## Indians AFF – Policy 1AC

#### The federal government passed the Indian Energy Act in 2005, enabling tribes to produce energy free from federal oversight using a Tribal Energy Resource Agreement; however, to date, these agreements have been underutilized due to onerous mandates

Kronk 12 [Elizabeth Ann, associate professor and director of Tribal Law & Government Center at KU School of Law, “Tribal Energy Resource Agreements: The Unintended ‘Great Mischief for Indian Energy Development’ and the Resulting Need for Reform,” Pace Environmental Law Review, [http://works.bepress.com/context/elizabeth\_kronk/article/1001/type/native/viewcontent //](http://works.bepress.com/context/elizabeth_kronk/article/1001/type/native/viewcontent%20//) myost]

Recognizing the importance of energy development in Indian country and the need to promote such development, Congress passed the Indian Tribal Energy Development and Self-Determination Act of 2005 as part of the Energy Policy Act of 2005. In relevant part, the Act allows tribes who have met certain requirements to “enter into a lease or business agreement for the purpose of energy resource development on tribal land” without review by or approval of the Secretary of the Interior, which would otherwise be required under applicable federal law. In order to qualify, a tribe must enter into a Tribal Energy Resource Agreement (TERA) with the Secretary of the Interior. The Secretary must approve the TERA if the tribe meets several requirements. One of these requirements is of particular importance to this article. Tribes are required to “establish requirements for environmental review,” which must include elements mirroring requirements of the National Environmental Policy Act (NEPA). In addition to the required elements that must be included in the TERA, the Indian Tribal Energy Development and Self-Determination Act of 2005 also expounds upon the federal government’s trust responsibility to tribes as related to TERAs. Specifically, the Act states that nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe. However, the Act goes on to provide that “the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement ….” The Act’s mandated environmental review requirements, statement on the federal government’s trust responsibility and general waiver of the federal government’s liability will all be discussed in much greater detail below as they potentially relate to the reason why tribes may not be taking advantage of the Act’s TERA provisions. From the text of the Act, that Congress hoped to promote energy development in Indian country by “streamlining” the bureaucratic process (i.e. removing the requirement of Secretarial approval for tribes that enter into a TERA with the Department of Interior) may therefore be inferred. In 2003, Senator Domenici confirmed this conclusion, explaining the purpose of the then-proposed TERA provisions as follows: The Indian people of the United States are the proprietors of large amounts of property. On this property and in this property lie various assets and resources. This section [proposed TERA provisions] authorizes the Indian tribes of this country to enter into agreements with the Secretary of the Interior to develop their energy resources. Once agreements between the Indian people and the Secretary of the Interior are entered into, the tribe can then enter into leases or production on their tribal lands with the same rights as if they were private landowners. In the end … the purpose of this bill will be to say to our Indian people, if you want to develop resources in the field of energy that lie within your lands, we are giving you the authority to do so and hopefully in a streamlined manner so that it will not be forever bogged down in the redtape and bureaucracy of Indian lands being subject to the Federal Government’s fiduciary relationships. Furthermore, in comments submitted to the Senate Committee on Indian Affairs, Joe Shirley, Jr, Office of the President and Vice President of the Navajo Nation, explained generally the advantages of streamlining the process through the TERA provisions: In general, any mechanism that puts tribes in the drivers seat of their own destiny by reducing the involvement of the federal government in tribal decisions is a good thing. A legislative mechanism that relieves tribal transactions of the burden of Secretarial involvement, so long as those transactions comply with pre-approved tribal regulations, is conceptually a very good idea. Such streamlining promotes efficiency, accountability, and self-determination. In addition to tribal and federal governmental interests in the TERA provisions, third party investors may also be interested in TERAs, because “[i]f a TERA is properly structured, a mineral developer should gain greater certainty and efficiency in the development of energy resources on tribal lands.” In this way, the TERA provisions represent a rare instance in the history of tribal-federal relations where both tribes and the federal government may benefit from a partnership. However, despite this possibility, apparently not a single tribe has taken advantage of the “streamlining” opportunity presented by the TERA provisions. This article examines why tribes have, to date, failed to take advantage of the TERA provisions and then makes recommendations as to how TERA might be reformed in order to increase tribal participation. Accordingly, Section I examines the underlying purpose of the TERA provisions and associated legislative history. Three categories of tribal concerns related to the TERA provisions emerge following a review of the applicable legislative history. Each of these categories is explored in depth. Next, Section II discusses the general ability of tribes to develop their energy resources. This Section also discusses why such development may be generally attractive to tribes. The Section concludes that some tribes both have the capacity and economic interest in developing their energy resources. Given the foregoing, Section III theorizes that tribes have failed to enter into TERA agreements due to the concerns represented in the related legislative history. As a result, Section IV presents two alternative proposals for reform, arguing that should either proposal be adopted by Congress, the likelihood that tribes would be willing to enter into TERA agreements would increase over the status quo. Ultimately, this article concludes that adoption of either of the proposed reforms of TERA will spur tribal promulgation of TERAs with the Secretary of Interior.

#### We will isolate two scenarios of violence—

#### Scenario 1 is Black Lung

#### Tribes want to switch to wind power to stop dependence on harmful technologies; they are often told that projects like clean coal are their only option

New York Times 11 (October 25th 2011 [**http://www.nytimes.com/2011/10/26/business/energy-environment/rich-in-coal-a-tribe-struggles-to-overcome-poverty.html?pagewanted=all**](http://www.nytimes.com/2011/10/26/business/energy-environment/rich-in-coal-a-tribe-struggles-to-overcome-poverty.html?pagewanted=all))

Sparsely populated and beautiful, with rolling plains and unusual rock outcroppings, **the Crow reservation is home to** about **three-quarters of the tribe**’s 12,144 enrolled members. **Their land lies in the Powder River Basin**, an epicenter of U.S. energy development **that supplies more than 40 percent of the country’s coal.** In spite of the Crow Nation’s long struggle with poverty, it is coal rich, with more than 9 billion tons of the fossil fuel. Coal development might seem like an obvious step, and indeed, since 1974 the tribe has leased coal reserves to Westmoreland Resources at the Absaloka Mine near Hardin, Montana. The mine ships as much as 7.5 million tons of coal annually. But execution of a new coal project has proved difficult, and some **tribal members are pursuing wind** development **as an alternative**. In 2008, Crow tribal leadership announced a 50-year, $7 billion deal with Australian-American Energy Co. to mine its coal and build a coal-to-liquids plant, or C.T.L. The technology has been mostly uneconomical since its invention in 1920s Germany. But now, with technology improvements and higher prices for crude oil, those numbers are beginning to change. Nevertheless, there is just one commercial-scale C.T.L. plant operating in the world at the moment, in South Africa, according to the World Coal Association. The tribe was attracted to the project, called Many Stars, in part because it claimed to be environmentally friendly in capturing and sequestering carbon dioxide generated by production. “With all this coal we have, one component of the coal monetization has to be state-of-the-art clean coal and addressing climate change, for long run utilization of coal,” said Bill Watt, Crow tribal attorney. But claims that C.T.L. has a light environmental footprints have been disputed. A 2007 report from the Natural Resources Defense Council, an environmental organization, said C.T.L. created 8 percent more carbon dioxide emissions than standard gasoline, even when the emissions were captured for reuse or storage. And it might not be. A study earlier this year from the Massachusetts Institute of Technology found that, in the near term, C.T.L. projects would not use carbon capture and storage because the added cost would be uneconomical. In any case, the Many Stars project stalled this year because the energy company was unable to raise the additional investment that it needed. “Continued uncertainties at the federal level have made it difficult to find additional support in the financial markets for a C.T.L. project,” said Dick Lyon, who is global projects director for Australian-American. In May, the tribe moved to terminate the agreement because of the lack of progress. On May 18, the energy company sued the tribe in a U.S. court in Delaware to prevent termination. A few days later, it agreed to negotiate and by July it had agreed that Australian-American would help the tribe to find another investor, with a “stronger ability to self-finance,” Mr. Lyon said. A call for competitive bids was issued Oct. 6 through Pritchard Capital Partners, in Covington, Louisiana. Bids are due by Dec. 1, Mr. Lyon said. From the beginning, **the proposed C.T.L. plant has been divisive** among Crow tribal members. A group called **the Crow Allottees Association feared their water would be** taken or **polluted** by the project. **In its place, they are planning wind development** for their land. Division among the Crow tribe has historical roots in the General Allotment Act of 1887, a bid by the U.S. government to grab land and disrupt the social cohesion of communal tribes by dividing up reservations into small land parcels, individually owned. The Crow tribe now collectively owns just 20 percent of its original reservation land. Crow allottees individually own another 45 percent, and non-Indians own the remaining 35 percent, according to the Bureau of Land Management. As a result of inheritance, many allottee parcels are now jointly owned by multiple family members. **As** originally **proposed, the** Many Stars **project would strip-mine 38,000 tons of coal a day** to make 50,000 barrels of diesel gasoline or aviation jet fuel. It would deliver 3,000 to 4,000 construction jobs and 700 to 900 permanent jobs in mine and plant operations. The energy company has also invested in local education, offering scholarships and supporting the development of vocational and professional programs. Such enticements, however, have not swayed the allottees’ association. “Any kind of **extraction would damage the adjacent allottees’ land**,” said John Dust, an association member. “**Water pollution would** likely **be an issue**,” said Willis D. Weight, an engineering professor at Carroll College in Helena, Montana, who specializes in hydrogeology and has been consulted by the allottees’ association. Water consumption is also a potential hurdle. Various figures have been bandied about, the lowest being 1.3 billion gallons a year, or 4.9 billion liters, to operate the liquefaction plant. But even if that optimistic figure is attained, additional water would be required to mine the coal, Mr. Weight said. While the actual water consumption figures remain murky, what is clear is the highly contentious nature of a recent water deal, the Crow Water Rights Settlement Act of 2010. Because “the federal government acted on behalf of the allottees without our permission,” the act amounts to a water grab, done in part to supply the plant, said Richard White Clay, president of the Crow Allottees Association. Mr. Weight agreed, saying, “Given that the water compact set aside $20 million for energy development, my opinion is that the tribal officials were ‘inspired’ to make the deal.” The act would dissolve the allottees’ water rights and give water to the tribe to be managed under a permit system. The act would also ratify an older document, the Crow Tribe-Montana Water Rights Compact, which makes the Crow tribe’s water rights junior to the state of Montana, said Mr. White Clay. Cedric Black Eagle, the Crow tribal chairman, dismissed the allottees’ concerns, saying the tribe’s water rights could now be protected in court. Previously, he said, the tribe had only a water claim. “To have a technical water right, we had to go through this process,” he said. “We can market the water now. We can utilize it for industry.” The Many Stars project has received broad political support in Montana, most notably from Governor Brian Schweitzer, who praised it as “clean-coal technology,” saying it offered the country energy security and the Crow tribe economic benefit and jobs. The federal environment is less encouraging. “This emerging business sector is facing uncertainties regarding whether U.S. energy policy will have a place for C.T.L.,” Mr. Lyon said. But there are other possible destinations for Crow coal, most notably Asia. A proposed export terminal in Washington state is stalled by local controversy: but if and when such a facility opens, shipping coal to Asia would be a real possibility, said both Mr. Lyon and Mr. Watt. **The domestic coal market** in the United States **is** currently **oversupplied**, they said. **While** the **C.T.L.** project **has languished, the allottees’ association has been moving** steadily **forward with wind development, attracted** by its more promising political profile, by the fact that **it consumes no water and** by **its less imposing physical footprint** that **would allow members to continue ranching and farming on their land.**

#### And, Indians are disproportionately harmed by coal; corporations put coal plants near the reservation, generating a cycle of colonialism which confounds resistance because “the impact isn’t big enough”

MPR 12 (Minnesota Public Radio, July 5th 2012, [**http://minnesota.publicradio.org/display/web/2012/07/04/environment/tribes-utilities/**](http://minnesota.publicradio.org/display/web/2012/07/04/environment/tribes-utilities/))

 Beyond the ancestral hunting fields and the rows of small, sparse homes, **the cemetery at the Moapa River Indian Reservation sprawls across a barren hill with the tombstones of tribal members who died young. Their deaths haunt this** small desert **community** outside Las Vegas. **Children play indoors, afraid they might be next. Hoping to keep out the air they believe is killing their people**, tribal **elders keep their windows shut and avoid growing food** on the land where their ancestors once found sustenance. **The Moapa Paiutes need not travel far to stare down their** perceived **enemy: The coal-powered plant** blamed for **polluting the southern Nevada reservation's air and water is visible from nearly every home**. "**Everybody is sick**," said Vicki Simmons, whose brother worked at the Reid Gardner Generating Station for 10 years before dying at age 31 with heart problems. Across the country, **a disproportionate number of power plants operate** near or **on tribal lands**. NV Energy maintains its plant near the Moapa Paiute reservation is safe and has been upgraded with the newest clean emissions technologies. Meanwhile, local, state and federal **health agencies say they cannot conduct** accurate **health studies** to verify the tribe's complaints **because** the sample size would be too small. In all, about 11 percent of all power plants operate within 20 miles of reservation land, according to an Associated Press analysis of data from the U.S. Environmental Protection Agency. **Many** of those 51 **energy production centers are more than a half-century old and affect** roughly **48 tribes living on 50 reservations**. Fewer than 2 percent of all people in the United States identify as Native American, and only a small portion live on tribal land. In many cases, Native American leaders have long embraced energy development as an economic opportunity for communities battling widespread unemployment. But **a growing backlash has** some **tribal leaders questioning whether** the health and environmental risks associated with **energy production has put** their **people in harm's way.** While it's not conclusive that coal operations pose a direct danger to reservation residents, **the Moapa Paiutes are one of several tribes demanding** the **closure of their neighborhood power plants**. Sherry Smith, a history professor who co-edited the book "Indians and Energy: Exploitation and Opportunity in the American Southwest," said **hardly anyone paid attention or were aware of** potential **environmental consequences when the power plants were built** decades ago. "**These are not simply people who have been duped** by the government or the energy corporations," said Smith, director of the William P. Clements Center for Southwest Studies at Southern Methodist University in Texas. "**They are** simply 21st century **people who are coping with the same issues the rest of us are about** economic **development and the environmental consequences** and having to weigh these things."

#### And, coal production is incredibly hazardous; mine collapses, respiratory and heart disease, mercury poison, environmental runoff and radiation result in countless deaths every year

Wanjek 11 [Christopher Wanjek, columnist for LiveScience, “Nuclear Danger Still Dwarfed by Coal,” 26 Apr 2011, <http://www.livescience.com/13876-nuclear-energy-dangers-coal.html>] // myost

As bad as Japan's nuclear emergency could have gotten, it would never be as bad as burning coal. Coal is fantastically dangerous, responsible for far more than 1 million deaths per year, according to the World Health Organization. Start with the coal miners, thousands of whom die from mine collapses and thousands more from various lung diseases. Next, add the hundreds of thousands of deaths in the public from breathing coal's gaseous and particulate pollution, mostly from respiratory and heart disease. Next, add the untold deaths and disabilities resulting from mercury in coal entering into the food chain. Then add the millions of acres of land, river and lake destroyed by mining waste. Some of China's citizens worried about a radioactive wind blowing over from Japan, but coal-burning power plants from China are causing far more health problems for both China and Japan. Coal even releases more radioactive material than nuclear energy — 100 times more per the same amount of energy produced, according to Dana Christensen of the U.S. Department of Energy (DOE), as reported in Scientific American in 2007. According to WHO statistics, there are at least 4,025 deaths from coal for every single death from nuclear power. Switch to "clean" natural gas? That's still 100 times deadlier than nuclear energy. Oil is 900 times deadlier.

#### Scenario 2 is Nuclear Colonialism

#### The nature of colonialism has changed—no longer content with simply stealing Native land, the federal government has pursued a policy of resource exploitation, making indigenous people economically dependent on nuclear dumping and mining

LaDuke 99[Native American environmental activist, *All Our Relations: Native Struggles for land and life*, p. 2-3]

There are over 700 Native nations on the North American continent. Today, in the United States, Native America covers 4 percent of the land, with over 500 federally recognized tribes. Over 1,200 Native American reserves dot Canada. The Inuit homeland, Nunavut, formerly one-half of the Northwest Territories, is an area of land and water, including Baffm Island, five times the size of Texas, or the size of the entire Indian subcontinent. Eighty-five percent of the population is Native. **While Native peoples have been** massacred and fought, cheated, and **robbed of their historical lands, today their lands are subject to** some of the most **invasive industrial interventions** imaginable. According to the Worldwatch Institute, **317 reservations** in the United States **are threatened by environmental hazards**, ranging from toxic wastes to clearcuts. **Reservations have been targeted as sites for 16** proposed **nuclear waste dumps. Over 100 proposals have been floated** in recent years **to dump toxic waste in Indian communities**.5 **Seventy-seven sacred sites have been** disturbed or **desecrated through resource extraction** and development activities. The federal government is proposing to use Yucca Mountain, sacred to the Shoshone, as a dumpsite for the nation's high-level nuclear waste. Over the last 45 years, there have been 1,000 atomic explosions on Western Shoshone land in Nevada, making the Western Shoshone the most bombed nation on earth. **Over 1,000 slag piles and tailings from abandoned uranium mines sit on Dine land, leaking radioactivity** into the air and water. **Nearby is the largest coal strip mine in the world, and** some groups of **Dine teenagers have a cancer rate 17 times the national average**. According to Tom Goldtooth, executive director of the Indigenous Environmental Network, most Indigenous governments are over 22 years behind the states in environmental infrastructure development. The EPA has consistently failed to fund tribes on an equitable basis compared with the states. The EPA has a statutory responsibility to allocate financial resources that will provide an equitable allocation between tribal governments and states.'

#### And, despite promising gestures from the Obama administration, its nuclear dumping policy promises more of the same—the systematic targeting of Indian lands for the disposal of radioactive waste

Gunter 12 [Linda Pentz, international specialist and director of media and development at Beyond Nuclear, “BRC report continues shameful history of targeting Native American communities for radioactive waste dumps,” 12 January 2012, [http://www.beyondnuclear.org/home/2012/1/26/brc-report-continues-shameful-history-of-targeting-native-am.html //](http://www.beyondnuclear.org/home/2012/1/26/brc-report-continues-shameful-history-of-targeting-native-am.html%20//) myost]

Today's final report by the Blue Ribbon Commission on America's Nuclear Future (BRC) continued the shameful history of the U.S. nuclear establishment, in both government and industry, of targeting Native American communities for radioactive waste dumps. Beyond Nuclear issued a media statement regarding the BRC report today, and an op-ed several days ago. At the very first public meeting of the BRC nearly two years ago, Beyond Nuclear's Kevin Kamps pleaded this environmental injustice be stopped. To the contrary, BRC's final report points to the U.S. Department of Energy's "Nuclear Waste Negotiator" as a model to be followed again now to advance "consolidated interim storage sites" and repositories. In the late 1980s and early 1990s, DOE's Nuclear Waste Negotiator contacted every single federally recognized Native American tribe in the United States, then targeted 60 in particular, focusing in the end on Mescalero Apache, New Mexico. It is a testament to the extraordinary efforts of Native American environmental justice activists like Grace Thorpe that all those proposals were defeated, and the Nuclear Waste Negotiator's program eliminated. The nuclear power utilities picked up where the Negotiator left off, next targeting Skull Valley Goshutes, Utah -- a struggle that continues. Ironically, President Obama praised Grace Thorpe in his "Women Taking the Lead to Save our Planet" Women's History Month Proclamation on March 3, 2009, for launching "a successful campaign to organize Native Americans to oppose the storage of nuclear waste on their reservations" -- only now to have his own DOE's BRC recommend that the Nuclear Waste Negotiator model be revived, including to re-target Native American communities for radioactive waste dumps.

#### And, the impact to this is cultural genocide—waste disposal threatens the very way of life of natives

Edwards 11 [Nelta Edwards, associate professor in the Department of Sociology at the University of Alaska-Anchorage, “Nuclear Colonialism and the Social Construction of Landscape in Alaska,” *Environmental Justice* 4.2 (2011): 109-114, [http://online.liebertpub.com/doi/pdfplus/10.1089/env.2010.0023 //](http://online.liebertpub.com/doi/pdfplus/10.1089/env.2010.0023%20//) myost]

It is important to examine the justifications and ramifications surrounding the choice of particular sites for nuclear testing because nuclear powers employ similar characterizations to add to the environmental devastation of these landscapes. In the Pacific Islands, corporations and national governments have attempted to persuade local communities to take on nuclear and toxic wastes as a form of economic development. Kuletz terms this the second order of nuclear colonialism.34 The idea is that since the land has already been polluted, it makes sense for the native people to accept more nuclear and toxic waste. And, indeed, seeing how the forces of history have stacked the deck against them, tribes may seek out waste because ‘‘<it is> the only business we can get to come here.’’35 Unlike the Pacific and the desert Southwest, Alaska has not, thus far, been suggested as a nuclear waste depository. It does share with other locales a depiction as a wasteland, suitable as a dumping ground, a test site for dangerous technologies, and as a practice bombing range.36 Despite its small population, Alaska has thousands of hazardous waste sites including active and formerly used defense sites (FUDs), National Priority List (NPL) or Superfund Sites, active and abandoned mine sites, and solid and industrial waste landfills.37 Although the military and industry have never sought to officially make Alaska a dump site, it has unofficially served as one. The use of indigenous land for nuclear weapons testing and waste disposal is a type of cultural genocide. Attempts to destroy the land amount to attempts to destroy the life way of the people. In Alaska, Alaska Native subsistence culture equates to individual and community health and well-being. Alaska Native peoples have traditionally derived not only their food and nutrition from the land and water, but also ‘‘their ethics and values of stewardship, languages, codes of conduct, stories, songs, dances, ceremonies, rites of passage, history, and sense of place and spirituality. It is a way of life in which everything is intimately tied to the land and the waters upon which the people depend for sustenance.’’38 When the ecosystem upon which so much is built is damaged; it undermines the people as well. For Alaska Native people, the land is not separate from themselves and spoiling it goes against what they have been taught. An Inupiaq elder in Point Hope said, ‘‘I learned to hunt when I was nine years old and I been told by my elders to keep my land clean; that’s the way I learned it—to keep my land clean <continues in Inupiaq>.’’39

#### And, for too long there been silence on the issue of Indian exploitation; the result is an ongoing campaign of concealed violence against Native Americans—we must challenge the idea that Indians are expendable to the cause of energy production

Gedicks 93 [Al, professor of sociology at Wisconsin, *The New Resource Wars: Native and Environmental Struggles Against Multinational Corporations*, p. 43-44]

In addition to the economic and political dimensions of internal colonialism, there is also an important, but frequently overlooked, environmental dimension. Jerry Mander has observed that **most Indian struggles take place far away from mass media**, "in the central Arizona desert, in the rugged Black Hills, the mountains of the Northwest, or else on tiny Pacific islands, orin the icy vastness of the far north of Alaska. **The New York Times has no bureau in those places**; neither does CBS...**As a result,** some of the most terrible **assaults upon native peoples** today **never get reported**."26 The Church Rock Tailings Dam accident on the Navajo reservation is a good example of a major environmental catastrophe that received very little media attention. In July 1979, **100 million gallons of radioactive sludge spilled into the Rio Puerco River from United Nuclear Corporation's uranium tailings pond** when its dam broke. **Those hardest hit** by the spill **were the** approximately 1,700 **residents of the Rio Puerco Valley, mostly Navajo Indians.** The Navajos used the river water for their livestock, grazed their cattle and sheep in the river bed, and drank from nearby wells. **While the spill remains the largest one-time release of radioactive wastes ever in the U**nited **S**tates, **it received hardly any media attention** at the time. The New York Times mentioned the spill in a short news story 12 days after it happened. The Los Angeles Times gave slightly more coverage, largely because California officials were concerned that the contamination could reach the southern California water supply coming from Lake Mead, Arizona. An engineering report on **the cause of the dam break attributed it to** the shifting and settling of the soil underneath the dam and **United Nuclear's failure to perform routine maintenance** of the dam. **The company had known about** serious **problems** with the site **two years before** the accident." **The ultimate costs** of the spill to the Navajo **may never be calculated.** The final report of the federal Centers for Disease Control argued that epidemiological studies of mortality and morbidity rates in Church Rock should not be under­ taken due to the difficulty in detecting risks associated with radiation exposure in a small population. **In other words, the Navajo were expendable.**

#### And, the nuclear violence which devastates indigenous peoples is premised on a brutal utilitarian calculus which devalues entire populations in the name of economic advancement—you should reject this colonialist logic

Edwards 11 [Nelta Edwards, associate professor in the Department of Sociology at the University of Alaska-Anchorage, “Nuclear Colonialism and the Social Construction of Landscape in Alaska,” *Environmental Justice* 4.2 (2011): 109-114, [http://online.liebertpub.com/doi/pdfplus/10.1089/env.2010.0023 //](http://online.liebertpub.com/doi/pdfplus/10.1089/env.2010.0023%20//) myost]

When nuclear superpowers describe population as ‘‘sparse’’ to justify nuclear testing, they employ a utilitarian logic in which harm for the few is justified by protection of the many. On the face of it, this seems to make sense—the greatest good for the greatest number. However, this sort of logic is generally used by those who are not being asked to, or forced to, sacrifice their lives or livelihood; that is, the argument is made by the powerful instead of the powerless, the colonial power rather than its subjects.25 This logic diminishes the value of the lives of the people who live near nuclear test sites, as if by virtue of the fact that they are few in number, their lives are less important. Alaska Native people understand this logic. As one elder Inupiaq woman said, ‘‘I guess that at that time in 1962 that there were not that many people living in Point Hope…they just wanted to attack because there’s not many people there.’’ But she counters the immorality of the logic by continuing, ‘‘They thought we were guinea pigs. We are not. We are human beings like you. I have a heart like you.’’26 Community members used the words ‘‘guinea pigs,’’ ‘‘specimens,’’ and ‘‘being treated like a plant’’ to describe their treatment as objects by colonial powers. When colonial powers construct the land as empty, it discursively erases the people who live there, making it impossible for the colonial powers to consider the interests of the existing inhabitants. Colonial powers, replete with a sense of entitlement and racism, overlook nonwhite people, ignoring them and their way of life. An Inupiaq man reminds others at a community meeting that his people were not then and are not now, expendable: ‘‘Now let’s see you, you don’t get me wrong, ask the white people, take note of this: we are human, as much as you are. It’s just a color difference.’’27 It is as if colonial culture prevented those in power from even seeing the people who lived there as real people, who have hopes and desires and who have a right to say what happens on their land. An elder introduces herself at a community meeting by saying, ‘‘My name is Alice Webber. I have lived here all of my life and worked here for my village. I am also a signer of the Project Chariot—No. I said NO. Everyone said no and yet they turn around and leave [the tracer experiment materials] there.’’ Although Point Hope community members very clearly expressed their disapproval of Project Chariot, their sentiments were ignored by colonial powers. After the cancellation of Project Chariot in the 1960s, colonial powers conducted the tracer experiments without the permission of the local people and defying their express wishes. The assumed superiority of the colonial power, fueled by self-interest, caused them to disregard the people who lived near nuclear test sites. This colonial hubris is revealed by an Inupiaq woman who wonders what would happen if Inupiat people treated colonial peoples in a like manner, ‘‘That’s why I think, I wonder how it would be to go down to Washington [DC], set some dynamite around the Capitol, to see whether it will sink or not.’’28 In a later meeting, another Inupiaq woman speculates, ‘‘If it were the other way around and Point Hope people put nuclear waste [break in tape] I know they would take us to court right away and solve it right away. If it were the other way around, what would they have done to us?’’29 By reversing the roles, putting Inupiat people in the position of harming colonial people, these women cleverly make the power imbalance and absurdity of the situation obvious. When the nuclear superpowers decided that people in the Pacific should sacrifice their lives, land, and livelihood for the ‘‘good of mankind,’’ the ‘‘good of mankind’’ meant to be the military and economic interests of world superpowers. 30 In the American Southwest, the United States decided that nuclear bomb testing and mining should take place on Indian land, making Indian people sacrifice their lands and their way of being in the name of American imperialism.31 This circumstance, where nonwhite people are made to bear the ecological burden of industrial societies, goes to the heart of the environmental justice struggle. An Inupiaq woman expresses incredulity, anger, and hurt at such treatment. ‘‘They risked our lives, our children’s lives. My god, you know, what are we, nothing? Why did the government want to harm us, just because of <their> curiosity? Just because they wondered how radiation would affect us? We never did any harm to them, we never did. Why did they want to harm us, just because of the land, because they wanted it? 32 The AEC did want to use the land for testing. Superpower militaries have a history of using native land for military testing and practice. A study of American formerly used defense sites (FUDS) quantified the burden of U.S. militarism on Native Americans. The study found that the more acres owned by Native Americans, the greater the number of extremely dangerous sites in that area and that Native Americans experience a disproportionate exposure to the most dangerous unexploded ordnance. Importantly, these findings underestimate the impact of military pollution on Native Americans because they are only able to look at former sites and not sites currently in use. In addition, this analysis leaves out the counties with the most pollution because the Army Corps of Engineers has yet to complete the assessment of these sites. The term, treadmill of destruction, describes the harm done on Native American land due to militarism and coercive state policies.33

## Thus the plan:

#### The United States Federal Government should extend eligibility for wind power Tribal Energy Resource Agreements to tribal energy resource development organizations composed of Native American tribes and waive the federal environmental review requirements for wind power production under the Indian Tribal Energy Development and Self-Determination Act of 2005.

#### Eliminating the “single-tribe” requirement for TERA eligibility would expand cooperation among indigenous groups, inaugurating construction of new wind power projects on native lands

Unger 9 [Kathleen R., JD candidate at Loyola Law School Los Angeles, “Change is in the Wind: Self-Determination and Wind Power through Tribal Energy Resource Agreements,” Loyola of Los Angeles Law Review 43.1 (2009): 329-372, <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2684&context=llr> // myost]

However, the use of TERAs for wind power development raises a question regarding the proper entity to enter into a TERA. Though a single tribe may not be the best entity to develop a wind power project, **the TERA framework directs that "an Indian tribe" can** apply for and **enter** into **a TERA** with the Secretary-that is, **a single tribe** is the TERA entity. 239 **For many** resource development **purposes, this is** the most **suitable** arrangement, because the TERA structure envisions that the tribe will be the regulatory body for development on its lands. **Wind**, however, **has the disadvantage of intermittency.** 24 Wind's intermittent nature raises concerns about the need for power from other sources to supplement wind power. 241 This drawback reduces wind's market value. 242 Additionally, existing grid-connection and pricing policies disadvantage intermittent power producers.243 Inter**connecting** geographically **dispersed turbines compensates for** the wind's **variability and can make the power** source more **reliable.** 244 For these reasons, wind power projects can benefit from a design in which wind farms are spread over a broad geographic area. 245 To allow for the necessary dispersal, **a tribal wind power project would gain from locating turbines on several reservations**.246 However, **with a project involving several reservations, the current** TERA **framework** would **require each tribe** involved **to enter into a separate TERA** with the Secretary. 247 This would create a significant administrative impediment to a wind power project involving several tribes, as each tribe's TERA would require a lengthy application process. 248 Other sections of the Indian Energy Act allow a tribal energy resource development organization-an organization including at least one tribe-to receive grants, loans, and other federal assistance. 249 Such an organization can be an important entity in wind power development because of the advantages of dispersal. Therefore, **the** TERA **framework should be revised to allow a tribal energy resource development organization, rather than a single tribe, to enter** into **a TERA**. Appropriate **limits can** be placed on the kind of organization that may enter into a TERA, such as **requiring** that **it include only tribes, and** on the kinds of projects that the organization can develop under a TERA, such as **limiting it to developing a single energy** resource. Allowing a tribal energy **resource development organization to be the TERA entity would streamline the** approval **process and facilitate development of wind power on tribal lands.** One example of a potential organization that could take advantage of the TERA structure is one composed of tribal members of the Intertribal Council On Utility Policy (COUP). 250 COUP represents member tribes located in the Northern Great Plains, a region with great wind power potential. 251 This organization has been investigating the possibility of a distributed wind power project with turbines on several reservations. 252 Allowing the participating tribes to enter into a single TERA through a tribal energy resource development organization might streamline the development of this project.

#### **And, waiving the environmental review requirement gives authority back to the tribes and creates increased chances of prosperity for tribes while limiting the USFG’s control of native lives**

Kronk 12 [Elizabeth Ann, associate professor and director of Tribal Law & Government Center at KU School of Law, “Tribal Energy Resource Agreements: The Unintended ‘Great Mischief for Indian Energy Development’ and the Resulting Need for Reform,” Pace Environmental Law Review, [http://works.bepress.com/context/elizabeth\_kronk/article/1001/type/native/viewcontent //](http://works.bepress.com/context/elizabeth_kronk/article/1001/type/native/viewcontent%20//) myost]

If Congress truly wishes the federal government to be free from liability with regard to certain types of energy development within Indian country, the TERA provision waiving federal government liability may remain. But, to maximize energy development within Indian country and truly promote tribal self-determination as is the stated goal of the Act, the federal government should remove some or all federal “conditions” on such development. This is consistent with the viewpoint expressed by Senator Campbell and discussed above; **if tribes are to be sovereign, they must have control over regulation within their territories** and then also bear the liability for the tribal decision-making. This means that **federal mandates**, such as the mandates listed **in the existing TERA provisions related to environmental review, should be removed**. Moreover, under the current provisions, “the government’s significant involvement in the approval process could be interpreted as an infringement on tribal self-sufficiency and sovereignty.” Previously, “[s]ome tribal representatives objected to the environmental review process either on the basis of inadequate tribal financial resources to carry out environmental reviews, or on the ground that the federal government should not mandate what tribal governments choose to do.” **Such reform** of the TERA provisions **empowers tribes to become the true decision-makers with regard to energy development** under the TERA provisions. The proposed reform offers several benefits. First, **“[t]ribes exercising** actual **decision-making powers ‘consistently out-perform outside decision-makers.’”** Tribes acting as decision makers are exercising their sovereignty, which as previously discussed above, is tied to the overall likelihood of tribal economic success. In order for a tribe to exercise its sovereignty as a “true” decision-maker, the federal government must take a reduced role in making decisions affecting development within Indian country. In fact, **scholars have deduced that “federal control over economic decision-making is ‘the** core problem in the standard approach to development and a **primary hindrance to reservation prosperity.’”** Moreover, tribes who have undertaken increased decision making roles have a demonstrated record of success, as exemplified by tribal forest management under Public Law 638. Under P.L. 638, tribes may enter into contracts and self-governance compacts to assume administration of federal Indian programs, and may use the 638 program to gain significant control over natural resources development. For example, a statistical analysis of seventy-five forestry tribes showed that in the 1980s, forty-nine of the tribes used the 638 program to take some degree of management over their forest resources. The study concluded that ‘tribal control of forestry under PL 638 results in significantly better timber management.’ When tribes took complete management over their forest resources under 638, output rose as much as forty percent with no increase in the number of workers, and the tribes received prices as much as six percent higher than they had when the forest resources were managed by the Bureau of Indian Affairs. Empirical proof exists that, at least **in the context of forest management**, which is analogous to energy development given both involve the development of natural resources, **tribes have demonstrated the ability to excel** when allowed to exercise increased **decision-making authority.** As Professor Royster concludes, “[t]ribal control of federal programs is thus better than federal control, but a clear second-best to tribal choices of what programs and development opportunities.” By eliminating the requirement that tribes entering into a TERA come into compliance with a federally-mandated environmental review process, tribes would, therefore, have increased decision-making authority, which in turn increases the utilization of practical sovereignty that has been shown to increase the likelihood of success of a project. Furthermore, **reduction of the federal** government’s **role** in energy development within Indian country **correlates with the** federal government’s **goal to promote tribal self-determination.** Although some tribes may not be in a position to take an increased role in decision-making within their respective territories, those that are in the position should be encouraged to take an increasing active role, thereby empowering the appropriate tribes to self-determinate. **The failure** of the federal government **to recognize that many tribes are capable of** independent **decision making would see tribal nations “frozen in a perpetual state of tutelage.”** Furthermore, “though ownership of most tribal lands is held by the federal government, the exclusive beneficiary of that ownership is intended to be the applicable tribe.” Also, the additional environmental requirements heaped on tribes through the TERA provisions are more extensive than those required of state governments. State and local governments are not required to comply with NEPA nor with a NEPA-like requirement, and therefore placing such a requirement on tribal governments would be odd. In fact, the environmental review requirements placed on tribes under the TERA provisions likely go beyond the requirements placed even on the federal government. **The need to subject tribes to a requirement more rigorous than the one applicable to the federal government and one** that is **not placed at all on state** and local **governments** (by the federal government) **is dubious** at best. Moreover, concerns regarding federal conflicts of interest exist within Indian country. “[A] question arises concerning whether the Secretary is acting in the tribe’s interest or the United States’ interest when reviewing an EIS and approving or disapproving a development lease.” For example, in Navajo Nation, the Navajo Nation brought suit against the federal government alleging that the federal government had failed to protect the interests of the Nation in part because of conflicting obligations. In addition to the deficiencies of federal oversight, as demonstrated by the Navajo Nation case, the federal government has generally failed to provide adequate oversight and resources to effectively manage resource development within Indian country.

#### And, we solve—wind power offers a unique opportunity to change the way resources are extracted from Indian lands; only the plan effectively allows tribes to assert sovereignty over their energy rights, enabling alternatives to the destructive status quo

Unger 9 [Kathleen R., JD candidate at Loyola Law School Los Angeles, “Change is in the Wind: Self-Determination and Wind Power through Tribal Energy Resource Agreements,” Loyola of Los Angeles Law Review 43.1 (2009): 329-372, <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2684&context=llr> // myost]

**Developing tribal wind power can** also **address** tribes' **environmental concerns**. Much **past resource development on tribal lands has involved the extraction of coal, oil, gas, and uranium**. 39 **Energy** mineral exploration and **production** activities **on tribal lands** have caused environmental effects including **air, water, and soil contamination,** as well as **erosion and flooding.** 40 **Wind power offers an alternative** form of development **without** air **pollution or** solid and **hazardous wastes.** 41 Thus, wind provides an opportunity for economic development that is nonpolluting and sustainable over the long term. 42 To meet these goals, however, tribal resource development must also promote self-determination through tribal control over development projects. Economic **development** on tribal lands **succeeds** best **where control over** the **development** activity **is in tribal hands rather than** in the hands of **the federal government** or another outsider. 43 Past federal policies tended to place control in the hands of the federal government or non-Indian developers. 44 For example, in the past, the federal government was entirely in charge of deciding the course of natural resource development on tribal lands. 45 The government often accomplished this development through lease agreements with outsiders, initially for grazing and mining, and later for other mineral development processes as well. 46 The royalty payments to tribes under these leases were low, and tribes were unable to negotiate for better lease terms, leaving them at a disadvantage. 47 More generally, the federal government retained the ability to direct the course of development under these policies. 48

#### And, prefer the systemic impacts of the 1ac over improbable disad claims and utilitarian scenarios

Menand 5 (Louis Phd from Columbia, December 2005 in The New Yorker [**http://www.newyorker.com/archive/2005/12/05/051205crbo\_books1?printable=true**](http://www.newyorker.com/archive/2005/12/05/051205crbo_books1?printable=true)**)**

It is the somewhat gratifying lesson of Philip Tetlock’s new book, “Expert Political Judgment: How Good Is It? How Can We Know?” (Princeton; $35), that **people who make prediction their business**—people who appear as experts on television, get quoted in newspaper articles, advise governments and businesses, and participate in punditry roundtables—**are no better than the rest of us. When they’re wrong, they’re rarely held accountable**, and they rarely admit it, either. **They insist** that **they were just off on timing, or blindsided by an improbable event**, or almost right, **or wrong for the right reasons**. They have the same repertoire of self-justifications that everyone has, and are no more inclined than anyone else to revise their beliefs about the way the world works, or ought to work, just because they made a mistake. No one is paying you for your gratuitous opinions about other people, but the experts are being paid, and Tetlock claims that **the better known** and more frequently quoted **they are, the less reliable their guesses about the future are likely to be**. The accuracy of an expert’s predictions actually has an inverse relationship to his or her self-confidence, renown, and, beyond a certain point, depth of knowledge. **People who follow current** events by reading the papers and newsmagazines regularly **can guess what is likely to happen** about **as accurately as** the **specialists** whom the papers quote. **Our system of expertise** is completely inside out: it **rewards bad judgments over good ones.** “Expert Political Judgment” is not a work of media criticism. Tetlock is a psychologist—he teaches at Berkeley—and his **conclusions are based on a long-term study** that he began twenty years ago. He picked two hundred and eighty-four people who made their living “commenting or offering advice on political and economic trends,” and he started asking them to assess the probability that various things would or would not come to pass, both in the areas of the world in which they specialized and in areas about which they were not expert. Would there be a nonviolent end to apartheid in South Africa? Would Gorbachev be ousted in a coup? Would the United States go to war in the Persian Gulf? Would Canada disintegrate? (Many experts believed that it would, on the ground that Quebec would succeed in seceding.) And so on. **By the end of the study**, in 2003, **the experts had made 82,361 forecasts.** Tetlock also asked questions designed to determine how they reached their judgments, how they reacted when their predictions proved to be wrong, how they evaluated new information that did not support their views, and how they assessed the probability that rival theories and predictions were accurate. Tetlock got a statistical handle on his task by putting most of the forecasting questions into a “three possible futures” form. The respondents were asked to rate the probability of three alternative outcomes: the persistence of the status quo, more of something (political freedom, economic growth), or less of something (repression, recession). And he measured his experts on two dimensions: how good they were at guessing probabilities (did all the things they said had an x per cent chance of happening happen x per cent of the time?), and how accurate they were at predicting specific outcomes. **The results were unimpressive**. On the first scale, **the experts performed worse than** they would have **if they had** simply **assigned an equal probability to all** three **outcomes**—if they had given each possible future a thirty-three-per-cent chance of occurring. **Human beings who spend their lives studying** the state of **the world**, in other words, **are poorer forecasters than dart-throwing monkeys, who would have distributed their picks evenly** over the three choices.

#### And, ignoring systemic impacts allows deadly, faceless, objective violence to continue; only embracing an impact framework that gets rid of a focus on directly visible, subjective violence solves

Zizek 8

 [Slavoj, senior researcher at the Institute of Sociology @ Univ. of Ljubljana, Violence, p. 1-2]

If there is a unifying thesis that runs through the bric-a-brac of reflections on violence that follow, it is that a similar paradox holds true for violence. At the forefront of our minds, **the obvious signals of violence are** acts of **crime and terror,** civil **unrest, international conflict**. But **we should** learn to **step back**, to disentangle ourselves **from the** fascinating **lure of this directly visible "subjective" violence**, violence **performed by a** clearly identifiable **agent. We need to perceive the** contours of the **background which generates such outbursts**. A step back enables us **to identify a violence that sustains our very efforts to fight violence** and to promote tolerance. This is the starting point, perhaps even the axiom, of the present book: **subjective violence is just the most visible** portion of a triumvirate that also includes two objective kinds of violence. First, there is a "symbolic" violence embodied in language and its forms, what Heidegger would call "our house of being." As we shall see later, this violence is not only at work in the obvious-and extensively studied-cases of incitement and of the relations of social domination reproduced in our habitual speech forms: there is a more fundamental form of violence still that pertains to language as such, to its imposition of a certain universe of meaning. Second, there is what I call "systemic**" violence**, or **the** often **catastrophic consequences of the smooth functioning of our economic and political systems.** The catch is that **subjective and objective violence cannot be perceived from the same standpoint**: **subjective violence is experienced** as such **against the background of a non-violent zero** level. It is seen as **a perturbation of the "normal," peaceful state of things**. However, **objective violence is** precisely the violence **inherent to this "normal" state of things. Objective violence is invisible since it sustains the** very **zero-level standard against which we perceive something as** subjectively **violent. Systemic violence** is thus something like the notorious "dark matter" of physics, the counterpart to an all-too visible subjective violence. It **may be invisible, but it has to be taken into account** if one is to make sense of what otherwise seem to be "irrational" explosions of subjective violence.