-determination, n202 and Indian tribes were still emerging from the uncertainties and destruction of the termination era. n203 The Department of the Interior had experience with considering all relevant factors in the approval of IMLA leases, and carried that standard into the new world of minerals agreements. It took twelve years for the Department to issue IMDA regulations, but the regulations again reflected the central role of the Secretary and the importance of the Secretary's judgment call. In the 1980s and even early 1990s, the Secretary's stringent oversight may have been justified by the imbalance of knowledge and bargaining power between tribes and energy companies.¶ But nearly twenty years have passed since the regulations were [\*136] promulgated in 1994. Indian tribes have thirty years of experience with IMDA minerals agreements, and many of the energy tribes have become sophisticated negotiators of development deals. Certainly tribes are the best determiners of cultural and social impacts, and often of the economic impacts as well. In light of those factors, the **standards for approval** of IMDA agreements are due for amendment.¶ Amending the statute itself to revisit the appropriate factors may be the best choice, **but a simpler** and perhaps **quicker fix is** also **available.** The Department could amend the regulations to reflect modern realities. Similar to the best interests determination in the regulations for agricultural and other surface leases, the IMDA regulations could provide that in reviewing an IMDA minerals agreement, the Secretary will defer to the tribe's determination that the agreement is in its best interest, **to the maximum extent possible.** n204 Although the conditional "maximum extent possible" language preserves the Secretary's ultimate authority under the statute, the regulation would ensure that the Secretary will undertake the minerals agreement review process with **due respect for the tribe's decision.** **Even if** a deferential review is current practice, embedding it in the regulations **strengthens the tribe's role in the decision making process.**¶VII. Conclusion¶ Renewable energy resources are taking on increased importance for tribal economies. While these resources are abundant in Indian country, the federal statutory authority for their development is dispersed and often problematic. Mineral development statutes may or may not apply; other statutes not originally intended for energy development fill the gap, but generally confine tribes to a passive role in renewables development. The recent energy statute solves many of the problems with the other approaches, but creates a process that is [\*137] complex and expensive enough to discourage most tribes from using it. Recent bills would tweak the energy statute and propose broader leasing authority, but none addresses the overarching problem of providing tribes with a way to take an active role in the development of renewable resources without undue expense or federal oversight.¶ The amendments to the IMDA and its regulations proposed here also do not solve that overarching problem entirely. They are intended to suggest **steps in the direction of greater tribal self-determination** in renewable energy development. They would free tribes to **take more active roles** in renewable energy projects, while preserving tribes' ability to use the variety of other available statutory approaches. And they would rein in the secretarial approval power by providing that federal inaction benefits the tribes and by reframing the best interests analysis. Under these proposals, Indian tribes could more easily develop their renewable energy resources, and do so with **more direct say** in the development itself.

**The plan opens up the floodgates for renewables – justifies corporate exploitation – Turns the aff – recreates neo-colonial structures**

**Mills 11** (Andrew D, Energy and Resources Group at UC Berkeley, Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,")

Broadly, the idea of dependency is summarized in the common phrase “the development of underdevelopment.” Dependency is a critique of the idea of the economic base in that underdeveloped regions become specialists in providing raw materials and resources that are used in developed regions to create manufactured goods. Substantial value is added to products in the latter stages of processing, but very little of that value is transferred to the developing region. Furthermore, **when large multi-national companies control the extraction of the resources the developing region often forgoes the opportunity to build capacity in the production of the base resource**. Instead, the local economy simply provides access to the resource and unskilled or semiskilled laborers (See Palma 1989 and Kay 1991). Beyond the lack of opportunity to capture value, the dependency critique argues that the success of developing a base resource can distort the structure of the regional economy. Instead of entrepreneurs developing a strong, diversified economy, the businesses that do emerge in the regional economy are oriented toward providing services to the large industrial companies that extract resources (Gunton 2003, 69). The services provided by the government can become focused on increasing the development of just one sector and income to the government becomes tied to the production of the resource. The economy of the entire region and the services provided by the government become linked to the price of the export resource. Moreover, if the resource is depleteable, the economy contracts as the resource becomes more and more difficult to extract in comparison to alternative resources. One measure of the degree of specialization in the production of energy resources is called the “oil dependency” metric. The “oil dependency” of the Navajo Nation is the ratio of the value of the energy exports (oil, coal, and gas) to the gross regional product of the Navajo Nation (Ross 2001). A rough approximation of the “oil dependency” for the Navajo Nation was found to be 1.1 using data available in the Comprehensive Economic Development Strategy of the Navajo Nation (Choudhary 2003) and energy prices from the Energy Information Agency. The most oil dependent national economy in the world is Angola (68.5). Norway, which exports a considerable amount of oil has an oil dependency of 13.5. The 25th of the top 25 most oil dependent nations has an oil dependency of 3.5 (Ross 2001). Although the Navajo Nation would not be considered as “oil dependent” as these other countries, it is also important to realize that 15- 20% of the Navajo Nation annual funds are from royalties on energy resources. If the grants from external sources like the federal government are not included in the sources of annual funds, then the share of energy resources increases to 25-50% of the Navajo Nation budget (Choudhary 2003, 65 - Table 7). Furthermore, the second largest recipient of revenues from the Navajo General Fund is the Division of Natural Resources (ibid, 64 – Table 6C). Overall these statistics indicate that **the Navajo Nation is oriented toward a heavy reliance and focus on energy development**. Discussions of the Navajo economy in the context of dependency often focus on the importance of the tribe being in control of energy development. By control, most authors are referring to the right to dictate the pace and laws surrounding energy development on their lands (Owens 1979, Ruffing 1980). However, gaining control of energy development is only one part of the dependency critique. The second part is that even with control over the pace and quality of energy development the Navajo government needs to steer the economy in diverse directions so that the economy does not become specialized in providing services to energy extraction companies. One could easily argue that the Navajo Nation is focusing significant efforts on increasing the level of energy development at the expense of supporting alternative development pathways (for example, the speech by Shirley and Trujillo to the World Bank, 2003). Many authors draw from dependency theories to show why the Navajo Nation is locked into an energy development pathway. One of the more important historical reasons for the orientation of the Navajo government toward energy development was that the Navajo government was first formed in 1922 by the federal government to act as a representative of the Navajo interests in signing oil leases on Navajo land. As part of organizing the relationship between the federal government, the Navajo Business Council (as it was first called) and energy developers, the Interior Department set policy such that the Navajo government would own all of the mineral resources on tribal land, rather than individual Navajo owning rights to the mineral resources (Wilkins 2002, 101-3). At the end of World War II, the still fledgling tribal government turned to economic development to improve the conditions in Navajoland in hopes that young people would not feel forced to live elsewhere (Iverson and Roessel 2002, 189). **In a process** LaDuke and Churchill refer to as **“Radioactive Colonialism”, the driver of economic development became, with pressure from energy companies and** the Bureau of Indian Affairs (**BIA), revenues from leasing land for large-scale extraction of the Navajo’s mineral resources by private non-Navajo enterprises**. The Vanadium Corporation of America and Kerr-McGee provided $6.5 million in uranium mining revenues and jobs for Navajo miners. The miners worked under dangerous and unhealthy conditions, but many of the jobs were the only wage employment ever brought to the southeastern part of the reservation. An oil boom in Navajoland between 1958-62 provided tens of millions of dollars in revenues to the tribal government (Iverson and Roessel 2002, 218-20). The Tribal Council used the revenues to provide services to many of the Navajo and increasingly employed Navajo in government related jobs. The government officials and workers, along with the few that obtained jobs in the capital-intensive extractive industries formed a class with similar economic interests. Their wealth and power increased with increasing energy development. LaDuke and Churchill explain: “**With this reduction in self-sufficiency came the transfer of economic power to a neo-colonial structure lodged in the US/tribal council relationship:** ‘development aid’ from the US, an ‘educational system’ geared to training the cruder labor needs of industrialism, and employment contracts with mining and other resource extraction concerns… for now dependent Indian citizens.”(LaDuke and Churchill 1985, 110) The relationship between economic development and energy development was further extended in the 1960’s with the development of large coalmines and power plants on Navajo lands. The federal government played numerous roles in support of connecting energy developers and the tribal government. One example that illustrates the diverse ways in which the federal government encouraged energy development with tribes was a stipulation in the contracts for cooling water for the Mohave Generating Station in Nevada that specified that the owners of Mohave could only use the Colorado River for cooling water as long as the power plant used “Indian Coal”6 (also see Wiley and Gottlieb 1982, 41-53; and Wilkinson 1996, 1999 for more of the history of coal development in the Western Navajo Nation). Recommendations for economic development in initial stages of the self-determination era focused not on how to build a diverse economy, but how to take control of energy development and ensure that the Navajo Nation received the best deal for their resources. In describing the role of policy in energy development on the Navajo Nation one author focuses on the capital-intensive nature of energy development. Whereas one recommendation might be to shift the focus to other development pathways, her recommendation was to take steps to ensure that the jobs that are created by energy development go toward tribal members. She recommended that provisions should be included in contracts for training and preference hire for tribal members with all energy development projects (Ruffing 1980, 56-7). A major transition point in the history of energy development on Navajo lands involved the Chairman of the Navajo Nation, Peter McDonald, declaring that changes needed to take place before the Navajo Nation would support continued development of energy resources on their land in the 1970’s. **Two major points he stressed included making sure that energy development was being carried out for the benefit of the Navajo people and that the tribe should be given opportunities to participate in and control energy development** (Robbins 1979, 116). **The main critique of both these stances from dependency theory is that even with control over energy development, it is still a capital-intensive, highly technical, and tightly controlled industry** (Owens 1979, 4). **The Navajo Nation can participate in energy development, but not without creating distortions in the orientation of the economy and government.** In this same vein, **it is difficult to argue that wind energy is inherently different that other forms of energy development from the dependency perspective.** While it is possible for the Navajo Nation to take steps to ensure that the tribe will obtain the maximum benefit from wind development, such as ensuring that tribal members and Navajo owned businesses have preference in hiring, **it is not likely that the tribe can become a self-sufficient wind developer without severely distorting the priorities of the economy and Navajo government. The alternative is to allow a specialized, large company from off the reservation to develop the wind farm,** with the possibility that a Navajo partner can take part in the ownership of the wind farm. While the Navajo Nation may now have the institutional structure in place to control wind energy development on their land, **wind development is still subject to the dependency critique.**

**Turns the entire aff – CP key to reform institutions that shield indigenous cultures from coercive market forces**

**Mills 11** (Andrew D, Energy and Resources Group at UC Berkeley, Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,")

**To allow the market mechanism to be the sole director of the fate of human beings and their natural environment… would result in the demolition of society**…. Labor cannot be shoved about, used indiscriminately, or even left unused without affecting also the human individual who happened to be the bearer of that particular commodity. In disposing of a man’s labor power the system would incidentally, dispose of the physical, psychological, and moral entity ‘man’ attached to that tag. **Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime, and starvation**. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted…, the power to produce food and raw materials destroyed (Karl Polanyi quoted in Block 2001, 75-6). Polanyi argues that there is a moral impediment to disembedding the economy from society. It is simply wrong to treat nature and human beings as objects whose value is determined entirely by the market. Subordinating the organization of nature and human beings to market forces violates principles that have governed societies for centuries: nature and human life have almost always been recognized as having a sacred dimension (Block 2001, xvii – xxxix). In trying to understand the impacts of energy development on families that were directly impacted by energy development on the Navajo Nation, a group of anthropologists in the early 1980’s applied enthoscience methods to unearth the social impacts of energy development. Instead of applying a cost benefit analysis approach whereby the economic value of the social costs were compared to the economic benefits of energy development, the researchers recognized that they must begin with a framework that allows for some costs to a way of life to not have a simple monetary value. Essentially they recognized that **what determines the quality of life in not always based on the monetary value of resources.** Instead**, if energy development were to occur and cause impacts, certain mitigating steps would need to be in place to prevent severe deterioration in the way of life for families impacted by energy development. The researchers evaluated the impacts by first establishing the possible costs to the way of life.** Then instead of looking at benefits to offset the costs, they evaluated possible mitigations to the costs that would be required before the impacted families could even begin to assess any benefits that would accompany energy development (Schoepfle et al. 1984, 887-8).

### Turtle Disad

**Solar development kills desert tortoise**

**Lovich & Ennen ‘11**

Jeffrey and Joshua, “Wildlife Development and Solar Energy Development in the Desert Southwest, United States,” Bioscience Volume 61 No. 12 Pages 982-992 <http://www.avhidesert.com/pdf/downloaded_file-1.pdf>

Habitat fragmentation. **Until relatively recently, the desert Southwest was characterized by large blocks of continuous and interconnected habitat**. Roads and urban development continue to contribute to habitat fragmentation in this landscape. **Large-scale energy development has the potential to add to and exacerbate the situation, presenting potential barriers to movement and genetic exchange in wildlife populations, including** those of bighorn sheep (Ovis canadensis), deer (Odocoileus spp.), **tortoise**s, and other species of concern and social significance. Research conducted on the effects of oil and gas exploration and development (OGED) on wildlife in the Intermountain West provides a possible analog to USSEDO, since comparable data are not available for the desert Southwest. **The potential effects** on mule deer (Odocoileus hemionus) and other wildlife species **include impediments to free movement, the creation of migration bottlenecks, and a reduction in effective winter range size.** Mule deer responded immediately to OGED by moving away from disturbances, with no sign of acclimation during the three years of study by Sawyer and colleagues (2009). Some deer avoidance resulted in their use of lesspreferred and presumably less-suitable habitats. Despite a lack of data on the direct contributions of USSEDO to habitat fragmentation, USSEDO has the potential to be an impediment to gene flow for some species. Although the extent of this impact is, as yet, largely unquantified in the desert, compelling evidence for the effects of human-caused habitat fragmentation on diverse wildlife species has already been demonstrated in the adjacent coastal region of southern California (Delaney et al. 2010).

**Desert Tortoise is a keystone species, keeps hundreds of species alive and soil correct**

**Becker ’12**

Kendall is an environmental researcher at the University of Washington, “Renewable Energy, Fire, and the Agassiz’s Desert Tortoise,” <http://scienceinshort.wordpress.com/2012/03/13/renewable-energy-fire-and-the-agassizs-desert-tortoise/>

**At the forefront of this debate is the Agassiz’s desert tortoise. The tortoise is a keystone species; the desert ecosystem revolves around the tortoises’ propensity to burrow. “Literally hundreds of other desert animals benefit from tortoise burrows,” says Dr.** Jeffrey **Lovich, director of the Southwest Biological Science Center** in Flagstaff, Arizona. Voles, enda**ngered lizards, and even rattlesnakes seek shady homes in burrows of dimensions they are incapable of engineering on their own**. **Still more critical to the desert ecosystem is the churning of the soil that occurs as tortoises dig these tunnels**. In an environment devoid of worms, **desert plants rely on tortoises to stir up the soil so more water and oxygen can reach plant roots**. In recent decades desert tortoise numbers have plummeted as encroaching civilization and industry fragment their habitat. **Where a full 1,000 tortoises used to populate each square kilometer, now as few as 100 remain**. With the California Bureau of Land Management currently reviewing 22 applications for solar energy permits, the question of how these facilities impact tortoises and, by extension, the entire desert ecosystem, is a pressing one.

**Extinction**

**Fraser 10**

(Caroline, "Could Re-Wilding Avert the 6th Great Extinction?," 1/5, Scientific American, Adapted from the book REWILDING THE WORLD: Dispatches from the Conservation Revolution by Caroline Fraser, <http://www.scientificamerican.com/article.cfm?id=could-re-wilding-avert-6th-great-extinction>)

Why do species matter? Why worry if some go missing? Part of the answer lies in the relationships coming to light between creatures like the canyon coyotes and the chaparral birds. After the nineteenth century’s great age of biological collecting, when collectors filled museums to bursting with stuffed birds and pinned beetles, the twentieth and twenty-first centuries have proved to be an age of connecting. Biologists have begun to understand that nature is a chain of dominoes: If you pull one piece out, the whole thing falls down. Lose the animals, lose the ecosystems. Lose the ecosystems, game over. This was the essential insight of conservation biology, a new scientific field launched with the determination to identify threats to ecosystems and to design the methods to deal with them. E. O. Wilson has called it “a discipline with a deadline.” The Society for Conservation Biology, founded in 1985, became one of the fastest-growing scientific organizations of its time, bringing together diverse specialties from ecology and population genetics to sustainable agriculture and forestry, revolutionizing the once sleepy field of natural history. The tremendous variety of species held in wilderness areas, particularly the tropics, is our bank and lifeline, our agricultural and medical insurance policy. Three-quarters of the world’s food supply comes from twelve plant species, but those species are dependent on thousands of others: pollinators (insects, bats, birds), soil microbes, nitrogen-fixing bacteria, and fungi. The tropical rain forests contain a pool of genetic diversity for important food crops, a source for vital new strains that can be hybridized to fight pests and diseases. Botanists are combing the planet for wild ancestors of soybeans, tomatoes, hard wheat, and grapes, believed to contain valuable genes for drought tolerance and other characteristics, but much diversity has already been lost. Genetic engineering alone cannot replace what hundreds of millions of years of evolution have given us. Wild replacements for pineapples, pomegranates, olives, coffee, and other crops lie in biodiversity-rich areas that must be saved. In terms of medicine, our most important modern pharmaceuticals, including quinine, morphine, aspirin, penicillin, and many other antibiotics, are derived from microbes, plants, and animals found in tropical and marine environments. The first comprehensive scientific treatise on our reliance on other species, Sustaining Life: How Human Health Depends on Biodiversity, published in 2008, confirmed the importance of genetic variety, describing groups of threatened organisms crucial to agriculture and human medicine. Predictably, our close relatives, primates, make up a key group. Contributing to work on smallpox, polio, and vaccine development, primates allow research on potential treatments for hepatitis C and B, Ebola and Marburg viruses, and HIV/AIDS. The list of threatened plants and animals we rely on is weird and varied, including amphibians, bears, gymnosperms (the family of plants that includes pine trees), cone snails, sharks, and horseshoe crabs. Cone snails, a large genus of endangered marine mollusks, inject their prey with paralyzing toxins that are prized in medical research for their use in developing pain medications for cancer and AIDS patients who are unresponsive to opiates. The blood of the horseshoe crab, which carries antimicrobial peptides that kill bacteria, is being tested in treatments for HIV, leukemia, prostate cancer, breast cancer, and rheumatoid arthritis; it also yields cells crucial in developing tests to detect bacteria in medical devices, and its eyes have allowed Nobel Prize–winning researchers to unravel the complexities of human vision. Cone snails and horseshoe crabs are exactly the kinds of species that people tend to dismiss, seeing no utility in them, no connection to human need. This was the attitude expressed in 1990 by Manuel Lujan Jr., secretary of the interior during the George H. W. Bush administration, who asked in exasperation, “Do we have to save every subspecies?” It was the attitude expressed in 2008 by presidential candidate John McCain, who repeatedly declared his opposition to the funding of research on grizzly bear DNA. He got a cheap laugh whenever he said, “I don’t know if that was a paternity issue or a criminal issue.” Medical researchers were not laughing: bears, too, are essential to human medicine. Bear bile yields ursodeoxycholic acid, now used in treating complications during pregnancy, gallstones, and severe liver disease. Denning bears enter a period of lethargy during the winter and recycle body wastes in a process unique in mammals; this process is studied for insights in treating osteoporosis, renal disease, diabetes, and obesity. If species are crucial to medicine, ecosystems are indispensable to the health of the planet. Ecosystems provide the most basic provisioning services— food, firewood, and medicines—along with the so- called regulating services of a fully functional environment, which include cleaning the air, purifying water, controlling floods and erosion, storing carbon, and detoxifying pollutants in soils. When ecosystems are lost, as they have been through felling of forests and conversion of landscape to agriculture on a vast scale, havoc ensues, triggering human and natural catastrophe on an unprecedented scale.

### Debt Ceiling Disad

#### Obama will win on debt ceiling

Klein 1-2

Ezra is a Washington Post Columnist, “The Lessons of the Fiscal Cliff,” <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/02/the-lessons-of-the-fiscal-cliff/>

The question of who “won” the fiscal cliff won’t be answered till we know what happens when Congress reaches the debt ceiling. The White House says that there’ll be no negotiations over the debt ceiling, and that if Republicans want further spending cuts, their only chance is to hand over more tax revenue. If they’re right and they do manage to enforce a 1:1 ratio of tax hikes to spending cuts in the next deal, they’re going to look like geniuses.¶ Republicans swear they are crazy enough to push the country into default, and they promise that the White House isn’t strong enough to stand by and let it happen. If they’re right, and the White House agrees to big spending cuts absent significant tax increases in order to avert default, then Republicans will have held taxes far lower than anyone thought possible.¶ But both Republicans and Democrats can’t be right. If we take the lessons of this negotiation, here’s what will happen: The White House will negotiate over the debt ceiling. They’ll say they’re not negotiating over the debt ceiling, and in the end, they may well refuse to be held hostage over the debt ceiling, but the debt ceiling will be part of the pressure Republicans use to force the next deal. The White House fears default, and in the end, they always negotiate.¶ That said, the Republicans aren’t quite as crazy as they’d like the Democrats to believe. They were scared to take the country over the fiscal cliff. They’re going to be terrified to force the country into default, as the economic consequences would be calamitous. They know they need to offer the White House a deal that the White House can actually take — or at least a deal that, if the White House doesn’t take it, doesn’t lead to Republicans shouldering the blame for crashing the global economy. That deal will have to include taxes, though the tax increases could come through reform rather than higher rates.¶ The Republicans also have a problem the White House doesn’t: The public broadly believes they’re less reasonable and willing to negotiate than the Democrats are. The White House has a reputation for, if anything, being too quick to fold. They have more room to avoid blame for a default than the Republicans do. In the end, if the White House holds its ground, Republicans will likely compromise — though only after the White House has done quite a bit of compromising, too. ¶ The final moments of the fiscal cliff offered evidence that both sides see how this is going to go. In his remarks tonight, President Obama signaled he would hold firm on the debt ceiling. “While I will negotiate over many things, I will not have another debate with this Congress over whether or not they should pay the bills they’ve already racked up through the laws they have passed,” he said. And Boehner signaled that he knows tax reform will have to be part of the next deal. The post-deal press release his office sent out had the headline, “2013 Must Be About Cutting Spending and Reforming the Tax Code.” That said, the final days of the fiscal cliff, in which the deal almost broke apart a half-dozen times for a hal-dozen reasons, is a reminder that these tense, deadline negotiations can easily go awry. And so there’s a third possibility, too: That the White House is wrong about the Republicans will compromise, that the Republicans are wrong that the White House will fold, and so we really will breach the debt ceiling, unleashing economic havoc.

#### Obama’s capital key to final cliff deal

U.S. News 12-20

“Setting Clear Priorities Will be Clear for Obama,” <http://www.usnews.com/news/blogs/Ken-Walshs-Washington/2012/12/20/setting-clear-priorities-will-be-key-for-obama>

President Obama's administration is brimming with new initiatives, creating a fresh sense of possibility at the White House but also alarming Washington veterans who wonder if he is asking too much of himself, his staff, and especially Congress. The challenge for Obama will be to set clear priorities rather than allow his wish list to get bogged down in a capital that has trouble dealing with more than one or two major issues at a time.¶ First and foremost, Obama is immersed in budget negotiations with House Speaker John Boehner, the top Republican leader in Congress.¶ If they fail to make a deal, tax increases and deep spending cuts will automatically start taking effect on January 1, which could create another recession. And even if Obama reaches an agreement with Boehner, it won't mean that restless conservatives or equally concerned liberals will accept what their leaders produce. Getting a final pact will take up large amounts of energy and political capital.

**Aff’s Unpopular- Removes Environmental Review**

**Anderson 05**

[Scot W., Davis Graham & Stubbs LLP. “THE INDIAN TRIBAL ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT OF 2005: ¶ OPPORTUNITIES FOR COOPERATIVE VENTURES” Rocky Mountain Mineral Law Institute ¶ Special Institute: Natural Resource Development in Indian Country. <http://www.dgslaw.com/images/materials/670412.pdf>]

Environmental Review by TERA Tribes¶ Some **environmental groups** have **expressed concern that the TERA process will truncate** ¶ review under the National Environmental Policy Act **(NEPA**).¶ 33¶ The National Resources ¶ Defense Council, for example, testified that Title V of the Energy Policy Act ¶ could remove the application of federal laws, such as NEPA and ¶ the National Historic Preservation Act, from energy development ¶ decisions on tribal lands. The bill affects land both on and off ¶ reservation. It provides that once the Secretary of the Interior ¶ approves a tribal energy resource agreement providing a process ¶ for making energy development decisions, individual energy ¶ projects would proceed without federal approval. Since no federal ¶ action would occur, the existing guarantees of environmental ¶ review and public participation under NEPA would be lost. ¶ **Concerned tribal community members and communities adjacent** ¶ **to the project would lose the mechanism that they have now to** ¶ **make their voices heard**.¶ 34 NEPA, of course, applies to major federal actions, and a decision made solely by a tribe has no ¶ “federal handle,”¶ 35¶ and therefore is not subject to NEPA.¶ 36¶ **The relationship between tribal** ¶ **approvals under a TERA and NEPA was a consistent theme in Congressional debates during the** ¶ **development of Title V.**¶ 37¶ **Consequently, Congress added a tribal environmental review process** ¶ **to the TERA.**¶ **38**

#### Going over the debt ceiling collapses the economy

Millhiser 12/30

(Ian Millhiser - Senior Constitutional Policy Analyst at the Center for American Progress Action Fund and the Editor of ThinkProgress Justice, “Lindsay Graham: I Will Destroy America’s Solvency Unless The Social Security Retirement Age Is Raised,” Dec 30, 2012, <http://thinkprogress.org/economy/2012/12/30/1379681/lindsay-graham-i-will-destroy-americas-solvency-unless-the-social-security-retirement-age-is-raised/?mobile=nc> KB)

Although official Washington is currently fixated on the so-called “Fiscal Cliff,” the biggest threat to American prosperity is the debt ceiling, which must be raised in February to prevent economic catastrophe. If Republicans refuse to reach a deal on the so-called cliff, the Congressional Budget Office predicts that they will spark a new recession in 2013. But if Republicans block action on the debt ceiling, they will make that potential recession look quaint. Without raising the debt ceiling, the United States will be forced to embrace austerity so severe it will lead to “a bigger GDP drop than that experienced during the Great Recession of 2008.”

#### Decline causes war

Kemp 10

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### Case

#### Aff can’t solve Native American poverty- most impoverished group in U.S.

#### Aff doesn’t solve self-determination

Porter 98

Porter, Director – Tribal Law and Government Center @ U Kansas, ‘98¶ (Robert B., 31 U. Mich. J.L. Reform 899)

Nevertheless, no matter how much responsibility we assume **for the redevelopment of our** **sovereignty**, **the** United States **remains a barrier to** our forward **progress**. **America**, **because of its geography**, its **people**, its **culture**, **and** its **media**, **is an overwhelming influence** on the Indigenous nations located within its borders. n9 As a result, **tremendous forces inhibit** the preservation and **strengthening** of the unique fabric of **our nations and** thus **form considerable obstacles to our redevelopment**. n10¶ One of the most **significant barriers** to our redevelopment **lie**s **in** the body of **American law**. Since its founding, the United States has developed an extensive body of law - so-called [\*902] "federal Indian law" - to define and regulate its relationship with the Indian nations remaining within its borders. n11 While this law may seem to have a neutral purpose, it would be more accurate to say that "**federal Indian law**" **is** really "federal Indian control law" because it has the twofold mission of establishing **the legal base**s **for** American **colonization of the continent** n12 **and perpetuating** American power and **control over the Indian nations**. n13 Unfortunately, in addition to this foundational problem, **the law itself is not simple or uniform**. Federal **Indian control** law **is a hodgepodge of statutes**, **cases**, **executive orders**, **and** administrative **regulations that embody a wide variety of divergent policies towards the Indian nations** since the time the United States was established. n14 Because old laws reflecting **these old policies have rarely been repealed** when new ones reflecting new policies have been adopted, n15 **any efforts** that might be taken by the Indian nations and the federal government **to strengthen Indian self-determination must first cut through the legal muck created by over 200 years of** prior federal **efforts to accomplish precisely the opposite** result.¶ As I see it, this legal minefield profoundly effects tribal sovereignty. For example, **conflicting federal laws** - such as those that provide for the federal government's protective trust responsibility over Indian affairs n16 and those that allow federal, [\*903] state, and private interests to interfere with tribal self-government n17 - make it impossible **for the Indian nations to exercise** fully their sovereign right of **self-determination**. As past efforts to destroy our sovereign existence continue to have their corrosive effect, so too, in my view, does the natural result of those efforts: the destruction of Indigenous culture and the eventual assimilation of Indian people into American society. n18 Inevitably, **in the absence of any affirmative efforts to decolonize** both the Indian nations and federal Indian control law, I believe that **our distinct native identity will continue to erode**, **and with it**, **the existence of our nations**.

#### Solar’s too expensive even if we give away the panels

Zehner 12

Green illusions, ¶ Ozzie Zehner is the author of Green Illusions and a visiting scholar at the University of California, Berkeley. His recent publications include public science pieces in Christian Science Monitor, The American Scholar, Bulletin of the Atomic Scientists, The Humanist, The Futurist, and Women’s Studies Quarterly. He has appeared on PBS, BBC, CNN, MSNBC, and regularly guest lectures at universities. Zehner’s research and projects have been covered by The Sunday Times, USA Today, WIRED, The Washington Post, Business Week and numerous other media outlets. He also serves on the editorial board of Critical Environmentalism.¶ Zehner primarily researches the social, political and economic conditions influencing energy policy priorities and project outcomes. His work also incorporates symbolic roles that energy technologies play within political and environmental movements. His other research interests include consumerism, urban policy, environmental governance, international human rights, and forgeries.¶ Zehner attended Kettering University (BS -Engineering) and The University of Amsterdam (MS/Drs – Science and Technology Studies). His research was awarded with honors at both institutions. He lives in San Francisco.

Free Panels, Anyone? Among the ceos and chief scientists in the solar industry, there is surprisingly little argument that solar systems are expensive.46 Even an extreme drop in the price of polysilicon, the most expensive technical component, would do little to make solar cells more competitive. Peter Nieh, managing director of Lightspeed Venture Partners, a multibillion-dollar venture capital firm in Silicon Valley, contends that cheaper polysilicon won't reduce the overall cost of solar arrays much, even if the price of the expensive material dropped to zero.47 Why? Because the cost of other materials such as copper, glass, plastics, and aluminum, as well as the costs for fabrication and installation, represent the bulk of a solar system's overall price tag

 The technical polysilicon represents only about a fifth of the total. Furthermore, Keith Barnham, an avid solar proponent and senior researcher at Imperial College London, admits that unless efficiency levels are high, "even a zero cell cost is not competitive."48 In other words, even if someone were to offer you solar cells for free, you might be better off turning the offer down than paying to install, connect, clean, insure, maintain, and eventually dispose of the modules—especially if you live outside the remote, dry, sunny patches of the planet such as the desert extending from southeast California to western Arizona. In fact, the unanticipated costs, performance variables, and maintenance obligations for photovoltaics, too often ignored by giddy proponents of the technology, can swell to unsustainable magnitudes. Occasionally buyers decommission their arrays within the first decade, leaving behind graveyards of toxic panels teetering above their roofs as epitaphs to a fallen dream. Premature decommissioning may help explain why American photovoltaic electrical generation dropped during the last economic crisis even as purported solar capacity expanded.49 Curiously, while numerous journalists reported on solar infrastructure expansion during this period, I was unable to locate a single article covering the contemporaneous drop in the nation's solar electrical output, which the Department of Energy quietly slid into its annual statistics without a peep.

#### Extinction outweighs ontology

Joseph S. Nye, Jr., professor of government at the Kennedy School of Government at Harvard University, Fellow of the American Academy of Arts and Sciences, former chair of the National Security Council Group on Nonproliferation of Nuclear Weapons, 1986, Nuclear Ethics, p. 65

The equal access approach assumes that each generation would wish to make the tradeoffs for themselves. The current generation cannot avoid imposing some risks upon the future. As Derek Parfit argues, the risk does not do injustice to identifiable persons, since they do not yet exist. Later the harm may become real. Nonetheless, if the risks are kept low and values are successfully preserved, the gamble benefits a next generation, who then make their own decisions about risks and benefits to be passed on to further generations. Keeping risks to the survival of the species at a low level is essential to a sense of proportionality. Survival is not an absolute value, but it is important because it is a necessary condition for the enjoyment of other values. The loss of political values may (or may not) be reversed with the passage of time. The extinction of the species would be irreversible. Thus proportionality requires that we rate survival very highly, but it does not require the absence of all risk. Proportionality in risks is easier to judge if we think in terms of passing the future to our children and letting them do the same for their children rather than trying to aggregate the interests of centuries of unknown (and perhaps nonexistant) people at this time. While the contemplation of species extinction—or what Schell calls “double death”—may reduce the meaning of life to some people in the current generation, that is a value to be judged against others in assessing the risks that are worth running for this generation. It is not a cause of injustice to a future generation.

**Even slight risks of catastrophic impacts outweigh**

**Rescher, 83** (Nicholas, Department of Philosophy at the University of Pittsburgh, Risk: A Philosophical Introduction to the theory of risk evaluation, p. 67)

In such situations we are dealing with hazards that are just not in the same league. Certain hazards are simply unacceptable because they involve a relatively unacceptable threat—things may go wrong so badly that, relative to the alternatives, it’s just not worthwhile to “run the risk,”

 even in the face of a favorable balance of probabilities. The rational man is not willing to trade off against one another by juggling probabilities such outcomes as the loss of one hair and the loss of his health or his freedom. The imbalance or disparity between risks is just too great to be restored by probablistic readjustments. They are (probablistically) incommersuable: confronted with such “incomparable” hazards, we do not bother to weigh this “balance of probabilities” at all, but simply dismiss one alternative as involving risks that are, in the circumstances, “unacceptable”.

# 2NC

## Debt Ceiling

### 2NC Avoids Politics

**Reinstating liability avoids politics and solves energy development**

Kronk, assistant professor of law – Texas Tech University, ‘12

(Elizabeth Ann, 29 Pace Envtl. L. Rev. 811)

B. An Alternative Possibility for Reform: Reinstate Federal Liability under the TERA Provisions¶ As an alternative, a second recommendation for reforming the existing TERA provisions would call for reinstatement of federal liability so as **to increase tribal participation** in TERAs. This second proposal is also **an improvement over the status quo** in that it will (with any luck) alleviate tribal concerns related to the federal government's responsibility to tribes. Such a revision would arguably be consistent with the federal government's trust responsibility to tribes. As "the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes," n163 the waiver of federal governmental liability [\*856] seems to be inconsistent with this federal trust obligation. **Removing the waiver would** also **allay fears that "private entities** such as energy companies **will** exploit tribal resources and **take unfair advantage of tribes**." n164 This is because the federal government would likely maintain a more active role in energy development under TERAs. Moreover, this proposal would likely be consistent with the federal viewpoint, such as the one expressed by Senator Bingaman, which envisions the federal government maintaining a significant role in Indian country.¶ Congress apparently intended the TERA provisions to be consistent with the federal government's trust responsibility to tribes. For example, one subsection of the TERA provisions refers specifically to the federal trust responsibility, affirming that the trust responsibility remains in effect. This provision mandates that the Secretary "act in accordance with the trust responsibility of the United States relating to mineral and other trust resources ... in good faith and in the best interests of the Indian tribes." It also notes that with the exception of the waiver of Secretarial approval allowed through the TERA framework, the Indian Energy Act does not "absolve the United States from any responsibility to Indians or Indian tribes, including ... those which derive from the trust relationship." n165¶ In addition to apparent consistency with the federal trust responsibility, federal liability under the TERA provisions is appropriate given that the federal government maintains a significant role in the development of energy within Indian country even under the TERA agreements. For example, under the TERA provisions, the federal government retains "inherently Federal functions." n166 Moreover, as discussed above, the federal government maintains a significant oversight role through the existing TERA provisions because it has a mandatory environmental review process which tribes must incorporate into TERAs. The failure to relinquish oversight to tribes ensures that the federal government will maintain a strong management role, even after a tribe enters into a TERA with the Secretary of the [\*857] Interior. Given that the federal government maintains a substantial oversight role under the TERA provisions (which it views as consistent with its federal trust responsibility), the federal government should remain liable for decisions made under TERAs. In addition to the strong administrative role that the federal government would still play under approved TERAs, it also maintains an important role as a tribal "reviewer." Under the TERA provisions, the federal government must review the tribe's performance under the TERA on a regular basis. n167 Although the existing TERA provisions certainly mark an increased opportunity for tribes to participate in decision-making related to energy development within Indian country, the federal government's role should remain significant. The proposal to reinstate federal liability under the TERA provisions, therefore, recognizes the significant role that the federal government still plays under the existing TERA provisions.¶ If Senator Bingaman's viewpoint is any indication, Congress may be unwilling to relinquish federal oversight over energy development within Indian country. As a result, the first proposal for reform discussed above may prove to be unacceptable to Congress. Assuming this is the case, this second proposal allows the federal government to maintain an oversight role in Indian county and reinstates the federal government's liability. Based on the legislative history detailed above, **reinstatement of the federal government's liability would likely address many of the concerns raised by tribes regarding the existing TERA provisions**. In this way, this second proposal would also constitute an improvement over the status quo.¶ VI. CONCLUSION¶ For a variety of reasons, America needs to increase energy production from domestic sources. Indian tribes may prove the perfect partners for the federal government to achieve its goal of increased domestic production of energy. These tribes have the available natural resources, and experience managing these resources, to make them excellent partners. Increased energy [\*858] production within Indian country would serve federal interests and tribal interests, as such endeavors would **increase tribal sovereignty and self-determination** while promoting economic diversification within Indian country. Congress recognized this potentially beneficial relationship with tribes when it passed the TERA provisions of the Energy Policy Act of 2005. The existing TERA provisions arguably "streamline" the process of energy production within Indian country. Under these provisions, tribes that enter into a TERA with the Secretary of Interior may be relieved of Secretarial oversight in certain regards. Despite the benefits of such "streamlining," at the time of this writing, no tribe has entered into a TERA agreement with the Secretary of Interior.¶ In an effort to understand the potential reasons for lack of tribal engagement with TERA, this article has explored the legislative history associated with the TERA provisions. A review of the legislative history has illustrated that concerns related to the then-pending TERA provisions generally fell into three categories: (1) concerns associated with the federal government's trust responsibility to tribes; (2) concerns associated with federally-mandated environmental review provisions; and (3) concerns associated with the general waiver of federal liability.¶ Based on the review of applicable legislative history and the concerns expressed therein, this article proposes reform of the TERA provisions. In particular, this article proposes two potential reforms. The first represents a tribal sovereignty perspective. Under the first proposal, the tribes should be liable (i.e., a waiver of federal government liability should be maintained) only if tribes are the true decision-makers. In this regard, the first proposal argues for the removal of federal mandates, such as the conditions of environmental review and administrative oversight. The reform would allow tribes to truly make decisions regarding energy development within their territories.¶ Because Congress may not accept this proposal, the article also proposes an option for reform that maintains the federal mandates and oversight role of the federal government, but reinstates the federal government's liability under the TERA provisions. Such a reinstitution of federal liability is consistent [\*859] with the federal government's trust responsibility to tribes. Although the two proposals are contradictory, **both represent improvements over the status quo and**, should either be adopted by Congress, **would encourage tribes to enter into TERAs with the Secretary of Interior**.

**2NC Capital Key**

**Capital key- leverage the public to pressure GOP**

**NYT 1-2**

“Lawmakers Gird for Next Fiscal Clash, on the Debt Ceiling,” <http://www.nytimes.com/2013/01/03/us/politics/for-obama-no-clear-path-to-avoid-a-debt-ceiling-fight.html?pagewanted=all>

Some people in both parties questioned why Mr. Obama would so emphatically vow not to negotiate over the debt limit, a promise he may ultimately be forced to break if necessary to avoid economic shock waves.¶ “It’s bizarre,” said one veteran Democratic senator who would not be named, citing the proven willingness of Republicans to force a fiscal crisis unless the president makes a deal for additional spending cuts.¶ Mr. Obama resolved immediately after the 2011 debt crisis, privately and publicly, that he would not be drawn again into negotiations over the borrowing limit. He has said that presidents and Congresses have a fundamental, shared responsibility to ensure that the government pays bills that it owes to its citizens and creditors.¶ In saying he will refuse to bargain over the debt limit, Mr. Obama is counting on help from the business community, given its traditional ties to Republicans. Recently, for example, the head of the Business Roundtable, John Engler, a Republican and former governor of Michigan, called for extending the debt limit for five years.¶ “You don’t put the full faith and credit of the United States’ finances at risk,” said David M. Cote, chairman of Honeywell and a Republican member of the 2010 Simpson-Bowles fiscal commission. “The whole idea of using debt ceiling that way or saying ‘I’ll do this horrible thing to all of us unless you give in’ just doesn’t make any sense for anybody. It makes me very nervous. It’s not a smart way to run the country.”¶ Mr. Obama might also take to the road again, using the power of his office in an effort to convince the public that another fight over the debt ceiling risks another economic crisis. Public polls after the last debt ceiling fight suggested that more people blamed Republicans for the threat of a shutdown.¶ “If Congress refuses to give the United States government the ability to pay these bills on time, the consequences for the entire global economy would be catastrophic — far worse than the impact of a fiscal cliff,” Mr. Obama said Tuesday.

### Growth Stabilizing

#### Global Growth Stabilizing- QE3 and Europe

IMF 11-5

International Monetary Fund, “Meetings of the G-20 Finance Ministers and Central Bank Governors,” <http://www.imf.org/external/np/g20/pdf/110512.pdf>

Financial markets have improved since September and global growth appears¶ to be stabilizing. While the first half of 2012 was marked by a global loss of growth¶ momentum and an intensification of financial and economic stress in the euro area (see¶ IMF’s October 2012 World Economic Outlook), recent developments point to stabilization,¶ following further policy actions:¶  European equities are trading higher. Bond yields in Italy and Spain have come down¶ significantly, though they remain at relatively high levels. Periphery bank CDS spreads¶ have also fallen somewhat and there has been some pickup in bank debt issuance,¶ especially by stronger institutions. There are some early indications that acute capital¶ outflow pressures from the periphery may have begun to ease, as reflected by the¶ slight narrowing of TARGET2 imbalances. In the United States, the announcement of¶ QE3 led to a strong decline in MBS yields, which may help support the housing¶ recovery, and a fall of short-term interest rate expectations due to the extension of¶ the forward guidance. The latest high-frequency indicators suggest that global GDP growth might be¶ stabilizing, albeit at a sluggish rate. Recent economic indicators have been stronger- than-expected in the United States, as the recovery in the housing sector continued and consumer spending picked up, while in the euro area activity remains weak. However, unemployment remains unacceptably high in most advanced economies. There are signs that a broad recovery is underway in Brazil, as reflected in indicators of retail sales, industrial production, and confidence; India is benefitting from a financial markets rally after its announcement of reforms (to FDI and subsidies); and growth in China appears to be stabilizing. In contrast, growth in Russia has been decelerating since the second quarter of this year, amid weak external demand.

## Case

**A2- Review Requirement**

**Review requirement doesn’t undermine tribal sovereignty and the aff doesn’t solve- still exists under NEPA**

**Fosland 2012**

[Benjamin J., Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011–¶ 2012; J.D., cum laude, Gonzaga University School of Law, 2011; B.A., honors, University of ¶ Montana, 2008. “A CASE OF NOT-SO-FATAL FLAWS: ¶ RE-EVALUATING THE INDIAN TRIBAL ¶ ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT” Idaho Law Review, Vol. 48 ¶ p. 458- 460]

2. Effects of Public Input Requirements on Tribal Decision Making¶ The required incorporation of public “notice-and-comment” periods ¶ into the structure of a resource agreement has also given some analysts ¶ cause for concern.¶ 110¶ These public-input requirements obligate the Secre-tary to receive comments on the proposed resource agreement itself,¶ 111¶ as well as the Department of Interior’s decision regarding approval of ¶ the resource agreement.¶ 112¶ The tribes must incorporate processes to allow for public comment before final tribal approval of leases, rights-ofway, and any other development instruments,¶ 113¶ and also must incorporate these comment periods as a part of the environmental review process tribes must establish under a resource agreement.¶ 114¶ Finally, interested parties have the ability under ITEDSA to petition the Secretary to ¶ review a tribe’s compliance with a resource agreement after the parties ¶ have exhausted tribal remedies.¶ 115¶ **The argument has been made** that ¶ these **public-input requirements “conflict sharply with tribal selfgovernance” and** will **prevent many tribes from** **taking advantage of the** ¶ **resource agreement** system.¶ 116¶ **But the requirements are unlikely to** ¶ **have the decisive effect predicted by** some of ITEDSA’s **critics**.¶ The incorporation of **public input** into the decision making process ¶ **is not in conflict with tribal self-governance** **because comments** received ¶ **cannot dictate the final decision**. In regard to the Secretary’s obligation, ¶ **input from tribal and non-tribal sources is not determinative of whether** ¶ **the** **Secretary** ultimately **approves a resource agreement**.¶ 117¶ Similarly, ¶ **public input** in regard to the final approval of development instruments ¶ or environmental effects **cannot dictate tribal decisions.**¶ 118¶ So, the belief¶ that public “notice-and-comment” periods will effectively usurp decisionmaking authority from the tribe is incorrect.¶ **The purpose of these “notice-and-comment” periods is to gather information, not to dictate a substantive outcome**.¶ 119¶ The process requirements of tribal environmental review under ITEDSA were created to ¶ track the requirements of the National Environmental Policy Act ¶ (NEPA).¶ 120¶ This was at least in part because NEPA no longer applies once the Secretary of the Interior approves a resource agreement.¶ 121¶ One ¶ of NEPA’s core principles, as Professor Royster has observed, is that ¶ more information leads to better decision making.¶ 122¶ It focuses on process, not on achieving a substantive outcome.¶ 123¶ The tribes’ environmental review process will similarly focus not on a substantive outcome, but ¶ rather on creating decisions that are “made in light of full environmental information.”¶ 124¶ Furthermore, **a tribe with a resource agreement in** ¶ **place will be responsible for final approval** of development instruments ¶ **and the environmental review process.**¶ 125¶ This means that **public comments “will be reviewed in light of tribal values,** priorities, and decisions, **rather than filtered through a federal lens**.”¶ 126¶ Even if one assumed the public input requirements imposed by ¶ ITEDSA somehow conflicted with tribal self-governance, **energy development on Indian reservations is already subject to NEPA under the** ¶ **current system.**¶ 127¶ The tribal comment processes created under ITEDSA ¶ will not, therefore, create opportunities for public input other than those ¶ that exist under the current system.¶ 128¶ And even assuming the public ¶ input requirements provide no benefit to the tribes, the requirements ¶ themselves do not change the status quo. Thus, the argument that ¶ tribes will not take advantage of ITEDSA due to the required “noticeand-comment” periods is unconvincing.

**Public challenges also don’t undermine sovereignty- tribes still maintain control of the process and it deters frivolous lawsuits against energies**

**Fosland 2012**

[Benjamin J., Law Clerk to Chief Judge David W. Gratton, Idaho Court of Appeals, 2011–¶ 2012; J.D., cum laude, Gonzaga University School of Law, 2011; B.A., honors, University of ¶ Montana, 2008. “A CASE OF NOT-SO-FATAL FLAWS: ¶ RE-EVALUATING THE INDIAN TRIBAL ¶ ENERGY DEVELOPMENT AND ¶ SELF-DETERMINATION ACT” Idaho Law Review, Vol. 48 ¶ p. 460-1]

The provisions of ITEDSA that allow interested parties to petition ¶ the Secretary to review a tribe’s compliance with a resource agreement ¶ seemingly pose a different threat. Although there is some confusion as ¶ to the regulations governing these challenges,¶ 129¶ it is clear that they ¶ have the potential to “inject considerable delay and expense into tribal ¶ resource development.”¶ 130 While this may be true, **outside petitions** ¶ **would not truly conflict with self-governance** **because the challenges can** ¶ **be mounted only in regard to tribal compliance with a resource agreement.**¶ 131¶ The substantive decision of whether or not to approve a particular development instrument will be protected as long as the tribe complies with the terms of its resource agreement—an agreement that, im-portantly, the tribe is responsible for entering into. As discussed above, ¶ **the terms of a resource agreement lay out a process; they do not dictate** ¶ **an outcome**. So while challenges (even frivolous ones) may cause delay, ¶ **as long as the procedures are** properly **followed, the tribe retains ultimate control over development** decisions.¶ It is also notable, in regard to possible challenges, that **the “noticeand-comment” procedures** incorporated into ITEDSA **may actually** serve ¶ to **reduce the chances of “nuisance suits by** disgruntled **neighbors**.”¶ 132¶ **By** ¶ **incorporating a process through which people and organizations** affected ¶ by the proposed development **can voice their concerns, a tribe may satisfy** many of **those affected** by its decisions. The comment process would ¶ “allow those who oppose or fear tribal actions generally to make their ¶ misgivings part of the record.”¶ 133¶ This process could, in many cases,¶ make decisions made by the tribe that much easier to swallow for those ¶ adversely affected by development and reduce the number of challenges ¶ and amount of litigation associated with tribal resource development.¶ In sum, fears that the public will hijack tribal energy development ¶ are unfounded given the focus on the process of decision making. **Substantive decisions about development** under a resource agreement system **will be made with more complete information** due to the public input. At the same time, the end result of the process remains in the ¶ hands of each individual tribe. With this in mind, **arguments that public** ¶ **input is irreconcilable with tribal self-governance** and selfdetermination **are unpersuasive**. In truth, **public notice** and comment on ¶ proposed tribal actions **will enhance a tribe’s ability to** **make the best** ¶ **choices concerning energy development** and to continue to serve as responsible stewards of their own lands.

### Violence Proximity

**Violence is proximately caused – root cause logic is poor scholarship**

**Sharpe ‘10**

Sharpe, lecturer, philosophy and psychoanalytic studies, and Goucher, senior lecturer, literary and psychoanalytic studies – Deakin University, ‘10¶ (Matthew and Geoff, Žižek and Politics: An Introduction, p. 231 – 233)

We realise that this argument, which we propose as a new ‘quilting’ framework to explain Žižek’s theoretical oscillations and political prescriptions, raises some large issues of its own. While this is not the place to further that discussion, we think its analytic force leads into a much wider critique of ‘Theory’ in parts of the latertwentieth- century academy, which emerged following the ‘cultural turn’ of the 1960s and 1970s in the wake of the collapse of Marxism. **Žižek’s paradigm to try to generate all his theory of culture**, subjectivity, ideology, **politics and religion is psychoanalysis.** But **a similar criticism would apply**, for instance, **to theorists who feel** that the method Jacques **Derrida** developed for criticising philosophical texts **can** meaningfully **supplant** the **methodologies of political science, philosophy, economics, sociology** and so forth, **when it comes to thinking about ‘the political’. Or**, differently, **thinkers who opt for Deleuze** (or Deleuze’s and Guattari’s) **Nietzschean Spinozism as a new metaphysics to explain** ethics, **politics**, aesthetics, ontology and so forth, **seem to us candidates for** the same type of **criticism, as a reductive passing over** the **empirical and analytic distinctness of** the **different** object **fields in complex societies.**

In truth, we feel that **Theory**, and the continuing line of ‘master thinkers’ who regularly appear particularly in the English- speaking world, **is the last gasp of** what used to be called **First Philosophy. The philosopher ascends out of the city**, Plato tells us, from whence she can espie the Higher Truth, which she must then bring back down to political earth. From outside the city, we can well imagine that **she can see** much **more widely than her** benighted political **contemporaries. But** from these philosophical heights, we can equally suspect that **the ‘master thinker’ is** also **always in danger of passing over** the **salient differences** and features of political life – **differences** only **too evident to people ‘on the ground’. Political life,** after all, **is** **always a more complex affair than** a bunch of **ideologically duped fools staring at** and enacting **a wall** (or ‘politically correct screen’) **of** ideologically produced **illusions**, from Plato’s timeless cave allegory to Žižek’s theory of ideology.

We know that Theory largely understands itself as avowedly ‘post- metaphysical’. It aims to erect its new claims on the gravestone of First Philosophy as the West has known it. But it also tells us that people very often do not know what they do. And so it seems to us that too many of its **proponents** and their followers **are** mourners who remain in the graveyard, **propping up the gravestone of Western philosophy under the sign of some totalising account of** absolutely **everything – enjoyment, différance, biopower** . . . Perhaps **the time has come,** we would argue, **less for one more would- be global**, allpurpose existential and **political Theory** **than for a** **multi- dimensional and interdisciplinary** critical **theory** that would challenge the chaotic specialisation neoliberalism speeds up in academe, which mirrors and accelerates the splintering of the Left over the last four decades. This would mean that **we** would **have to shun the hope that one method**, one perspective, or one master thinker **could single- handedly decipher** all the **complexity of socio- political life**, the concerns of really existing social movements – **which** specifi cally **does not mean mindlessly celebrating difference**, marginalisation and multiplicity as if they could be suffi cient ends for a new politics. **It would be to reopen critical theory and non- analytic philosophy to the other intellectual disciplines**, most of **whom** today **pointedly reject Theory’s legitimacy,** neither reading it nor taking it seriously.

## CP

### Clinton Agrees We solve

**This trust relationship shouldn’t be confused with colonialism – it is necessary to prevent exploitation of Native America.**

**Clinton, '93** (Former Iowa Law Prof -- Go Hawks!, 46 Ark. L. Rev. 77)

Given the chameleon-like nature of and complex roles played by the federal trusteeship doctrine over the course of American legal history, it may not be sufficient only to identify it as a legacy of colonial oppression of Indian tribes and to condemn it to the oblivion of America's colonialist past. Although the doctrine has been destructive to Indian tribes and their cultures, it also **has protected ~~tribal~~ communities by affording redressability for past wrongs**. For example, Chief Justice Marshall used the doctrine in Cherokee Nation in part to insinuate the federal government's obligation by treaty or otherwise to protect the sovereignty and lands of the Cherokee Nation from encroachment by the State of Georgia and its [\*134] citizens. Surely, this protective role, for which many tribes diligently negotiated in many of the treaties**, does not represent a legacy of colonialism**. Rather, it is a logical outgrowth of the political relationships created by such treaties and the course of dealings between the federal government and the tribes. Similarly, while colonialism certainly caused the federal government to assume the management of many Indian minerals and resources, the legal doctrines derived from the trusteeship hold the federal government legally accountable for actual mismanagement of such Indian resources, and therefore, **they should not be simplisticly condemned and eliminated as a vestige of colonialism.** Thus, dealing with the federal trusteeship in the visionary world of a decolonized federal Indian law poses significant conceptual problems. Certainly, the elements of the doctrine which justify the exercise of plenary federal authority, federal usurpation of the management of or decision making about Indian resources, or federal efforts to "enlighten" Indians by depriving them of their tribal traditions and culture represent a part of the legacy of conquest and properly should be jettisoned by a decolonized federal Indian law as relics of America's colonialist past. By contrast, a decolonized federal Indian law still might retain those elements of the trusteeship under which the federal government justified its protection of the legal autonomy of communities from the onslaught of the legal authority of the states that surrounded them or under which it has sought to provide legal redress for harms caused by its past colonialist excesses. Perhaps doctrinal labels less paternalistic than trusteeship, guardianship, wardship, or the like could be found to describe these legal theories, but, nevertheless, these elements, which historically have been associated with the federal trusteeship over Indian affairs, **should escape the scalpel of decolonization of federal Indian law.**

### Royster Agrees

**If a small distinction in tribal sovereignty dooms the CP it dooms the aff too- they leave multiple points of federal control within TERA in place**

**Royster**, Co-Director – Native American Law Center @ University of Tulsa, ‘**8**

(Judith V., 12 Lewis & Clark L. Rev. 1065)

The first concern is the limitation on the resources to which ITEDSA applies. Enacted as an energy development measure as well as a tribal self-determination measure, n106 ITEDSA does not apply to all tribal mineral resources. The statute itself contains no definition of energy [\*1083] resources, but the regulations define them as "both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources." n107 Tribes' ability to **exercise** greater practical **sovereignty** over their mineral resources thus does not extend to such minerals as clay or sand and gravel. **This artificial division of tribal mineral resources into energy and non-energy** resources **means** that instruments for the **development of non-energy** minerals **must still go through a secretarial review process** even for tribes that enter into TERAs. Consigning sand and gravel development to a more onerous process than, say, uranium or coal development makes little sense. Amending ITEDSA to apply to the full range of mineral resources covered by the Indian Mineral Development Act n108 would not only harmonize the two statutes, but ensure that tribes could address all their mineral resources in the same manner.

### A2: Liability

**Federal liability is the only way to guarantee checks on exploitative corporate power**

**Reese 5** (April, "ENERGY POLICY: New federal law encourages tapping of Indian resources," Lexis)

Supporters of the measure, which was proposed by members of the Council of Energy Resource Tribes (CERT), say it will help tribes meet growing demand for energy both on and off the reservation. "Indian lands represent tremend ous potential for economic advancement for the tribes that want to use those resources and develop them, and they represent an important energy supply to the rest of the country," said David Lester, executive director of CERT, adding that tribes can provide "far more" energy than the Arctic National Wildlife Refuge holds. Tribal populations are growing twice as fast as the general U.S. population and tribal economies are growing three times as fast as the national economy, Lester said. With almost all of the 562 federally recognized Indian tribes harboring some kind of energy resource, from wind, solar and biomass to coal and natural gas, tribes that choose to take advantage of the incentives in the new law can provide electricity and heat to their members, with plenty left over to sell to their non-tribal neighbors, he said. While only about 2 percent of the lands within the United States are tribally owned, lands on or adjacent to reservations contain more than 30 percent of its fossil energy sources, Lester said. Supporters, which include the National Congress of American Indians, say **giving Indian tribes more control over their resources is a good idea, especially since the federal government has not been a good steward of tribal lands in the past.** Several tribes have wrangled in court with the Interior Department and energy companies over what they contend are paltry royalty payments for resources extracted from their lands. **A major case involving the federal government's alleged mishandling of tribal energy revenues is still pending in federal court. The new law**, Lester and others say, **will help avoid such problems by giving tribes greater say over energy development on their lands.** 'Culture at stake' But **critics of the new law say not all tribes are ready for that kind of responsibility. They fear it will allow energy companies to take advantage of tribes that are energy-rich but lack the governing capacity to ensure they are getting a fair deal.** Clayton **Thomas-Muller, native energy organizer at the Indigenous Environmental Network, said some tribes** also **do not have the institutional and enforcement mechanisms needed to guarantee that their resources will be developed responsibly. The law** essentially **allows the federal government to abandon its trust responsibility to the tribes, which is intended to prevent unfair treatment of tribes by outside entities such as energy companies**, he said. "Yes, there are tribes that have those resources -- the lawyers, the scientists, the capacity to do what they need to do -- but there are hundreds that don't and are being set up to fail," Thomas-Muller said. "**This energy bill basically takes us back 100 years, allowing corporations to exploit tribes that are still reeling from the impacts of colonization and dealing with different socioeconomic situations." The law encourages development of conventional energy resources like coal, natural gas and oil, which could scar tribal lands and undermine native ways of life, while bringing very little benefit to the tribes**, he added. "**Our very culture is at stake here**," Thomas-Muller said. "To further destroy our land, our air, and our water for short-term economic solutions is not economic development, and it sets up our unborn generations for a very hard life." Lester emphasized that the new incentives will encourage the development of renewables like wind and solar, which are even more abundant on Indian lands than conventional, fossil-based resources. And the measure is voluntary, he added, noting that tribes can choose not to develop their resources, and those that do can choose to continue using NEPA instead of crafting their own regulatory framework. "**This law strengthens each tribe's hand to use energy resources the way they want to use them**," he said. "If they have coal resources but don't want to develop them, there's nothing that says they have to." And **the law also seeks to ensure that tribes are capable of regulating energy development themselves before handing over the reins to them.** When considering whether to approve a tribal energy resource agreement, the secretary of Interior must determine that the tribe "has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe," according to the law. Obstacles Bob Gough, secretary of the Intertribal Council on Utility Policy, which promotes renewable energy development on tribal lands, characterized the measure as "a good start" but said some of the timelines for implementing its provisions appear to be unrealistic. For instance, it will likely take tribes six months or more to set up a system to sell clean energy bonds and funds to support that effort are not likely to be available until fiscal year 2007. But the provision expires at the end of 2007, he said. "There are a whole lot of new procedures," Gough said. "It's not going to happen overnight. There aren't a lot of tribes who will take advantage of this quickly." Tribal leaders, Interior officials and energy industry representatives will meet Monday in Chicago to discuss what the new law means and how to implement it, Gough said. Lizana Pierce, with DOE's tribal energy program in Golden, Colo., said the law has the potential to help tribes develop their resources, but that it will mean little unless Congress provides the funding to implement it. "There's a whole cadre of deadlines," she said. "But at least on the DOE side, there's no funds." Lester said the CERT tribes plan to "work our tails off" to convince lawmakers to back the law with appropriate funding levels, most likely through the Interior and Energy appropriations bills for fiscal year 2007. "We have a lot of work ahead of us," Lester said. Southwest reporter April Reese is based in Santa Fe, N.M.

**A2- Counterplan Undermines Sovereignty (Kronk)**

**The counterplan provides the perfect middle-ground between trust doctrine and tribal sovereignty- Kronk agrees**

Kronk (1AC Author) 12—Assistant Professor, Texas Tech University School of Law (Elizabeth, Tribal Energy Resource Agreements: The Unintended "Great Mischief for Indian Energy Development" and the Resulting Need for Reform, 29 Pace Envtl. L. Rev. 811)

\*\*\*Above suggestion = AFF\*\*\*

**Should the above suggestion prove distasteful, a second recommendation for reforming the existing TERA provisions calls for reinstating federal liability so as to hopefully increase tribal participation in TERAs. This second proposal is also an improvement over the status quo in that itwill with any luck alleviate tribal concerns** related to the federal government’s responsibility to tribes. Such a revision would arguably be consistent with the federal government’s trust responsibility to tribes. This is because the language that removes the federal government from liability under the TERA provisions “’undercuts the federal trust responsibility to Tribes by providing a waiver for the federal government of all liability from energy development.’” As such, “the ability to hold the federal government liable for breach is at the heart of its trust obligation toward tribes.” The waiver of federal governmental liability would, therefore, seem to be inconsistent with the federal trust obligation to tribes. Removing such a waiver would also allay the fears of some that “private entities such as energy companies will exploit tribal resources and take unfair advantage of tribes.” This is because the federal government would likely maintain a more active role in energy development under TERAs. **Moreover, this proposal would likely be consistent with a federal viewpoint, such as the one expressed by Senator Bingaman as discussed above, which envisions the federal government maintaining a significant role in Indian country. Congress apparently intended the TERA provisions to be consistent with the federal government’s trust responsibility to tribes. For example, one subsection of the TERA provisions refers specifically to the federal trust responsibility, affirming that the trust responsibility remains in effect. This provision mandates** that the Secretary “act in accordance with the trust responsibility of the United States relating to mineral and other trust resources” and “in good faith and in the best interests of the Indian tribes.” It also notes that with the exception of the waiver of Secretarial approval allowed through the TERA framework, the Indian Energy Act does not “absolve the United States from any responsibility to Indians or Indian tribes, including …those which derive from the trust relationship**.” In addition to apparent consistency with the federal trust responsibility, federal liability under the TERA provisions is appropriate given the federal government maintains a significant role in the development of energy within Indian country even under the TERA agreements**. For example, under the TERA provisions, the federal government maintains “inherently Federal functions.” Moreover, as discussed above, the federal government maintains a significant oversight role through the existing TERA provisions because it has a mandatory environmental review process that tribes must incorporate into TERAs. This failure to relinquish oversight to tribes ensures that the federal government will maintain a strong management role, even after a tribe enters into a TERA with the Secretary of the Interior. “According to the Preamble, the inclusion was attributable partly to the trust responsibility toward tribes and trust assets and partly to the DOI’s responsibilities, as spelled out in the Indian Energy Act, to determine a tribe’s capacity to carry out TERA activities and to undertake periodic reviews of a tribe’s TERA activities.” **Given the federal government maintains a substantial oversight role under the TERA provisions (which it views as being consistent with its federal trust responsibility), the federal government should remain liable for decisions made under TERAs. In** addition to the strong administrative role that the federal government would still play under approved TERAs, it also maintains an important role as tribal “reviewer”. Under the TERA provisions, the federal government must review the tribe’s performance under the TERA on a regular basis. **Although the existing TERA provisions certainly mark an increased opportunity for tribes to participate in decision-making related to energy development within Indian country, the federal government’s role remains significant.**The proposal to reinstate federal liability under the TERA provisions, therefore, recognizes the significant role that the federal government still plays under the existing TERA provisions. If Senator Bingaman’s viewpoint is any indication, Congress may be unwilling to relinquish federal oversight over energy development within Indian country. As a result, the first proposal for reform discussed above may prove to be unacceptable to Congress. Assuming this is the case, **this second proposal allows the federal government to maintain an oversight role in Indian county and, at the same time, reinstates the federal government’s liability. Based on the legislative history discussed above, reinstatement of the federal government’s liability would likely go a long way toward addressing many of the concerns raised by tribes in relation to the existing TERA provisions. In this way, this second proposal would also constitute an improvement over the status quo.**

**A federal trust doctrine based on protecting Native resources prevents Native extinction.**

**Wood, ’94** (Oregon Assistant Law Professor, 1994 Utah L. Rev. 1471)

Since first entering into treaties with the United States, native nations have waged a 200-year struggle to maintain their autonomy against an encroaching majority society. With all too few exceptions, native interests have been overwhelmingly subjugated to the political will of the majority. Now, positioned at the threshold of the twenty-first century, tribes are still adjusting to the relatively new era of Self-Determination--an era marked by federal policy supportive of native sovereignty. Despite the comforting tenor of current federal policy, the future of tribal existence for many native nations is imperiled. While the remaining three percent of the native land base is vital to preserving tribal autonomy, **it stands to be lost in a storm of development and pollution** throughout the United States. Many native lands are severely contaminated as a result of non-Indian activities occurring off reservations, and tribes are finding it increasingly difficult to continue their traditional way of life because of unrestrained non-Indian activities that are depleting and degrading shared resources. But the threat also arises from within Indian society itself. Indian lands are increasingly eyed by the majority society to alleviate scarcity outside of Indian Country. Such lands may be developed only with the consent of the governing tribal entity--consent that is more readily given in times of economic hardship, such as the present. As this Article points out, the deep aversion of a significant portion of the native population to industrial development of their lands is largely overlooked in the face of tribal council approvals legitimized by the policy of Self-Determination. This Article has explored the federal government's role in the continuing assault on Indian lands and has examined modern governmental duties and obligations owed to tribes within a sovereign trust paradigm. The federal government's trust duty is rooted in the land cessions made by the native nations. As expressed in treaties and elsewhere, the land cessions were conditioned upon an understanding that the federal government would safeguard the autonomy of the native nations by protecting their smaller, retained territories from the intrusions of the majority society and its ambitious entrepreneurs. This promise of a viable separatism forms the heart of the federal government's continuing trust responsibility toward the native nations. The continuing entitlement of tribes to maintain a separate existence, however, has been obfuscated by a modern trend [\*1568] to address native needs through the legal structure developed for a non-Indian society--a structure consisting primarily of constitutional and statutory protections. Such legal protections, geared as they are toward non-Indian needs and values, are often inadequate to protect the distinctive sovereign character of native nations. Now, with much of the native land base and corollary resources on the verge of irrevocable deterioration, renewed attention to the trust doctrine **is critical.** This Article charted a course for the trust doctrine within the context of the Mitchell decisions and post-Mitchell precedent. It concluded that, while courts will likely remain reluctant to enforce trust obligations against Congress, trust claims against the executive branch remain viable after Mitchell in both the federal landmanagement and incidental-action contexts. In the incidental-action context, the trust doctrine allows tribes to challenge federal action which, though perhaps permissible under federal environmental law, detrimentally affects their unique way of life. In the land-management context, the trust doctrine provides important redress for tribes against governmental mismanagement of tribal lands and resources. Just as important, the trust claim may provide critical protection to tribal members seeking to safeguard their lands and resources against large-scale disposition to private interests through lease arrangements. In this latter context, the federal fiduciary duty to protect a tribe's territory against market encroachments of the majority society may sometimes outweigh the inevitable intrusion into tribal council prerogatives resulting from federal disapproval of a project. This argument recognizes the complex underpinnings of tribal sovereignty on many reservations and seeks to define the federal government's trust obligation not as a duty to automatically approve each transaction negotiated by a tribal government, but rather as a duty to safeguard the land interests of the tribe as a whole for present and future generations. To conclude, native nations in the Self-Determination era face threats to their autonomy perhaps more subversive and subtle **than those of any previous era**. While the current Self-Determination era carries pleasant overtones of tribal autonomy, in reality it may be promoting a rapid conversion of tribes from culturally autonomous, land-based societies, to substantially assimilated, corporate-like entities reflecting normative characteristics of the highly industrialized majority society that surrounds them. Undoubtedly the most dangerous aspect of the modern policy is its effective disguise of the continued pressures exerted by the majority society to sever native people from their lands and extinguish their way of life. As this Article has pointed out, Self-Determination will prove a hollow concept [\*1569] if industry and the government **exploit it to serve the interests** of the majority society at the expense of the native nations. Indeed, it will become nothing more than continued **colonialism under the banner of native sovereignty.**At a very basic level this Article has suggested a fundamental shift in the policy and law paradigm governing federal-tribal relations. The federal duty of protection, which forms the basis of the sovereign trusteeship as secured by the vast land cessions of two centuries ago, should again serve as the focal point of future dealings between tribes and the federal government. This duty of protection does not justify or authorize plenary power over sovereign native nations, but rather translates into self-restraint on the part of the majority society to refrain from taking actions injurious to native lands and resources.

# 1NR

### More Evidence

#### Indian Country is not in the United States- foreign country

**US Department of State Manual ’12**

“7 Fam 1113 Not Included in the Meaning of “in the United States” http://www.state.gov/documents/organization/86755.pdf

a. Before U.S. v. Wong Kim Ark, the only occasion on which the Supreme ¶ Court had considered the meaning of the 14th Amendment‟s phrase ¶ “subject to the jurisdiction” of the United States was in Elk v. Wilkins, 112 ¶ U.S. 94 (1884). That case hinged on whether a Native American who ¶ severed ties with the tribe and lived among whites was a U.S. citizen and ¶ entitled to vote. The Court held that the plaintiff had been born subject ¶ to tribal rather than U.S. jurisdiction and could not become a U.S. citizen ¶ merely by leaving the tribe and moving within the jurisdiction of the ¶ United States. The Court stated that: “The Indian tribes, being within ¶ the territorial limits of the United States, were not, strictly speaking, ¶ foreign States; but they were alien nations, distinct political communities, ¶ with whom the United States might and habitually did deal through ¶ treaties or acts of Congress. They were never deemed citizens of the ¶ United States except under explicit provisions of treaty or statute to that U.S. Department of State Foreign Affairs Manual Volume 7 - Consular Affairs¶ 7 FAM 1110 Page 10 of 13¶ effect, either declaring a certain tribe, or such members of it as chose to ¶ remain behind on the removal of the tribe westward, to be citizens, or ¶ authorizing individuals of particular tribes to become citizens upon ¶ application for naturalization.”

## Reasons why Cal Shouldn’t Read this Card

#### Indian territories are considered part of the United States geographically and jurisdictionally

Cherokee Nation v. Georgia Court Decision

(Cherokee Nation v. Georgia (30 U.S. (5 Pet.) 1 (1831))

The Indian Territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees, in particular, were allowed by the treaty of Hopewell, which preceded the Constitution, "to send a deputy of their choice, whenever they think fit, to Congress." Treaties were made with some tribes by the State of New York, under a then unsettled construction of the confederation by which they ceded all their lands to that State, taking back a limited grant to themselves in which they admit their dependence.

### This is the Cheap Shot

#### Skies are not in the United States

**US Department of State Manual ’12**

“7 Fam 1113 Not Included in the Meaning of “in the United States” http://www.state.gov/documents/organization/86755.pdf

A U.S.-registered aircraft outside U.S. airspace is not considered to ¶ be part of U.S. territory. A child born on such an aircraft outside U.S. ¶ airspace does not acquire U.S. citizenship by reason of the place of birth. ¶ NOTE: The United States of America is not a party to the ¶ U.N. Convention on Reduction of Statelessness (1961). ¶ Article 3 of the Convention does not apply to the United States. ¶ Article 3 provides “For the purpose of determining the obligations ¶ of Contracting States under this Convention, birth on a ship or in ¶ an aircraft shall be deemed to have taken place in the territory of ¶ the State whose flag the ship flies or in the territory of the State ¶ in which the aircraft is registered, as the case may be.” ¶ This is a frequently asked question.