# T Restrictions

## 1NC

#### Restrictions must be prohibitions---can’t be regulations

Anell 89 Lars is the Chairman of the WTO panel adopted at the Forty-Fifth Session of Contracting Parties on December 5, 1989. Other panel members: Mr. Hugh Bartlett and Mrs. Carmen Luz Guarda. “Canada – Import Restrictions on Ice Cream and Yoghurt,” 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.

#### Substantially reduce means to eliminate

Dunn 2k Examiner Thomas Dunn, March 7, 2000, "Method of minimizing iron contamination during catalyst regeneration processes," [www.patentgenius.com/patent/6034019.html](http://www.patentgenius.com/patent/6034019.html)

The phrase "substantially reduce" as used herein is defined as reducing the numerical amount of noble metal oxides present in the catalyst by about 70 wt % to about 100 wt % and preferably about 90 wt % to about 100 wt %.

#### Reduce acts on restrictions as a collective noun

Shertzer 86 Margaret Shertzer, “The Elements of Grammar” 1986

Collective nouns as subjects

A collective noun is a noun that names a group of persons, animals, or things: *committee, herd, furniture.*

Such nouns may be regarded as singular or plural: singular if the word denotes a group acting as an individual; plural if the word denotes the individuals that make up the group.

#### That means “reduce restrictions” requires a reduction in the number of restrictions---reduce means to lessen in quantity

Wisconsin Department of Natural Resources 8

(http://www.dnr.state.wi.us/org/caer/ce/eek/earth/recycle/rgloss.htm, accessed 9-9-9)

reduce: to lessen in amount, number or other quantity.

## 2NC

#### Including energy regulations adds five million research hours

Tugwell 88 Franklin Tugwell joined The Asia Foundation's Board of Trustees in 2010. Dr. Tugwell has served as the President and CEO of Winrock International since 1999. Previously, Dr. Tugwell was the executive director of the Heinz Endowments of Pittsburgh, the founder and president of the Environment Enterprises Assistance Fund, and as a senior consultant for International Projects and Programs at PG&E Enterprises. He served as a deputy assistant administrator at USAID (1980-1981) and as a senior analyst for the energy program at the U.S. Office of Technology Assessment (1979-1980). Dr. Tugwell was also a professor at Pomona College and an adjunct distinguished professor at the Heinz School of Carnegie Mellon University. Additionally, he serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. He also serves on the Board of Eucord (European Cooperative for International Development). Dr. Tugwell received a PhD in political science from Columbia University. “The Energy Crisis and the American Political Economy,” ISBN 0-8047-1500-9

 Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five million man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.^

#### Including energy regs is too big---it’s torture for the neg

Edwards 80 Opinion in BAYOU BOUILLON CORP. v. ATLANTIC RICHFIELD CO. Court of Appeal of Louisiana, First Circuit. May 5

Comprehending the applicability and complexity of federal energy regulation necessitates both a stroll down the tortuous legislative path and a review of legal challenges so numerous as to require the establishment of a Temporary Emergency Court of Appeals.

#### That destroys education---too much to comprehend

Stafford 83 G. William is an Associate at Ross, Marsh and Foster. Review of “Federal Regulation of Energy” by William F. Fox, Jr, http://felj.org/elj/Energy%20Journals/Vol6\_No2\_1985\_Book\_Review2.pdf

It may safely be said that any effort to catalogue "the entire spectrum of federal regulation of energy"' in a single volume certainly requires an enterprising effort on the part of the author. In this regard, Mr. Willam F. Fox, Jr., an Associate Professor of Law at Catholic University of America, has undertaken an examination of a vital aspect of United States policy in Federal Regulation of Energy, published in 1983 with an annual pocket supplement available. Despite the complex nature of the subject of his work, Mr. Fox has prepared a text that provides a significant description of many aspects of federal energy regulatory policy. Initially, the book's title may prove somewhat misleading in that it approaches the subject from an historical perspective focused more on substantive than procedural issues. Although a reader gets the impression that the author at time has tried to do too much -at least from the standpoint of the energy practitioner- the historical and technical insights it offers the student of federal energy relation are valuable. Moreover; its detailed explanations of the methods used to tneet federal energy goals are useful for those in the position of initiating energy policy. This strength notwithstanding, it appears unlikely that an energy law practitioner would benefit significantly from its use, other than from its historical point of view. A general impression is that the author may have been overly ambitious in his effort to undertake the monumental task of evaluating laws, regulations, and significant judicial decisions in a single work.

#### Conditions on monitoring or supervision are NOT restrictions

Jean Schiedler-Brown (Court of Appeals, Attorney at Law Offices of Jean Schiedler-Brown & Associates) June 19 2012 Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Conditions aren’t restrictions---this distinction matters

Pashman 63 Morris is a justice on the New Jersey Supreme Court. “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. Lexis

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.¶ Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

#### Prefer our Anell evidence---he defines ‘restriction on production’---they don’t---key to predictability

Haneman 59 J.A.D. is a justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

# States CP

#### TEXT: The 50 states and all relevant territories should all adopt Renewable Portfolio Standards equivalent to the state with the most stringent targets, with set-asides for solar power. The 50 states should adopt feed-in tariffs that incentivize solar power.

#### That solves

Masterson 09 (Crystal, Third-year student, University of Oklahoma College of Law, “WIND-ENERGY VENTURES IN INDIAN COUNTRY: FASHIONING A FUNCTIONAL PARADIGM”, 34 Am. Indian L. Rev. 317, Lexis)

While many governments have taken an "either/or" approach to feed-in tariffs and renewable portfolio standards, it has been suggested that the two are capable of harmonious co-existence-and may in fact be entirely complementary. n276 A renewable portfolio standard (RPS) requires that a set percentage of a retail electricity supplier's energy come from renewable sources. n277 The set percentage often starts low and gradually escalates over time, spurring steady growth in the overall renewable-energy supply. n278 To satisfy the requirement, retail electricity suppliers must provide the governing body with sufficient renewable-energy credits (RECs) at the end of a regulatory period to establish compliance with the standard. n279 Each REC "certifies that a unit of electricity (e.g., a kilowatt hour) has been generated from a qualified renewable source." n280 Retail electricity providers have the luxury of choosing the most efficient way to meet the RPS requirement. n281 They may obtain RECs either by producing the renewable energy themselves or by purchasing the RECs from another electricity supplier that has produced in excess of its obligation. n282 The establishment of a successful RPS requires six elements. The RPS must (1) specify the percentage of renewable electricity and applicable time frame, (2) determine which technologies qualify as renewable, (3) identify who is required to provide or obtain the renewable energy, (4) determine whether the standard will include RECs, (5) designate an agency to oversee and administer the standard, and (6) set penalties for utilities that fail to meet their obligation. n283 The RPS will further the successes of a feed-in tariff system. It provides long- term certainty for wind energy by assuring that a certain amount of electricity is generated from renewable resources. This long-term predictability enables wind- project owners to "attract investment capital and achieve manufacturing economies of scale that will spur economic development, lower consumer prices, strengthen U.S. energy security, and help [\*355] our environment." n284 The RPS also diversifies the energy supply by developing domestic renewable energy, which functions "to shield consumers from spikes in energy prices" accompanying the volatile foreign energy market. n285 Last, by encouraging the rapid growth of renewable energy, the RPS will generate employment opportunities and "increase[] income across the country, especially in economically hard-pressed rural areas," n286 which include many tribal lands. Because each large utility-scale wind turbine erected generates over $ 2 million in economic activity, n287 the potential impact on rural and tribal communities would be stunning. As sovereign nations, tribes will not be subject to the federally mandated REC- generation requirements that other retail electricity suppliers must satisfy. But the tribes will still be capable of selling RECs generated through their facilities in order to assist other suppliers in meeting their obligations. The RPS will thus assist the tribes in accelerating the timeframe within which the tribes will be able to realize profits by providing supplemental income with which to repay any loans acquired for project development.

# TERA CP

#### The United States Federal Government should

#### --remove the federal government liability waiver for Tribal Energy Resource Agreements

#### --clarify that the Secretary of the Interior, when evaluating applications for leases of Indian lands and non-lease arrangements, must defer to the tribe's determination that the agreement is in its best interest, to the maximum extent possible

#### --amend the Indian Mineral Development Act of 1982 by clarifying that the statutory definition of "mineral resources" includes wind and solar energy.

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

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “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.

#### Redefining the IMDA spurs renewable power development by circumventing TERAs

Judith V. Royster 12, Co-Director – Native American Law Center @ University of Tulsa, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” March, 31 Stan. Envtl. L.J. 91

The heart of my proposal is a small and likely uncontroversial amendment to the Indian Mineral Development Act of 1982. The statutory definition of "mineral resources" should be amended to clarify that mineral resources includes all renewable energy resources. Although that is arguably the case now, the clear inclusion of renewable energy resources would remove a point of contention and confusion.

At present, the IMDA defines "mineral resources" as "oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources." n179 Congress should amend the definition to something like, "oil, gas, uranium, coal, other energy and nonenergy mineral resources, or any renewable energy resources including, but not [\*129] limited to, wind, solar, geothermal, biomass, and hydrologic resources." n180 Language such as this leaves no question that renewable energy resources are included in the scope of the IMDA.

Alternatively, the definition could be amended in the regulations without amending the statute itself. The regulatory definition of minerals for purposes of leases and minerals agreements expands on the statutory definition: "both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral." n181 This definition helps to clarify the meaning of "other" minerals in the statute by specifying such minerals as sand and gravel. The regulatory definition could similarly help clarify the meaning of "other energy" in the statute by specifying that it includes "both renewable and nonrenewable energy sources, including, but not limited to, wind, solar, geothermal, biomass, and hydrologic resources." n182 A statutory amendment would be preferable to a regulatory amendment, but a regulatory amendment could likely be accomplished more quickly. n183

Expanding the minerals definition of the IMDA to specify energy resources regardless of their classification would broaden, simplify, and normalize Indian tribes' ability to engage in renewable energy development. Any tribe with renewable resources could enter into any type of development agreement that suited its needs. Tribes could employ not only the current structure of leases, but joint ventures, partnerships, and business agreements of all kinds. This simple amendment would thus authorize all Indian tribes to move into more active roles in the [\*130] development of their renewables. Tribes seeking to partner with non-Indian companies to develop wind farms, solar collectors, or biomass feedstock operations would no longer be confined to the passive role of lessor. And it makes common sense. There is no reason to deny a tribe with wind resources the ability to enter into a joint venture, for example, when a tribe with coal resources may do so.

Clarifying that the IMDA may be used for renewables development could, however, impact the tribes' ability to use § 81 easements for wind and solar power development. Under current § 81 regulations, contracts and agreements that encumber Indian lands do not need secretarial approval if they are subject to approval under another statute or regulation, specifically including surface leases, agricultural leases, timber contracts, mineral leases, and minerals agreements. n184 The regulations thus appear to put those types of leases and agreements, including IMDA leases and agreements, outside § 81. If the IMDA definition of minerals is amended to specifically include renewable energy resources, then it may mean that a tribe could no longer use § 81 for renewable energy easements.

To prevent this possible unintended consequence, a further amendment to the IMDA may be necessary. The IMDA now provides that nothing in the statute "shall affect" the Indian Mineral Leasing Act "or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe." n185 An amendment to clarify that it also does not affect tribes' authority to enter into § 81 easements would preserve that option for renewable energy development. This amendment would need to be carefully worded, however, if Congress wished to preserve the current practice that § 81 contracts and agreements cannot otherwise be used to substitute for mineral leases and agreements.

It is possible that a broader amendment may be necessary to preserve tribes' options under other statutes if the IMDA definition of minerals is expanded to include renewables. The proposed expansion of the IMDA suggested here is not intended to replace any existing authorities, but to supplement them. Just as the IMDA authorization of minerals agreements did not replace [\*131] the IMLA authority to enter into mineral leases, and the TERA process for energy agreements did not replace either IMDA agreements or IMLA leases, n186 the proposed expansion of the IMDA is intended as one more option for tribes.

Under the proposed amendment to the IMDA definition of minerals, for example, a tribe seeking to construct a wind farm on tribal land could do so using a lease under § 415, an easement under § 81, a negotiated lease or other minerals agreement under the IMDA, or an agreement pursuant to an approved TERA under ITEDSA. The tribe could weigh the advantages and drawbacks of each alternative, and chose the one that best suits its needs. Including a statement in the IMDA that it is not intended to replace other existing options would preserve tribes' self-determination rights to choose the best approach for that tribe.

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

Elizabeth Ann Kronk 12, assistant professor of law – Texas Tech University, 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.

# Politics

## 1NC

#### Immigration reform will pass because Obama’s spending capital

Charles Castaldi 3-27 | Take Two | KPCC – California Public Radio, March 27th, 2013, LA Archbishop Gomez keeps Mahony's promise to push for immigration reform

President Obama said he expects Congress to introduce an immigration reform bill next month. The Los Angeles Archdiocese has played a key role in advocating for change. Before he was stripped of his duties for mishandling sex abuse cases, Cardinal Roger Mahony was a leading voice on immigration reform.¶ In 2010, Cardinal Mahony spoke to a crowd of thousands at the Washington mall at a rally in support for immigrant’s rights.¶ Mahony promised the Catholic Church would stand beside immigrants in the fight for immigration reform. This was just one of many examples of his bringing his activism out to the street.¶ “Cardinal Mahony was very clear that he was going to use the pulpit and he was going to use the airwaves,” says Angelica Salas, the executive director of CHIRLA, the Coalition for Humane Immigrant Rights of Los Angeles. “He was going to march with us, he was going to use whatever public space there was in order to get the word out.”¶ Salas says that Mahony’s successor, Archbishop Jose Gomez, might not be speaking at rallies as much and certainly maintains a lower public profile, but he is very active in pushing for immigration reform.¶ “I was in a meeting with President Obama a couple of weeks ago at the White House with religious leaders,” Gomez says. “And we all came out of the meeting with the conviction that now is the time and that the president is committed to work on immigration reform. So we are enthusiastic about the possibility of an immigration reform law soon.”¶ Gomez is the chairman of the Immigration Committee of US Catholic Bishops, which makes him a key voice on immigration matters not only in the church, but also in Washington as well. Both he and Salas agree that this is a moment when there’s a real chance to see an actual immigration reform bill come out of Congress, especially with the President as committed as he is.¶ “Lots of things have also changed even within the Obama administration,” Salas says. “In 2010, I had the opportunity to meet with President Obama in much the same way that Archbishop Gomez did and at that time we were in a very different situation in which for the first time we were seeing deportations exploding. Something we were shocked to our core about. And so it was a different kind of engagement with our president."¶ But since then, she has seen a change in tone from Washington.¶ "Since that time and after a lot of pushing, he has provided deferred action for childhood arrivals, (Obama) has opened up opportunities for prosecutorial discretion," Salas says. "I think that his entire team at every single level is now committed to making sure that immigration reform gets across the finish line.”¶ Public opinion on immigration has also shifted substantially since Mahony took up the cause more than 20 years ago. Now, according to a recent USC/LA Times poll, about two-thirds of Californians support providing undocumented immigrants a path to citizenship. According to Mike Madrid, a Republican political consultant, Gomez’s low key lobbying might be a better fit for the times.

#### Plan drains capital

Judith Royster 12, Professor of Law and Co-Director of the Native American Law Center at the University of Tulsa College of Law, 5/1/12, “Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures,” 31 Stan. Envtl. L.J. 91

Discarding any approval role for the Secretary of the Interior is, at least in the short term, unrealistic. In only one limited situation relevant to renewable energy has Congress eliminated secretarial approval entirely: the 2000 amendment to § 81 to authorize contracts or agreements that encumber Indian lands for less than seven years without any federal approval. As noted earlier, § 81 applies only if other statutory authority does not.¶ More commonly, Congress has been willing to ease up on the Secretary‘s approval power, allowing tribes to bypass federal approval of specific instruments if a more global approval has already been granted. Thus, the original ten-year authority of section 17 corporations to lease without secretarial approval was expanded in 1990 to twenty-five years. Nonetheless, the section 17 corporate charter itself is issued by the Secretary, and the powers granted in the charter are thus subject to secretarial approval. The surface leasing statute was amended several times to authorize specific tribes to lease without secretarial approval of the individual lease, as long as the tribe first has in place tribal regulations approved by the Secretary. Legislation introduced in the 111th and 112th Congresses would have extended this authority to all tribes. Similarly, the TERA process enacted in 2005 authorizes any tribe to use the same approach for energy leases and agreements.¶ While these statutes and amendments clearly indicate a trend toward a somewhat less intrusive role for the Secretary, it is equally clear that Congress wants some level of federal oversight for long-term encumbrances of Indian lands. It is willing to have that oversight one step removed from specific development instruments, but not removed altogether. Any realistic solution at this point, therefore, must retain some sort of secretarial approval.

#### PC’s key

Foley 1/15 Elise is a writer @ Huff Post Politics. “Obama Gears Up For Immigration Reform Push In Second Term,” 2013, http://www.huffingtonpost.com/2013/01/15/obama-immigration-reform\_n\_2463388.html

Obama has repeatedly said he will push hard for immigration reform in his second term, and administration officials have said that other contentious legislative initiatives -- including **gun control and the debt ceiling -- won't be allowed to get in the way.** At least at first glance, he seems to have politics on his side. GOP lawmakers are entering -- or, in some cases, re-entering -- the immigration debate in the wake of disastrous results for their party's presidential nominee with Latino voters, who support reform by large measures. Based on those new political realities, "it would be a suicidal impulse for Republicans in Congress to continue to block [reform]," David Axelrod, a longtime adviser to the president, told The Huffington Post.¶ Now **there's the question of how Obama gets there.** While confrontation might work with Republicans on other issues -- the debt ceiling, for example -- the consensus is that the GOP is serious enough about reform that the president can, and must, play the role of broker and statesman to get a deal.¶ It starts with a lesson from his first term. Republicans have demanded that the border be secured first, before other elements of immigration reform. Yet the administration has been by many measures the strictest ever on immigration enforcement, and devotes massive sums to policing the borders. The White House has met many of the desired metrics for border security, although there is always more to be done, but Republicans are still calling for more before they will consider reform. Enforcing the border, but not sufficiently touting its record of doing so, the White House has learned, won't be enough to win over Republicans.¶ In a briefing with The Huffington Post, a senior administration official said the White House believes it has met enforcement goals and must now move to a comprehensive solution. The administration is highly skeptical of claims from Republicans that immigration reform can or should be done in a piecemeal fashion. Going down that road, the White House worries, could result in passage of the less politically complicated pieces, such as an enforcement mechanism and high-skilled worker visas, while leaving out more contentious items such as a pathway to citizenship for undocumented immigrants.¶ "Enforcement is certainly part of the picture," the official said. "But if you go back and look at the 2006 and 2007 bills, if you go back and look at John McCain's 10-point 'This is what I've got to get done before I'm prepared to talk about immigration,' and then you look at what we're actually doing, it's like 'check, check, check.' We're there. The border is as secure as it's been in a generation or two, so it's really time."¶ One key in the second term, advocates say, will be convincing skeptics such as Republican Sen. John Cornyn of Texas that the Obama administration held up its end of the bargain by proving a commitment to enforcement. **The White House** also **needs to convince GOP lawmakers** that there's support from their constituents for immigration reform, which could be aided by conservative evangelical leaders and members of the business community who are pushing for a bill.¶ Immigrant advocates want more targeted deportations that focus on criminals, while opponents of comprehensive immigration reform say there's too little enforcement and not enough assurances that reform wouldn't be followed by another wave of unauthorized immigration. The Obama administration has made some progress on both fronts, but some advocates worry that the president hasn't done enough to emphasize it. The latest deportation figures were released in the ultimate Friday news dump: mid-afternoon Friday on Dec. 21, a prime travel time four days before Christmas.¶ Last week, the enforcement-is-working argument was bolstered by a report from the nonpartisan Migration Policy Institute, which found that the government is pouring more money into its immigration agencies than the other federal law-enforcement efforts combined. There are some clear metrics to point to on the border in particular, and Doris Meissner, an author of the report and a former commissioner of the U.S. Immigration and Naturalization Service, said she hopes putting out more information can add to the immigration debate.¶ "I've been surprised, frankly, that the administration hasn't done more to lay out its record," she said, adding the administration has kept many of its metrics under wraps.¶ There are already lawmakers working on a broad agreement. Eight senators, coined the gang of eight, are working on a bipartisan immigration bill. It's still in its early stages, but nonmembers of the "gang," such as Sen. Marco Rubio (R-Fla.) are also talking about reform.¶ It's still unclear what exact role the president will play, but sources say he does plan to lead on the issue. Rep. Zoe Lofgren (D-Calif.), the top Democrat on the House immigration subcommittee, said the White House seems sensitive to the fact that Republicans and Democrats need to work out the issue in Congress -- no one is expecting a fiscal cliff-style arrangement jammed by leadership -- while keeping the president heavily involved.

#### Ag industry’s collapsing now---immigration’s key

Alfonso Serrano 12, Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws, Time, 9-21-12, http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/

The Broetjes and an increasing number of farmers across the country say that a complex web of local and state anti-immigration laws account for acute labor shortages. With the harvest season in full bloom, stringent immigration laws have forced waves of undocumented immigrants to flee certain states for more-hospitable areas. In their wake, **thousands of acres of crops have been left to rot** in the fields, as **farmers have struggled to compensate for labor shortages** with domestic help.¶ “The enforcement of **immigration policy has devastated the skilled-labor source that we’ve depended on** for 20 or 30 years,” said Ralph Broetje during a recent teleconference organized by the National Immigration Forum, adding that last year Washington farmers — part of an $8 billion agriculture industry — were forced to leave 10% of their crops rotting on vines and trees. “**It’s** getting worse **each year,**” says Broetje, “and it’s going to end up **putting** some **growers out of business** if Congress doesn’t step up and do immigration reform.”¶ (MORE: Why Undocumented Workers Are Good for the Economy)¶ Roughly 70% of the 1.2 million people employed by the agriculture industry are undocumented. No U.S. industry is more dependent on undocumented immigrants. But acute labor shortages brought on by anti-immigration measures **threaten to heap** record losses on an industry emerging from years of stiff foreign competition. Nationwide, labor shortages will result in **losses of up to $9 billion**, according to the American Farm Bureau Federation.

#### Extinction

Lugar 2k | Chairman of the Senator Foreign Relations Committee and Member/Former Chair of the Senate Agriculture Committee (Richard, a US Senator from Indiana, is Chairman of the Senate Foreign Relations Committee, and a member and former chairman of the Senate Agriculture Committee. “calls for a new green revolution to combat global warming and reduce world instability,” pg online @ http://www.unep.org/OurPlanet/imgversn/143/lugar.html)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. But we do so at our peril. One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of [WMDs] weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

## 1NR

#### Skilled worker shortages prevent energy expansion

Lavelle 8 Marianne Lavelle, energy editor for National Geographic Digital Media, has spent more than two decades covering environment, business, and energy. “A Worker Shortage in the Nuclear Industry,” March 13, http://money.usnews.com/money/careers/articles/2008/03/13/a-worker-shortage-in-the-nuclear-industry

The reason for the hurry: Big energy construction will be booming in the next decade, concentrated in the South—not only nuclear generators but coal plants, liquefied natural gas terminals, oil refineries, and electricity transmission lines. All projects need skilled craft workers, and they are in drastically short supply.¶ The utility Southern Co. estimates that existing energy facilities already are short 20,000 workers in the Southeast. That shortfall will balloon to 40,000 by 2011 because of the new construction. Pay is inching up and hours are increasing for workers who are certified craftsmen. Fluor says skilled workers at the Oak Grove coal project are putting in 60-hour weeks instead of the well-into-overtime 50-hour weeks that had been planned.¶ Looking ahead, the nuclear industry views itself as especially vulnerable to the skilled-labor shortage. It hasn't had to recruit for decades. Not only were no nuke plants getting built, but workers in the 104 atomic facilities already in operation tended to stay in their well-paid jobs for years. But in the next five years, just as the industry hopes to launch a renaissance, up to 19,600 nuclear workers—35 percent of the workforce—will reach retirement age.¶ "The shortage of skilled labor and the rising average age of workers in the electric industry are a growing concern," likely to push up the cost of nuclear power plant construction, said Standard & Poor's Rating Services in a recent report.

#### Compromise now on work visas

Fawn Johnson 3-26

“Why the Fight Over Work Visas Won't Doom the Immigration Bill,” NationalJournal, <http://www.nationaljournal.com/congress/why-the-fight-over-work-visas-won-t-doom-the-immigration-bill-20130325>

Make no mistake. The immigration bill being crafted by the “Gang of Eight” senators will include foreign work visas despite warnings from both business and labor that their talks over the issue have broken down.

Here’s why. The AFL-CIO, for the first time in its history, has signed off on a work-visa program that would allow employers to bring foreign workers into the United States on a temporary basis. Those visas would come with an assurance that the worker would have access to a green card, possibly as soon as one year after coming into the country. But initially, they are temporary visas.

“It would be **a new kind of work-visa program**. It would be dual intent,” said AFL-CIO spokesman Jeff Hauser.

This is a big deal. Previously, the AFL-CIO opposed any kind of temporary-visa program. That intransigence caused a highly public split with the Service Employees International Union in 2007. SEIU was willing to embrace some form of temporary work visas for immigrant labor if the broader immigration bill also legalized the currently undocumented population.

Now labor is speaking with one voice. They **want legalization for the undocumented population** and are **willing to allow new foreign workers** to come to the country, provided the employers pay them at the same rates they would pay an American worker. The business community has indicated it **can live with those parameters.**

#### Immigration reform will pass---not moving too quickly

Reuters 3-27, “Senators say they expect to deliver immigration bill,” http://www.reuters.com/article/2013/03/27/us-usa-immigration-senate-idUSBRE92Q17Z20130327

(Reuters) - Members of a bipartisan group of eight Senators took their quest for a deal on immigration reform to the Arizona-Mexico border on Wednesday where they **said they were on track to deliver a bill when Congress resumes next month.**¶The senators - New York Democrat Charles Schumer, Arizona Republicans John McCain and Jeff Flake and Colorado Democrat Michael Bennet - toured a stretch of the Arizona-Mexico border where many foreigners have entered the United States illegally.¶ The senators are trying to create metrics for defining whether the border is secure as part of a comprehensive immigration bill that would give millions of illegal immigrants a path to citizenship.¶ Speaking at a news conference after meeting with border patrol agents and flying over the international border around the frontier city of Nogales, Schumer said he was hopeful they would present a bill when Congress resumes April 8.¶ "The bottom line is we are very close. I'd say we are 90 percent there. We have a few little problems to work on ... but we're very hopeful that we will meet our deadline," said Schumer, who was speaking at a building that was within sight of the steel border fence.¶ "We hope to have a bill agreed to and done .. the day we come back," he said.¶ The senators are members of the so-called Gang of Eight - four Democrats and four Republicans - who are working on a plan for the biggest overhaul of immigration laws since 1986.¶ Flake and McCain have tried to impress on their colleagues the difficulties in their home state of Arizona, which is part of the most heavily trafficked section of the nearly 2,000 mile southwest border with Mexico.¶ "In the last several years we have made improvements on the border. The border is still not in many areas as secure as we want it to be or expect it to be," McCain told reporters at the same news conference.¶ Asked if it would take billions of dollars and decades to secure the border, McCain said, "We are talking about a lot of money, but we also have to make sure that the money is well spent."¶ Although the group of senators has agreed to create a way for the 11 million undocumented foreigners in the country to earn citizenship, problems with the future flow of immigrants has remained a sticking point.¶ A new temporary worker program is critical for Republicans, who will not agree to overhaul the immigration system unless there is a process for foreigners to fill U.S. jobs temporarily if needed.¶ The issue of wages for the new workers briefly stalled talks on Friday in Washington with unions and businesses publicly hurling insults at each other.¶ At the time, the AFL-CIO, the biggest labor federation, said Republicans and businesses wanted to undercut wages. The Chamber of Commerce, the biggest U.S. business lobby, said the unions had jeopardized the entire immigration reform effort.¶ **Tempers cooled earlier this week with both sides cautiously voicing some optimism.**¶Obama acknowledged on Wednesday that the future flow of guest workers was a sticking point between labor and business, but he said the **conflicts could be resolved.**¶"I don't agree that it's threatening to doom the legislation," Obama said in an interview with Telemundo, according to a transcript. "This is a resolvable issue."

#### Bipartisan CIR’s proceeding and likely to pass

The Hill 3-25, Obama to host new citizens, push for action on immigration reform, Read more: http://thehill.com/blogs/blog-briefing-room/news/290053-obama-to-host-new-citizens-press-congress-on-immigration-reform#ixzz2OlJUGdTY

President Obama will host a naturalization ceremony on Monday for 28 new citizens, including 13 service members, at the White House.¶ The move comes as the president continues to press lawmakers to pass comprehensive immigration reform, one of his second-term **priorities**.¶ Obama will be joined by Homeland Security Secretary Janet Napolitano and U.S. Citizenship and Immigration Services Director Alejandro Mayorkas in the East Room. The president will deliver remarks at the ceremony, the White House announced.¶ “The event underscores the contributions made to the United States by immigrants from all walks of life, including the foreign-born members of the U.S. Armed Forces, as well as our shared history as a nation of immigrants,” said a White House official. “While the President remains pleased that Congress continues to make progress towards commonsense immigration reform, he believes Congress needs to act quickly, and he expects a bill to be introduced as soon as possible.”¶ Bipartisan groups in both the House and Senate are moving closer to unveiling separate immigration reform proposals.¶ The Senate’s “Gang of Eight” introduced their framework in January, calling for a pathway to citizenship, heightened border security, increased high-skilled immigration and a guest worker program. ¶ But since then, senators have been tied down in negotiations over the details of the plan, with many key issues still unresolved. Reports last week, though, said that sources close to the talks said they **hoped to have a bill by the end of April.**¶ The bipartisan House group has yet to share details of their proposals, but their work has already **received general support from leaders in both parties.** ¶Speaker John Boehner (R-Ohio) last week praised their work as a “pretty responsible solution.”¶ House Minority Whip Steny Hoyer (D-Md.) said the group was “very close to an agreement,” and that **lawmakers had made “real progress.”**¶ Advocates for immigration reform see a real chance that a bill could pass Congress this year, with growing momentum on both sides. But any immigration deal would **need to pass muster with House GOP lawmakers**, many of whom have said they will oppose measures that grant “amnesty” to illegal immigrants and have questioned proposed protections for gay or lesbian couples.¶ But after the strong showing President Obama made among Hispanic voters in the 2012 election, a growing number of conservative lawmakers have signaled they would back immigration reform, including measures to provide a pathway to citizenship.¶ Sen. Rand Paul (R-Ky.) unveiled his own proposal last week, which would first require strengthened border security before allowing illegal immigrants to apply for legal status. Paul’s support for eventual citizenship could help **rally other conservative lawmakers** to back reform.

#### Top of the agenda

NY Post 3-26, Obama pushes immigration law, http://www.nypost.com/p/news/national/pushes\_immig\_law\_PoMCwPpbwkq0XeP0SkDvIJ

WASHINGTON — President Obama hailed recent progress on immigration-reform legislation, saying he expects debate next month on “comprehensive, sensible” reform.¶ Fresh off his trip to the Middle East, Obama dived into one of the top issues on his agenda — one that’s entirely separate from the intractable budget battles.¶ “We are making progress,” Obama said at a White House ceremony for 28 new Americans from many countries including Afghanistan, Peru and St. Lucia. “I expect a bill to be put forward. I expect the debate to begin next month. I want to sign that bill into law as soon as possible.”¶ Thirteen of the new citizens were members of the military.¶ In a gesture to Republicans, Obama called for a pathway to “earned citizenship,” which he said included “going to the back of the line behind everyone else who is trying to come here legally.”¶ He called the immigration system “broken,” adding: “After avoiding the problem for years, the time has come to fix it once and all. The time has come for comprehensive, sensible immigration reform.”

#### Obama’s not spending political capital to promote gun control

NYT 3-14, 2013, “Party-Line Vote in Senate Panel for Ban on Assault Weapons,” http://www.nytimes.com/2013/03/15/us/politics/panel-approves-reinstatement-of-assault-weapons-ban.html?\_r=0

If the Senate passes even modest measures next month, **they will face a steep climb in the House**. “I’ve made it perfectly clear if the Senate passes a bill, we will be happy to review it,” Speaker John A. Boehner, Republican of Ohio, said in an interview on Thursday. “In the meantime, our committees are continuing to have hearings on this issue, continuing to look at our violent society and the causes of it and what we can do to reduce the incidents of violence in our society.”

President Obama has made an emphatic call for new gun regulations, **but he so far has not spent extensive political capital on the effort**. In visits to Capitol Hill to meet with lawmakers this week, the **issue barely came up.** “The Senate has now advanced legislation addressing three of the most important elements of my proposal to help reduce the epidemic of gun violence in this country,” he said in a statement.

#### Obama’s not spending capital on gun control – even though he supports the idea – he’s husbanding it for other priorities, including immigration

Chris Cillizza 3-22, “Newtown didn’t change the politics of guns,” Washington Post, 3-22-13, http://www.washingtonpost.com/blogs/the-fix/wp/2013/03/22/newtown-didnt-change-the-politics-of-guns/

The decision this week by Senate Majority Leader Harry Reid to drop the assault weapons ban and a ban on high-capacity clips from the broader Congressional effort to curb gun violence sent an unmistakable message: The murders of 20 children in Newtown, Conn., in late 2012 has not changed politics as much as many people thought it might.¶ That’s a hard political truth to hear for many Americans who viewed what happened in Connecticut as a moment when the conversation about guns in America changed. President Obama pledged action. Vice President Biden chaired a White House task force to recommend legislative and executive solutions to curb gun violence. Longtime gun control advocates like New York City Mayor Michael Bloomberg (I) and California Sen. Dianne Feinstein (D) insisted that this time — past mass murders involving guns had not moved the needle on a desire for stricter gun laws — was different.¶ And public polling suggested — and continues to suggest — that large majorities favor many of the provisions put forward by Biden’s task force. Nearly six in 10 Americans support banning assault weapons in the latest Washington Post-ABC News poll, and large majorities back expanding background checks to cover all purchases. A smaller majority — though still a majority — favor a ban on high-capacity clips.¶ And yet, as Newtown disappeared further in the political rearview mirror, the same politics that had turned guns into a dormant issue on the national political stage for much of the 1990s and 2000s began to take hold.¶ Senate Democrats up for reelection in Republican-leaning states in 2014 — think Montana, North Carolina, Alaska, Arkansas and Louisiana — were loathe to vote on things like the assault weapons ban out of the fear that their eventual Republican opponent would use such a vote to cast them as out of touch with the average person in their state. According to Reid, less than 40 Senate Democrats were ready or willing to vote for the assault weapons ban.¶ And the White House, perhaps sensing that it would need to spend its political capital on other priorities — debt ceiling/budget fight, immigration and perhaps even climate change — seemed to decide that passing something (even something that didn’t include major provisions like an assault weapons ban or a ban on high capacity clips) was better than passing nothing at all.¶ (President Obama did make clear that he supports the assault weapons ban. But there is a big difference between supporting a piece of legislation and putting the full force of your administration behind convincing wavering members of your party to vote for it.)¶ The simple fact is that despite all of the assertions that Newtown had changed or would change the political dialogue around guns in this country, it wound up reinforcing much of what we already knew about the difficulties of limiting gun rights.

#### Obama won’t issue an immigration XO --- not worth the political risk

Keegan Hamilton 3-26, “How Obama Could (but Probably Won't) Stop Deporting Illegal Immigrants Today,” The Atlantic, 3-26-13, http://www.theatlantic.com/politics/archive/2013/03/how-obama-could-but-probably-wont-stop-deporting-illegal-immigrants-today/274352/

On the other hand, Kenneth R. Mayer, a professor of political science at the University of Wisconsin and author of the book With the Stroke of a Pen: Executive Orders and Presidential Power, argues history is littered with executive orders popular with the president's party and condemned by the opposition.¶ "Democrats and liberals say, 'This is wonderful, it's about time,' while conservatives and Republicans are outraged, saying 'He's nullifying a law, he can't do that!'" Mayer says. "The answer is they're both right. In practice, the president can do this. But Congress could try to stop him, and the way they do that is raising the political cost to a degree the president doesn't find acceptable."¶ With immigration-reform legislation inching toward the president's desk, it's unlikely he'll waste political capital by halting deportations or even reducing the immigrant detainee population, despite the budgetary considerations. The prospect of doing anything that might alienate Republicans, especially with a compromise so close, alarms activists like Tamar Jacoby, president of ImmigrationWorks USA, an advocacy group comprised largely of small-business owners.

#### Plan leads to backlash—the existence of the law proves the link

Miles 6 (Andrea, JD Candidate, “TRIBAL ENERGY RESOURCE AGREEMENTS: TOOLS FOR ACHIEVING ENERGY DEVELOPMENT AND TRIBAL SELF-SUFFICIENCY OR AN ABDICATION OF FEDERAL ENVIRONMENTAL AND TRUST RESPONSIBILITIES”. 30 Am. Indian L. Rev. 461, Lexis)

Opponents, including some environmental groups, have expressed concern that Title V will eliminate the federal guarantees of public participation and environmental review from energy development decisions in Indian Country. n78 Further, opponents state that the "language also undercuts the federal trust [\*471] responsibility to Tribes by providing a waiver for the federal government of all liability from energy development." n79 Additionally, "other governments - state, local and foreign - are not required to conduct a NEPA review of actions they approve." n80

Some claim that the bill releases the federal government from its traditional trust responsibility to ensure the protection of the health, environment, and resources of Tribes and undermines federal environmental laws such as NEPA for energy development projects on Indian lands, resulting in a rearrangement of the federal- tribal relationship. n81 For example, during a congressional oversight hearing on NEPA, Zuni tribal member Calbert Seciwa stated "that NEPA was a vital tool in the Zuni Salt Lake Coalition's successful fight to block development of a coal mine near the sacred lake south of Gallup." n82

Environmentalists also criticize the new language. The National Resources Defense Council argued that the provisions remove the federal guarantee of environmental review and public participation. n83 Sharon Buccinio, an attorney for the NRDC argues

Title V 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 the reservation. It provides that once the Secretary of the Interior approves a [TERA] 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 now have to make their voices heard. n84

 [\*472]

Because of the ongoing concern that TERA tribes could ignore NEPA, Congress added a tribal environmental review process to the TERA. n85 The environmental review process must provide for the identification and evaluation of all significant environmental effects, including effects on cultural resources, identify proposed mitigation measures, and incorporate these measures into the TERA agreement. n86 In addition, the Tribe must ensure that the public is informed of and has the opportunity to comment on the environmental impacts of the proposed action, provide responses to relevant and substantive comments before tribal approval of the TERA agreement, provide sufficient administrative support and technical capability to carry out the environmental review process and allow Tribal oversight of energy development activities by any other party under any TERA agreement to determine whether the activities are in compliance with the TERA and applicable federal environmental law. n87

#### Reducing environmental regulations triggers massive Congressional battles and requires PC expenditure

Kraft and Vig 10 Michael Kraft is a Professor of Public and Environmental Affairs @ UWisconsin-Green Bay. Norman J. Vig is Winifred and Atherton Bean Professor of Science, Technology, and Society, Emeritus, at Carleton College. “Environmental Policy over Four Decades,” CQPress, http://www.cqpress.com/docs/college/Ch1-kraft-vig.pdf

Despite these notable pledges and actions, rising criticism of environmental programs also was evident throughout the 1990s and the first decade of the twenty-first century both domestically and internationally. So too were a multiplicity of efforts to chart new policy directions. For instance, intense opposition to environmental and natural resource policies arose in the 104th Congress (1995–1997), when the Republican Party took control of both the House and Senate for the first time in forty years. Ultimately, much like the earlier effort in Ronald Reagan’s administration, the antiregulatory campaign on Capitol Hill failed to gain much public support. 2 Nonetheless, **pitched battles over environmental and energy policy continued in every Congress** through the 110th (2007–2009), and they were equally evident in the executive branch as the Bush White House sought to rewrite environmental rules and regulations to favor industry and to dramatically increase development of U.S. oil and natural gas supplies on public lands. 3 Yet growing dissatisfaction with the effectiveness, efficiency, and equity of environmental policies was by no means confined to congressional conservatives and the Bush administration. It could be found among a broad array of interests, including the business community, environmental policy analysts, environmental justice groups, and state and local government officials. 4 Since 1992, governments at all levels have struggled to redesign environmental policy for the twenty-first century. Under Presidents Bill Clinton and GeorgeW. Bush, the U.S. Environmental Protection Agency (EPA) tried to “reinvent” environmental regulation through the use of collaborative decision making involving multiple stakeholders, public-private partnerships, market-based incentives, information disclosure, and enhanced flexibility in rulemaking and enforcement (see chapters 7, 9, and 10). 5 Particularly during the Clinton administration, new emphases within the EPA and other federal agencies and departments on ecosystem management and sustainable development sought to foster comprehensive, integrated, and long-term strategies for environmental protection and natural resource management (see chapter 8). 6 Many state and local governments have pursued similar goals, with adoption of a wide range of innovative policies that promise to address some of the most important criticisms directed at contemporary environmental policy (see chapters 2 and 11). The election of President Barack Obama in 2008 signaled the likelihood of even greater attention to innovative policy ideas in the years ahead as the nation demonstrated a new sense of urgency about climate change and a determination to address a range of environmental, energy, and resource challenges despite a poor economy. The precise way in which Congress, the states, and local governments will change environmental policies remains unclear. The partisan gridlock of the past decade may give way to greater consensus on the need to act. Yet policy change rarely comes easily in the U.S. political system. Its success will likely depend on several key conditions: public support for change, how the various policy actors stake out and defend their positions on the issues, the way the media cover these disputes, the relative influence of opposing interests, and the state of the economy. Political leadership, as always, will play a role, especially in reconciling deep divisions between the major political parties on environmental protection and natural resource issues. Political conflict over the environment is not going to vanish any time soon. Indeed, it **will likely increase** as the United States and other nations struggle to define how they will respond to the latest generation of environmental problems. In this chapter we examine the continuities and changes in environmental politics and policy since 1970 and discuss their implications for the early twenty-first century. We review the policymaking process in the United States, and we assess the performance of government institutions and political leadership. We give special attention to the major programs adopted in the 1970s, their achievements to date, and the need for policy redesign and priority setting for the years ahead. The chapters that follow address in greater detail many of the questions explored in this introduction. The Role of Government and Politics The high levels of political conflict over environmental protection efforts during recent years underscores the important role government plays in devising solutions to the nation’s and the world’s mounting environmental ills. Global climate change, population growth, the spread of toxic and hazardous chemicals, loss of biological diversity, and air and water pollution all require diverse actions by individuals and institutions at all levels of society and in both the public and private sectors. These actions range from scientific research and technological innovation to improved environmental education and significant changes in corporate and consumer behavior. As political scientists we believe government has an indispensable role to play in environmental protection and improvement. The chapters in this volume thus focus on environmental policies and the government institutions and political processes that affect them. Our goal is to illuminate that role and to suggest needed changes and strategies.

# K

#### Proponents of renewable power for indigenous groups essentialize Native desires---that reifies colonialism and exclusionary violence

Bosworth 10—Honors Projects Environmental Studies Department, Macalester College (Kai, Straws in the Wind: Race, Nature and Technoscience in Postcolonial South Dakotan Wind Power Development, <http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1007&context=envi_honors&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D10%26q%3D%2522Technologies%2Bof%2BExistence%2522%26hl%3Den%26as_sdt%3D0%2C14#search=%22Technologies%20Existence%22>)

Linking Foucault and Latour’s circulatory systems encourages an examination of power within technoscientific development. In the context of western South Dakota, power operates through systems of colonialism, race, science, and nature. This project resonates with studies of what Warwick Anderson calls “postcolonial technoscience,” an interrogation into how “scientific facts or practices, and technological configurations, [are] stabilized in different places” in order to reinforce and reproduce colonial operations of power (2002, 649). 3 The work of geographers, historians, anthropologists and other scholars of the social studies of science inform this articulation of postcolonial politics. While often working within relational theoretical frameworks like the one outlined above, social scientists like David Turnbull, John Law, Sarah Whatmore, Bruce Braun, and Arturo Escobar have taken the ideas of Latour, Haraway, Foucault, Deleuze, and others and shown how they operate in various colonial contexts. This project extends this methodology by working to show how wind power development practices are extended into Native American reservations, changed in this context, and recommunicated. Indigenous people living on and off the nine reservations in South Dakota are impacted by the history of colonialism in ways that deserve attention, even as their situation differs from many other postcolonial encounters. 4 Like other postcolonial states, the US conquered, settled, divided and allocated space and land for the Lakota and other Native Americans living in South Dakota. At various times, the entire western half of South Dakota was the Great Sioux Reservation, before the allure of gold and newly workable land along with Eastern investment, the development of railroads, and the centralization of production in cities drove settlement and war (Cronon 1991). As reservation borders changed, the state built and legitimated government models for the Lakota, before attempting to dissolve these in the 1950s and 60s. The Lakota and others have been legally defined as “domestic dependent nations,” producing the conditions for decision-making and sovereignty (Alfred 2002, Biolsi 1992, Deloria and Lytle 1984). Assumptions about the presumed connections between indigenous people worldwide and nature have become a potent site of interrogation for historians, geographers, and others. In the 17th and 18 th century, colonial expeditions figured both nature and indigenous people worldwide as timeless, premodern, and degenerate (Pratt 1991, Gregory 2001). This strong and inherent connection drawn between indigenous people and the land, for many explorers, did not justify their ownership of land, at least in the traditional European framing. But it wasn’t until the 18 th and 19 th century that these qualities of indigeneity were centralized and seen as essential qualities of race and biology (Jackson and Weidman 2006). In North America, these connections helped justify new norms and practices of American exceptionalism and expansion, including the Lewis and Clark expedition, dispossession of land, war and genocide, and some of the first missions for rural development (Biolsi 1992, 1995, Brown 1971, Ostler 2004). Some contemporary environmentalist discourses have built images of “authentic” indigenous experience, people, or knowledge to legitimate and authorize exclusionary and privileging practices (Braun 2002, Moore et. al. 2003). Romanticized images of Native American spiritual, physical, beneficial, and/or harmonious relationships to nature have become centralized around a discourse that anthropologist Shepard Krech has called the “Ecological Indian” (1999). 5 These discourses are complex, and are articulated in different ways through social movements (Nadasdy 2005, Li 2000), popular television shows and movies (Sturgeon 2009), discourses of science and social science (Agrawal 1995, Latour 1993), and through economic development, tourism, and environmental politics (Braun 2002). For Braun, many contemporary conservation discourses have assumed, that safeguarding indigenous cultures would help protect nature, because indigenous peoples are thought to have an interest and/or expertise in sustaining existing ecological relations; or, alternately, that the preservation of nature is necessary to preserve indigenous cultures, because they are seen to have a necessary relation to nature…Indigenous identities are defined and contained within the environmental imaginaries of European environmentalists and the postcolonial nation-state” (2002, 81).

#### Critiquing the discourse surrounding solar development on Native lands is crucial to open up space to resist this colonialism---the alt is to endorse the 1AC absent their understanding of Native epistemologies

Bosworth 10—Honors Projects Environmental Studies Department, Macalester College (Kai, Straws in the Wind: Race, Nature and Technoscience in Postcolonial South Dakotan Wind Power Development, <http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1007&context=envi_honors&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D10%26q%3D%2522Technologies%2Bof%2BExistence%2522%26hl%3Den%26as_sdt%3D0%2C14#search=%22Technologies%20Existence%22>)

In this thesis, I argue that the conditions of possibility for imagining, discussing, and materially constructing wind power on Native American land results in the reproduction of narratives of the Ecological Indian. The production of this discourse by government institutions like the Department of Energy unevenly allocates responsibilities and privileges for energy production and addressing global warming. The failure to account for the colonial history and present of western South Dakota has resulted in an inability to fully engage the larger processes that shape wind power possibilities. Ideas about indigeneity, race and nature are both reiterated and reconfigured through the developments of wind power in Native American communities. The contemporary politics of wind power on the Rosebud Sioux Reservation cannot be understood without connection to history, larger political context, the circulatory potential of discourse, and the norms and standards of technoscience. By pasting together a number of pieces about the history on which the Rosebud wind power projects are built, the multiplicity of actors enmeshed and constituted by this situation, our responsibilities for reconfiguring become clearer. Another major goal of this paper is to make a mess out of something that could be understood simplistically, within dominant binaries. Things and meanings are always in process, negotiated and contested by humans and nonhumans alike. But to make a mess is not enough; we must also think about how the mess can be acted upon to produce justice. I evoke and critique the multiplicities of discourses, histories, images, natures, and other stuff at play in the Little Soldier and Owl Feather War Bonnet projects in order to create space for a reconfiguring of wind power development against institutions of colonialism, capitalism, and racism. It is my hope that the wind is my ally in eroding these reified processes and practices.

# Greenwashing

#### Further deregulation guts tribal sovereignty—causes a new land rush

Awehali 6 (Brian, independent journalist on environmental issues, 2006 Project Censored Award winner, “NATIVE ENERGY FUTURES: Renewable Energy & the New Rush on Indian Lands”, 6/5, http://loudcanary.com/2006/06/05/native-energy-futures/)

But there are a host of alarming provisions in the act. For starters, Section 1813 of Title V gives the US the obviously dangerous power to grant rights of way through Indian lands without permission from Indian tribes, if deemed to be in the strategic interests of an energy-related project. Other critics have derided the act as a fire sale on Indian energy, characterizing various incentives as a broad collection of subsidies for US energy companies, particularly those in Texas. And, according to a 2005 Democracy Now! interview with Clayton Thomas-Muller, Native Energy Organizer for the Indigenous Environmental Network, the act “rolls back the protections of the National Environmental Policy Act and the protections of the National Historic Preservation Act, both of which are critical pieces of legislation that grassroots indigenous peoples utilize to protect our sacred sites.” Most importantly, under the guise of promoting tribal sovereignty (leaving out those aspects of sovereignty that have little or nothing to do with economics), the act also releases the federal government from its traditional trust responsibility to tribes where resource development is concerned**.** The trust relationship between the US and native tribes has been a crucial way for Native Americans to hold the government legally accountable, as evidenced by the many recent court losses suffered by the Department of the Interior and Treasury during the years-long Indian Trust Case filed by Eloise Cobell on behalf of more than 500,000 Native American landholders. The trust relationship was originally imposed on Native Americans in 1887, after the passage of the Dawes Allotment Act. This act was a fairly straightforward (and successful) attempt to break down tribal unity by dispersing parcels of land to individual Indian “heads of household” who signed on to the government’s “tribal rolls.” The land was not to be managed by Native Americans, however: It was held “in trust,” and the government was supposed to disburse to Native landholders the royalties generated by the leasing of their lands to timber, mining, livestock, and energy interests. But for the most part, the government didn’t disburse the money, and now admits that at least $137 billion of it is simply missing. Without the trust relationship, which among other things makes the government legally responsible for the money it manages, Cobell and her coplaintiffs could not have sued. The Energy Policy Act also shifts responsibility for environmental review and regulation from the federal to tribal governments. This, too, was promoted under the auspices of increasing tribal sovereignty, but it doesn’t take a genius to know that Native Americans won’t be any more successful in regulating the energy industry than the US government, a host of well-funded environmental groups, and the UN have been. In fact, it probably only takes a village-variety idiot to comprehend the predictably disastrous outcome of this shift for Native Americans. It’s hard to believe, in light of the relevant history, that an ever-avaricious energy industry—which has been all too willing to play a game of planetary ecological brinksmanship in the name of profit—places any value on tribal sovereignty unless there’s a way to exploit it. It’s hard to believe, after hundreds of years of plunder and unaccountability, that further deregulation, coupled with economic incentives, and even with the participation of some well-meaning “green” players on the field, is going to deliver anything but the predictable domination of Native Americans by white European economic powers. In fact, I’ll go out on a limb and say that the emerging Native American energy infrastructure looks more like the beginnings of a new rush on Indian lands than it does the advent of any kind of brave new sovereign era.

#### That causes massive structural violence

Mills 6 (Andrew, Masters thesis at Berkeley, overseen by Daniel Kammen, Professor, Energy and Resources, Goldman School of Public Policy University of California, Berkeley, Alastair Iles Post-Doctoral Scholar University of California, Berkeley, “Wind Energy in Indian Country: Turning to Wind for the Seventh Generation,” http://rael.berkeley.edu/sites/default/files/old-site-files/2006/Mills-Masters-2006.pdf)

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).

The most severe impacts of energy development were found to be forced relocations of families from land that was going to mined, reductions in the numbers of livestock, and denial of access to traditional lands (ibid). The researchers found that the loss of grazing permits was the most threatening outcome in the possible impacts of energy development. The permits were important due to the way the grazing permits were linked to many other dimensions such as lifestyle, kinship, housing, animals, and sacred places (ibid, 894). The authors of the study do not conclude that the adverse impacts of energy development on families necessarily precludes energy development, but their work in the context of Polanyi’s theories of development help to understand why after 13,000 relocations of Navajo families in the past three decades on the Navajo Nation 7 many within the Navajo Nation oppose continuing energy development.

The idea of a socially embedded economy supports the claim by an advisor to the Navajo government on energy development in the 1970’s, Lorraine Turner Ruffing, that Navajo economic development is subject to cultural constraints. Ruffing asserted that economic development would occur more rapidly on the Navajo reservation if the development strategy took into account differences in the social structure (Ruffing 1976, 612). Ruffing found that often Navajo allocated resources to traditional activities, which did not disrupt their way of life. Even when partaking in non-traditional activities like wage work, many preferred to remain in their local area even if it meant lower wages (ibid). One researcher went as far as to suggest that energy development would always be destined to lead to degradation in the quality of life for many Navajo due to the “disharmony” caused by extracting energy resources (Ellis 1988, 130).

Cornell and Kalt produced a significant body of research that shows that compatibility of institutions and culture matter to economic development (see Cornell and Kalt 1997,1998; Cornell and Gil-Swedberg 1995 for example). One of the critical issues in establishing a culturally appropriate development agenda for tribes is to determine: “What do we hope to preserve or protect? What are we willing to give up?” (Cornell and Kalt 1998, 206). The Executive Director of the Division of Natural Resources, Arvin Trujillo, indicated that there is an element of the Navajo Nation that has made it clear that they are not willing to accept the adverse impacts of energy development (Shirley and Trujillo 2003). The shut down of the Mohave Generating Station in 2005 reflects people within the Navajo Nation and Hopi Tribe mobilizing support for the tribal governments to refuse to allow pumping groundwater for the transport of coal. 8 Increasingly in the Navajo Nation, energy development is opposed on the grounds that it uses too much water. Water is a key element in Navajo maintaining their ability to raise livestock and maintain their way of life.

# Impact Framing

## 1NC

#### Extinction outweighs structural violence

Bostrum 12 (Nick, Professor of Philosophy at Oxford, directs Oxford's Future of Humanity Institute and winner of the Gannon Award, Interview with Ross Andersen, correspondent at The Atlantic, 3/6, “We're Underestimating the Risk of Human Extinction”, <http://www.theatlantic.com/technology/archive/2012/03/were-underestimating-the-risk-of-human-extinction/253821/>)

Bostrom, who directs Oxford's Future of Humanity Institute, has argued over the course of several papers that human extinction risks are poorly understood and, worse still, severely underestimated by society. Some of these existential risks are fairly well known, especially the natural ones. But others are obscure or even exotic. Most worrying to Bostrom is the subset of existential risks that arise from human technology, a subset that he expects to grow in number and potency over the next century.¶ Despite his concerns about the risks posed to humans by technological progress, Bostrom is no luddite. In fact, he is a longtime advocate of transhumanism---the effort to improve the human condition, and even human nature itself, through technological means. In the long run he sees technology as a bridge, a bridge we humans must cross with great care, in order to reach new and better modes of being. In his work, Bostrom uses the tools of philosophy and mathematics, in particular probability theory, to try and determine how we as a species might achieve this safe passage. What follows is my conversation with Bostrom about some of the most interesting and worrying existential risks that humanity might encounter in the decades and centuries to come, and about what we can do to make sure we outlast them.¶ Some have argued that we ought to be directing our resources toward humanity's existing problems, rather than future existential risks, because many of the latter are highly improbable. You have responded by suggesting that existential risk mitigation may in fact be a dominant moral priority over the alleviation of present suffering. Can you explain why? ¶ Bostrom: Well suppose you have a moral view that counts future people as being worth as much as present people. You might say that fundamentally it doesn't matter whether someone exists at the current time or at some future time, just as many people think that from a fundamental moral point of view, it doesn't matter where somebody is spatially---somebody isn't automatically worth less because you move them to the moon or to Africa or something. A human life is a human life. If you have that moral point of view that future generations matter in proportion to their population numbers, then you get this very stark implication that existential risk mitigation has a much higher utility than pretty much anything else that you could do. There are so many people that could come into existence in the future if humanity survives this critical period of time---we might live for billions of years, our descendants might colonize billions of solar systems, and there could be billions and billions times more people than exist currently. Therefore, even a very small reduction in the probability of realizing this enormous good will tend to outweigh even immense benefits like eliminating poverty or curing malaria, which would be tremendous under ordinary standards.

#### Ethical policymaking requires calculation of consequences

**Gvosdev 5** – Rhodes scholar, PhD from St. Antony’s College, executive editor of The National Interest (Nikolas, The Value(s) of Realism, SAIS Review 25.1, pmuse)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

#### Deontology collapses into util

Schuck 8 – PROFESSOR OF LAW AT YALE --- Peter H. Schuck, the Simeon E. Baldwin Professor of Law at Yale University, Fall 2008, “The Morality of Immigration Policy,” San Diego Law Review, 45 San Diego L. Rev. 865, p. lexis

That said, I believe that any deontological claim in the realm of practical or applied ethics, the subject of this Article, must ultimately devolve for its proof on some set of consequentialist claims. n4 If the content of what is right-in-itself is, say, some notion of human flourishing, then in assessing a policy alternative in light of that norm, it becomes necessary at some point to defend that alternative in consequentialist terms by showing that certain conduct does, or does not, in fact conduce to human flourishing, however defined. If one seeks to justify a law permitting gay marriage, for example, as moral action on deontological grounds because it instantiates the value of, say, dignity or equality, then at some pivotal point in the argument one must show that the law's effects will in fact promote the dignity or equality of the couple - perhaps by giving them as much pleasure or self-respect as other couples receive from marriage. The deontological claim may constrain the kinds of consequences that are relevant to its justification, but once the claim is elaborated conceptually and normatively as deeply as the analysis permits, the claim's validity must ultimately rest on propositions about its actual effects in the real world. n5

[\*869] By adopting a consequentialist approach, I emphatically do not dismiss the importance of deontological approaches. Indeed, consequentialism would be less attractive without an underlying, perhaps deontological, conception of the good. n6 Deontological approaches help us to decide which ends we wish to pursue a priori. I do not, therefore, subscribe to consequentialism monistically. I simply argue that as a descriptive matter, consequentialism can shed much light on which among the competing ends we should choose. As Shelly Kagan notes, "the goodness of an act's consequences is at least one morally relevant factor in determining the moral status of that act," but the goodness of consequences requires a theory of the good to ground the comparison. n7

## 1NR

#### Our form of scenario planning is good---creates the best risk analysis and contingency planning

Han 10 Dong-ho is a PhD candidate in Political Science at U Nebraska Lincoln. “Scenario Construction and Implications for IR Research: Connecting Theory to a Real World of Policy Making,” All Academic Research

How do we assess future possibilities with existing data and information? Do we have a systematic approach to analyze the future events of world politics? If the problem of uncertainty in future world politics is increasing and future international relations are hard to predict, then it is necessary to devise a useful tool to effectively deal with upcoming events so that policy makers can reduce the risks of future uncertainties. In this paper, I argue that the scenario methodology is one of the most effective methods to connect theory to practice, thereby leading to a better understanding of future world events. The purpose of this paper is to introduce the scenario methodology to the field of IR in a more acceptable fashion and to explore its implications for a real policy world. To achieve this goal, I will explain the scenario methodology and why it is adequate to provide a better understanding of future world events. More specifically, I will clarify what the scenario method is and what its core components are and explain the importance and implications of the scenario method in IR by analyzing existing IR literature with an emphasis on security studies that primarily provide the prospect of future security issues. 1. Introduction How do we assess future possibilities with existing data and information? Do we have a systematic approach to analyze the future events of world politics? Given various theoretical ideas for predicting and analyzing future events in the field of international relations (IR), to understand these events properly it is important both to cast out all plausible outcomes and to think through a relevant theory, or a combination of each major theory, in connection with those outcomes. This paper aims to explain the scenario methodology and why it is adequate to provide a better understanding of future world events. After clarifying the scenario methodology, its core components, and its processes and purposes, I will explore other field’s use of this methodology. Then I will explain the importance and implications of the scenario method in the field of IR. I will conclude with summarizing the advantage of the scenario method in a real world of policy making. 2. What is the Scenario Methodology? This section begins with one major question – what is the scenario methodology? To answer this, some history regarding the development of this method should be mentioned.1 Herman Kahn, a pioneer of the scenario method, in his famous 1962 book Thinking about the Unthinkable, argued that the decision makers in the United States should think of and prepare for all possible sequences of events with regard to nuclear war with the Soviet Union.2 Using scenarios and connecting them with various war games, Kahn showed the importance of thinking ahead in time and using the scenario method based upon imagination for the future.3 According to Kahn and his colleagues, scenarios are “attempts to describe in some detail a hypothetical sequence of events that could lead plausibly to the situation envisaged.”4 Similarly, Peter Schwartz defines scenarios as “stories about the way the world might turn out tomorrow, stories that can help us recognize and adapt to changing aspects of our present environment.”5 Given a variety of definitions of scenarios,6 for the purpose of this research, I refer to the scenario-building methodology as a means by which people can articulate different futures with trends, uncertainties, and rules over a certain amount of time. Showing all plausible future stories and clarifying important trends, scenario thinking enables decision makers to make an important decision at the present time. Key Terms in the Scenario Methodology The core of the scenario method lies in enabling policy makers to reach a critical decision at the present time based on thinking about all plausible future possibilities. Key concepts in the scenario method include: driving forces, predetermined elements, critical uncertainties, wild cards and scenario plot lines.7 Driving forces are defined as “the causal elements that surround a problem, event or decision,” which could be many factors, including those “that can be the basis, in different combinations, for diverse chains of connections and outcomes.”8 Schwartz defines driving forces as “the elements that move the plot of a scenario, that determine the story’s outcome.”9 In a word, driving forces constitute the basic structure of each scenario plot line in the scenario-making process. Predetermined elements refer to “events that have already occurred or that almost certainly will occur but whose consequences have not yet unfolded.”10 Predetermined elements are “givens” which could be safely assumed and understood in the scenario-building process. Although predetermined elements impact outcomes, they do not have a direct causal impact on a given outcome. Critical uncertainties “describe important determinants of events whose character, magnitude or consequences are unknown.”11 Exploring critical uncertainties lies at the heart of scenario construction in the sense that the most important task of scenario anaysts is to discover the elements that are most uncertain and most important to a specific decision or event.12 Wild cards are “conceivable, if low probability, events or actions that might undermine or modify radically the chains of logic or narrative plot lines.”13 In John Peterson’s terms, wild cards are “not simple trends, nor are they byproducts of anything else. They are events on their own. They are characterized by their scope, and a speed of change that challenges the outermost capabilities of today’s human capabilities.”14 Wild cards might be extremely important in that in the process of scenario planning their emergence could change the entire direction of each scenario plot line. A scenario plot line is “a compelling story about how things happen” and it describes “how driving forces might plausibly behave as they interact with predetermined elements and different combinations of critical uncertainties.”15 Narratives and/or stories are an essential part of the scenario method due to the identical structure of analytical narratives and scenarios: “both are sequential descriptions of a situation with the passage of time and explain the process of events from the base situation into the situation questioned.”16 Process and Purpose of Scenario Analysis Scenario analysis begins with the exploration of driving forces including some uncertainties. However, scenario building is more than just organizing future uncertainties; rather, it is a thorough understanding of uncertainties, thereby distinguishing between something clear and unclear in the process of decision making.17 As Pierre Wack has pointed out, “By carefully studying some uncertainties, we gained a deeper understanding of their interplay, which, paradoxically, led us to learn what was certain and inevitable and what was not.” In other words, a careful investigation of raw uncertainties helps people figure out more “critical uncertainties” by showing that “what may appear in some cases to be uncertain might actually be predetermined – that many outcomes were simply not possible.”18 Exploring future uncertainties thoroughly is one of the most important factors in scenario analysis. Kees van der Heijden argues that in the process of separating “knowns” from “unknowns” analysts could clarify driving forces because the process of separation between “predetermineds” and uncertainties demands a fair amount of knowledge of causal relationships surrounding the issue at stake.19 Thus, in scenario analysis a thorough understanding of critical uncertainties leads to a well-established knowledge of driving forces and causal relations.20 Robert Lempert succinctly summarized the scenario-construction process as follows: “scenario practice begins with the challenge facing the decisionmakers, ranks the most significant driving forces according to their level of uncertainty and their impact on trends seemingly relevant to that decision, and then creates a handful of scenarios that explore different manifestations of those driving forces.”21

#### Policymakers must act in a consequentialist fashion --- their moral theorizing ignores the constraints of real-world policymaking

Michael Ignatieff 7, member of the independent international commission on Kosovo, chaired by Judge Richard Goldstone of South Africa. Former fellow at King’s College, Cambridge; École des Hautes Études, Paris; and St. Antony’s College, Oxford; and Visiting Prof of Human Rights Practice at Harvard, August 5, 2007, The New York Times, online: http://www.nytimes.com/2007/08/05/magazine/05iraq-t.html?ei=5090&en=cb304d04accc6df8&ex=1343966400&partner=rssuserland&emc=rss&pagewanted=all, accessed August 10, 2007

The unfolding catastrophe in [Iraq](http://topics.nytimes.com/top/news/international/countriesandterritories/iraq/index.html?inline=nyt-geo) has condemned the political judgment of a president. But it has also condemned the judgment of many others, myself included, who as commentators supported the invasion. Many of us believed, as an Iraqi exile friend told me the night the war started, that it was the only chance the members of his generation would have to live in freedom in their own country. How distant a dream that now seems.

Having left an academic post at Harvard in 2005 and returned home to Canada to enter political life, I keep revisiting the Iraq debacle, trying to understand exactly how the judgments I now have to make in the political arena need to improve on the ones I used to offer from the sidelines. I’ve learned that acquiring good judgment in politics starts with knowing when to admit your mistakes.

The philosopher Isaiah Berlin once said that the trouble with academics and commentators is that they care more about whether ideas are interesting than whether they are true. Politicians live by ideas just as much as professional thinkers do, but they can’t afford the luxury of entertaining ideas that are merely interesting. They have to work with the small number of ideas that happen to be true and the even smaller number that happen to be applicable to real life. In academic life, false ideas are merely false and useless ones can be fun to play with. In political life, false ideas can ruin the lives of millions and useless ones can waste precious resources. An intellectual’s responsibility for his ideas is to follow their consequences wherever they may lead. A politician’s responsibility is to master those consequences and prevent them from doing harm.

I’ve learned that good judgment in politics looks different from good judgment in intellectual life. Among intellectuals, judgment is about generalizing and interpreting particular facts as instances of some big idea. In politics, everything is what it is and not another thing. Specifics matter more than generalities. Theory gets in the way.

The attribute that underpins good judgment in politicians is a sense of reality. “What is called wisdom in statesmen,” Berlin wrote, referring to figures like Roosevelt and Churchill, “is understanding rather than knowledge — some kind of acquaintance with relevant facts of such a kind that it enables those who have it to tell what fits with what; what can be done in given circumstances and what cannot, what means will work in what situations and how far, without necessarily being able to explain how they know this or even what they know.” Politicians cannot afford to cocoon themselves in the inner world of their own imaginings. They must not confuse the world as it is with the world as they wish it to be. They must see Iraq — or anywhere else — as it is.

#### Governments can’t make case by case judgments, they have to base their decisions on broad trends and averages, necessitating consequentialism

GOODIN 90 Fellow of Philosophy – Australian National University 1990 The Utilitarian Response

In response to the challenge that utilitarianism asks too little of us, then, it can be said that – at least as regards public policymakers – utilitarianism demands not only about as much but also virtually the same things as deontologists would require. If they are to decide cases according to general rules, rather than on a case-by-case basis, then the rules that utilitarians would adopt are virtually identical to those that deontologists recommend. And public policy-makers will indeed decide matters according to rules rather than on a case-by-case basis, either because the utility costs of doing otherwise are too high or else because as a purely practical matter more fine-grained assessments are impossible are impossible to make or to act upon.

#### Preventing death is the first ethical priority – it’s the only impact you can’t recover from.

Zygmunt **Bauman,** University of Leeds Professor Emeritus of Sociology, 1995, Life In Fragments: Essays In Postmodern Morality, p. 66-71

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, puts an end to the musical‑chairs game of the real and the potential ‑ it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self." `Creating an image' is the dress rehearsal of that death. But creating an image is the inner urge, the constant temptation, the *must* of all affection . . . It is the loneliness of being abandoned to an unresolvable ambivalence and an unanchored and formless sentiment which sets in motion the togetherness of being‑for. But what loneliness seeks in togetherness is an end to its present condition ‑ an end to itself. Without knowing ‑ without being capable of knowing ‑ that the hope to replace the vexing loneliness with togetherness is founded solely on its own unfulfilment, and that once loneliness is no more, the togetherness ( the being‑for togetherness) must also collapse, as it cannot survive its own completion. What the loneliness seeks in togetherness (suicidally for its own cravings) is the foreclosing and pre‑empting of the future, cancelling the future before it comes, robbing it of mystery but also of the possibility with which it is pregnant. Unknowingly yet necessarily, it seeks it all to its own detriment, since the success (if there is a success) may only bring it back to where it started and to the condition which prompted it to start on the journey in the first place. The togetherness of being‑for is always in the future, and nowhere else. It is no more once the self proclaims: `I have arrived', `I have done it', `I fulfilled my duty.' The being‑for starts from the realization of the bottomlessness of the task, and ends with the declaration that the infinity has been exhausted. This is the tragedy of being‑for ‑ the reason why it cannot but be death‑bound while simultaneously remaining an undying attraction. In this tragedy, there are many happy moments, but no happy end. Death is always the foreclosure of possibilities, and it comes eventually in its own time, even if not brought forward by the impatience of love. The catch is to direct the affection to staving off the end, and to do this against the affection's nature. What follows is that, if moral relationship is grounded in the being-for togetherness (as it is), then it can exist as a project, and guide the self's conduct only as long as its nature of a project (a not yet-completed project) is not denied. Morality, like the future itself, is forever not‑yet. (And this is why the ethical code, any ethical code, the more so the more perfect it is by its own standards, supports morality the way the rope supports the hanged man.) It is because of our loneliness that we crave togetherness. It is because of our loneliness that we open up to the Other and allow the Other to open up to us. It is because of our loneliness (which is only belied, not overcome, by the hubbub of the being‑with) that we turn into moral selves. And it is only through allowing the togetherness its possibilities which only the future can disclose that we stand a chance of acting morally, and sometimes even of being good, in the present.

# Solvency

## 1NC

#### Restrictions are being overcome now – tribes are working with government and investors to develop renewables capacity

Tara S. Kaushik 12, Senior Associate with Manatt, Phelps & Phillips, LLP, regularly advises and represents tribal organizations concerning energy regulatory matters, April 25, 2012, "Tribal Lands: An Emerging Market for Renewable Energy Development," http://www.renewableenergyworld.com/rea/news/article/2012/04/tribal-lands-an-emerging-market-for-renewable-energy-development

Renewable energy projects on tribal lands are fast becoming a reality. Tribal communities in the Southwestern United States reside on lands that are known to be rich with potential for the development of solar, wind, biomass, and geothermal facilities on a large commercial scale. Studies have found that tribal lands nationwide have the potential for producing up to 10 percent of the United States' renewable energy. This development could mean lower rates for electricity, new directions for the nation's energy industry and a new economic reality for some Native American tribes and their neighboring communities. To that end, tribal communities such as the Navajo Nation have begun to own and develop renewable energy projects on tribal lands.

This is no small feat. For decades, tribal communities in this region have suffered high unemployment, poor social conditions and widespread poverty. As the demand in the West for renewable energy grows, tribes have now recognized that they can diversify their resources and sell renewable energy and leverage their assets to spur economic development. This could create an emerging, domestic market that would serve as a vehicle for economic development and a source of long-term revenue for tribal communities.

Critics often dismiss the viability of renewable projects on tribal lands, stating that projects are subject to delays, regulatory hurdles, and lack of expertise by the tribes to develop renewable projects. These are myths that reflect a misunderstanding of tribal communities and ignore the efforts underway to clear the hurdles to renewable energy development. In reality, tribes are working with Congress to clear federal regulatory hurdles to development on their lands, and successfully partnering with renewable energy developers or developing projects on their own.

#### Building tribal capacity solves

Winona LaDuke 9, Executive Director of Honor the Earth & Former Green Party VP Candidate, “Helping the Prez, Greening the Rez,” http://www.loe.org/shows/segments.html?programID=09-P13-00003&segmentID=3

CURWOOD: When it comes to U.S. energy policy and Native Americans, the record's pretty poor. Uranium and coal mining have brought pollution to native communities and lands - but relatively few jobs - and rising sea waters due to fossil fuel consumption are forcing native villages in Alaska to abandon their coastal lands. But now that Barack Obama has brought his promise of a lean, clean economy to the White House, many tribes are feeling hopeful. So hopeful, in fact, that a green policy statement representing more than 200 tribes and tribal organizations has been submitted to the Obama team. Winona LaDuke is a rural development economist and writer - you might know her as Ralph Nader's running mate on the Green Party ticket in the 2000 presidential elections. She now directs Honor the Earth, a non-profit that helped draw up the green petition, which outlines what Native America needs from the Obama administration, and what the Obama administration needs from Native America. LADUKE: We have this vast potential for renewable energy. The best potential in the whole country comes from Indian tribes and Indian tribal communities. We have been the most impacted by the last energy economy of anyone. And what we need to do is to capitalize the next energy economy in Indian country on terms that are just and are fair. So that we aren't selling our wind rights out to major corporations, you know, and just receiving a pittance. I'm relatively aware of the fact that 1) the Obama administration has inherited a huge mess and 2) the Obama administration is full of vital energy to make a change. So we have infused our strategy, saying that you want a green economy? This is what a green economy looks like in Indian Country, and this is how you would do it. CURWOOD: So what is it that you're asking the Obama administration to do? LADUKE: What we are asking the Obama administration to do is 1) increase tribal capacity in training to create a work force that is able to move into renewable energy through financing. We are asking them for energy assistance, efficiency work, because most of our homes are trailers on our reservations, and, in addition to that, homes that are already up are highly inefficient. So in order to reduce fuel poverty in Indian country, we have to have efficient homes. We are asking for renewable production refund for tribal projects that can't utilize tax credits in order to ensure that tribal governments are able to capitalize renewable energy in Indian Country. We are asking for access to the federal grid in ways that will address tribal ability to bring our projects online at a level that is meaningful both for tribal economies and to address climate change. CURWOOD: Now, your organization also made it very clear that you don't want to see the U.S. pursuing nuclear energy and what's been called clean coal. Why is that? LADUKE: Well clean coal doesn't exist. You can't wash it enough, you can't – strip mining or blowing off the top of a mountain is not clean. There's no way to clean up coal. And so, we just think that we shouldn't waste our time and the billions or trillions of dollars that it would take to try to sequester something for forever – because that is what you would have to do is for forever. So just leave it in the ground. Nuclear power – our tribes have been heavily impacted and are presently impacted by uranium mining. We are fighting uranium mining out in South Dakota and in Nebraska and all through the north. You know we have thousands of abandoned uranium mines and thousands of people who are impacted by radiation exposure. Nuclear is expensive, is dangerous and is not the answer to climate change. There is no way you can bring enough nuclear power plants on line in time to address climate change disasters. What we need to do is we need to put the money that would be wasted on clean coal and wasted on nuclear power into a full scale efficiency, renewable economy that treats people with dignity and doesn't treat people as second class citizens and assume that we can dump our waste in third world countries or in Indian reservations. CURWOOD: So, let's look at some specifics here Winona LaDuke. I understand about a hundred tribes have already done some feasibility studies to look at what could be done in terms of wind and solar energy generation. What are those numbers? What kind of potential are we looking at here? LADUKE: So the United States needs to produce about 185,000 megawatts of green power in the next decade in order to address climate change. That is the reality. Tribal communities are probably in a position to produce about 120,000 megawatts of that. Between wind potential, they're saying that our tribal communities have the potential to produce about one third of present installed U.S. electrical capacity to massive solar projects that are, you know, tribal projects and have the potential to feed into the present grids and create a green energy that will help this country address climate change. So, we are the people of color with land and natural resources, that's what distinguishes us, aside from other things, from other communities of color. And on that land, we have some of the windiest places in the country. Go figure how that happened – but the northern plains – you know, even in my reservation we have very high wind potential. I just finished last week putting up the foundation for a wind turbine at my office in Callaway, Minnesota. It's a 75 kilowatt wind turbine. My tribe is looking at – and other tribes in our area are looking at about four more megawatts of power coming online probably within the next two to three years. CURWOOD: Certainly the need for economic development on Native lands is really as impressive as the renewable energy potential that you have with your very high unemployment rates. And I think, in fact, a lot of reservation households don't even have electricity. So to what extent do you think that green jobs, green infrastructure, green energy is gonna get those figures turned around, to make change that has yet to come to Indian Country some two hundred plus years into the life of this country? LADUKE: I am very hopeful. That is to say, I look at my own reservation the White Earth reservation in northern Minnesota – on my reservation, one quarter of our money is spent on energy. All of that money basically goes to off reservation vendors whether it is for electricity or whether it is for fuel. You know a quarter of our income is a substantial economy for our reservation and for any reservation. And so our strategy is to replicate what we are doing in White Earth, you know, nationally, and say instead of outsourcing, we can re-localize a good portion of our energy economy. But we need the jobs in our communities. We need joint ownership or ownership of the wind power production and the solar power productions so that the revenues return to our tribal communities. We need to be employed in those, because we have 60% unemployment on my reservation, and, you know, the average age of a Native person is, you know, like 20, 21 years of age and you could either send my young man off to jail or you could employ him or send him to the military. CURWOOD: Winona LaDuke, you once very famously said, and I quote “I would like to see as many people patriotic to a land as I have seen patriotic to a flag.” How do you feel about this being the time for that sort of patriotism? LADUKE: I think that the present time is good. My youngest son, his name is Gwaconamont Gasko (sp). And Gwaconamont in our language means when the wind shifts. And that is what is happening now; the wind is shifting. And we have a chance to do something great for the generations that have not yet arrived here. You know, we've battled for years to create a society which is not based on conquest, but is based on survival. And the Obama administration, with the intersection between the realities of a shrinking, unsustainable economy, climate change, fuel, poverty and peak oil, we have the chance to make an economy that will reaffirm a relationship to the land. And so, I'm very optimistic. The next economy will not affect our sacred sites, our rivers, our lakes, our mountains, because the next economy will not require their consumption.

#### Squo tribal energy is small-scale, affordable and locally maintained

Peter Meisen et al 12, President of the Global Energy Network Institute (GENI), Aug 20, 2012, "Renewable Energy on Tribal Lands," http://www.geni.org/globalenergy/research/renewable-energy-on-tribal-lands/Renewable-Energy-on-Tribal-Lands.pdf

A third way to develop renewables on tribal lands is to use them for rural electrification. Many reservations do not have the same access to electricity that most American communities have. In fact, according to the Energy Information Administration, 14% of households on Native American reservations have no access to electricity, compared to 1.4% nationally.30 Energy can also cost as much as 10% above national average on reservations. This creates a high need for rural electrification. One way rural electrification systems are developed is by linking a small scale generator, such as solar panels, small turbines, or a propane generator to a bank of batteries that then store the charge until it is needed. One of these systems can provide power to a household and is fairly inexpensive compared to the enormous cost of bringing traditional utility distribution lines to remote locations at a cost of as much as $60,000 a mile. While rural electrification systems like this can not provide the same quality of energy as a utility, requiring the households that use these systems to be conservative in their use of electricity, they can provide a substantial increase in the basic standard of living for households far from the electric grid.

The use of solar panels attached to banks of batteries to supply energy to homes far from the grid was pioneered by the Hopi Nation in which several villages did not have access to the local energy grid.31 The Hopi Tribe formed the Hopi Solar Enterprise which sold small scale solar systems to Native Americans and trained them to maintain their generation systems.32

The Navajo Tribal Utility Authority (NTUA) uses this system of solar panels combined with batteries in their attempt to bring electricity to the estimated 10,000 to 30,000 Navajo tribal members who live without electricity.33 Many of the residents living on the Navajo reservation can not pay for these systems in one lump sum. The Navajo Tribal Utility Authority has a payment method whereby they require regular affordable payments of $75 to $95 per month over a 15 year period. During this time the NTUA performs the necessary maintenance on the systems and trains the customers to maintain their systems. At the end of the 15 years, the utility transfers both the ownership and the responsibility for maintenance to the customer. This system has proven to be effective, and the NTUA is now in the process of installing over 200 such systems. 34

#### Squo solves – Navajo projects prove that tribes are pushing renewable energy now

Tara S. Kaushik 12, Senior Associate with Manatt, Phelps & Phillips, LLP, regularly advises and represents tribal organizations concerning energy regulatory matters, April 25, 2012, "Tribal Lands: An Emerging Market for Renewable Energy Development," http://www.renewableenergyworld.com/rea/news/article/2012/04/tribal-lands-an-emerging-market-for-renewable-energy-development

Notwithstanding the hurdles, tribes such as the Navajo Nation are actively pursuing the ownership and development of renewable energy projects on its lands. The Big Boquillas Ranch project is a proposed wind generation facility that will be constructed on Navajo lands in an area known as Aubrey Cliffs, near Seligman, Arizona. The project will have an estimated capacity of 85 MW for the first phase of development, and 200 MW for the second phase of development. The first phase is scheduled for completion by December 2013. It will be the Navajo Nation’s first tribally owned utility-scale project.

## 2NC

#### Squo federal policies spurring native renewables development now

Tracey LeBeau 12, Director of the Office of Indian Energy Policy and Programs at DOE, 2/16/12, "Energy Development in Indian Country," Lexis

To accomplish these goals, Title V of the Energy Policy Act of 2005 ("EPAct") conferred my Office the authority to provide grants, including formula grants or grants on a competitive basis to eligible tribal entities. Grants may be used for establishing programs to assist consenting Indian Tribes in meeting energy education, research and development, planning, and management needs, including: \* Energy generation, energy efficiency, and energy conservation programs; \* Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in promoting electrification of homes and businesses on Indian land; \* Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; \* Development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities; \* Developing a program to support and implement research projects that provide Indian Tribes with opportunities to participate in carbon sequestration practices on Indian land; and \* Encouraging cooperative arrangements between Indian Tribes and utilities that provide service to Tribes. Since joining DOE a little more than a year ago, I have been committed to accomplishing four strategic programmatic and administrative goals: 1. Fully implement Congressional stated goals for energy development in Indian Country, as found in Title V of the Energy Policy Act of 2005; 2. Reach out to Indian Country to understand what the high priority needs are for energy development and how this Office can help address those needs, and based on feedback from Indian Country, develop policies and programs to fill gaps in current Department programs; 3. Work within the Department to leverage the many resources--financial and technical--to promote Indian energy development throughout the Department and to institutionalize Indian energy development; and 4. Coordinate resources across agencies to promote Indian energy development. In that same time period, the DOE Office of Indian Energy has: \* Conducted a major outreach initiative to Indian Country through eight roundtable discussions with tribal leaders around the country to discuss current needs and priorities related to Indian energy policy and programs; \* Established the Indian Country Energy and Infrastructure Working Group, an informal group of tribal leaders that provides input and recommendations to the DOE Office of Indian Energy on issues related to energy development and opportunities in Indian Country; \* Developed programs that provide tribal leader energy education, strategic and targeted technical assistance for Tribes on renewable energy project deployment, information on transmission and electrification, innovative project development, and best practices forums for tribal leaders; and \* Supported interagency coordination efforts to promote energy development in Indian Country. More details about these efforts, as well as future plans are provided below. My testimony today will touch on some of our efforts to fulfill congressional and Administration goals. My written testimony goes into considerably more detail regarding these activities. Pursuing Sustainable Energy Development in Indian Country The Administration is committed to safely, responsibly harnessing America's domestic energy resources to power our economy--from oil and gas to clean coal to nuclear energy to renewable energy and energy efficiency. Our Office's charge is also broad in terms of the scope of energy development we are directed to facilitate in Indian Country - including renewable energy sources such as wind and solar and traditional energy sources such as coal and natural gas, as well as improving the infrastructure needed to deliver this energy. However, Tribes have shown a high motivation to pursue expanded clean energy development. It is our strong belief that the new DOE Office of Indian Energy initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of tribal energy development. Our priority is in designing and implementing new programs in close collaboration with tribal leaders and tribal experts that will accelerate energy development in Indian Country. By providing reliable and accurate information, quality training, and technical assistance, we seek to further empower tribal leaders to make informed energy decisions that promote community economic development and job creation, foster energy self-sufficiency and self-determination, and advance tribal clean energy visions. Shortly after being appointed, I asked the National Renewable Energy Lab to update all the renewable resource estimates in Indian Country. Based on 2011 data provided by DOE's National Renewable Energy Laboratory using updated analysis and modeling tools, the estimated maximum renewable energy resource potential on Indian lands is millions of megawatts (MW) of nameplate capacity. Solar and wind are the primary energy resources that contribute to this potential. These estimates do not, however, take into account cost, transmission access, or other critical constraints on renewable energy deployment, and they assume that all land that is not protected, impervious to (or too small for) system installation, or clearly ill-suited for the technology is used for generation. Most of these resources will not be economical to access and there are competing land-use constraints. Although it would not be realistic to blanket Indian Country with solar panels or wind turbines, these numbers certainly illustrate the vast amount of resources potentially available. These resources are generally regional and geographic in nature: solar in the southwest, wind in the plains, biomass in the northwest and east, and geothermal in the West. When combined, it's clear that further development of these energy resources in Indian Country provide an incredible opportunity to not only increase tribal energy reliability and self-sufficiency, but also provide an opportunity for Tribes to contribute to the nation's energy security goals. Energy Economies in Indian Country that are Built to Last There are many critical factors to building sustainable economies around energy. Key among those factors are policy support, strong collaborative partnerships and understanding of issues affecting the hoped for outcomes, and of course designing appropriate responses to meeting the challenges identified. Policy Support President Obama and Secretary Chu have been extremely supportive of improving the economy of Tribal communities through enhanced energy development. At the 2011 White House Tribal Nations Conference, the President stated: "While our work together is far from over, today we can see what change looks like. It's the Native American-owned small business that's opening its doors, or a worker helping a school renovate. It's new roads and houses. It's wind turbines going up on tribal lands, and crime going down in tribal communities. That's what change looks like." At DOE's Tribal Summit, held May 2011, the Secretary reaffirmed his commitment to Indian energy development. The summit provided a historic opportunity for the Department and tribal leaders to discuss a broad range of critical energy and environmental issues in Indian Country. Secretary Chu said, "By working together, we can promote economic development and help many more tribes and villages seize the clean energy opportunity." In support of this commitment, Secretary Chu announced three key initiatives to support DOE's goals of promoting Indian energy: 1) the creation of the previously mentioned Indian Country Energy and Infrastructure Working Group (ICEIWG); and 2) intent to issue policy guidance to the Department to implement the Title V provision on giving preference to tribal majority-owned businesses for DOE acquisition of electricity, energy products, and by-products. DOE also supports a number of programs that provide technical assistance to Indian tribes, including the Strategic Technical Assistance Response Team (START) initiative to help advance clean energy development in tribal communities, as described later in this testimony. The Indian Country Energy and Infrastructure Working Group was established in August 2011. The working group provides advice and recommendations to the Director of the DOE Office of Indian Energy Policy and Programs and to the Secretary of Energy on the strategic planning and implementation of the Department's energy resource, energy technology, and energy infrastructure development programs. To provide the most relevant and up-to-date perspectives, the ICEIWG is comprised of five (5) elected tribal leaders from Tribes that are actively developing or have established energy projects, or can demonstrate business interest in energy development. This composition of tribal leaders enables ICEIWG to provide technical and experienced analysis and feedback to the Office of Indian Energy and DOE on complex energy development issues. We also have been working since May 2011 with several DOE offices, including the Office of Procurement, Federal Energy Management Program, Office of Policy, Office of Economic Impact and Diversity, Western Area Power Administration (WAPA), and the Bonneville Power Administration (BPA) to implement Secretary Chu's directive to develop policy guidance to implement the Indian energy procurement preference provision. Section 503 in Title V of the Energy Policy Act of 2005 (codified at 25 U.S.C. 3502(d)) grants DOE new authority to give preference to tribal majority-owned business organizations when purchasing electricity, energy products, and energy by-products. This procurement preference is intended to promote energy development in Indian Country by providing federal agencies the discretion to give tribal majority-owned business organizations preferred access to the federal government marketplace for electricity, energy, and energy by-products. Promoting tribal renewable energy development further enables economic development in Indian Country, and also helps meet the Administration goals on the acquisition and use of clean energy. Strong Partnerships and Common Challenges I began my appointment by meeting with tribal leaders in their communities to hear first-hand about the obstacles, issues, and opportunities for energy development in Indian Country. During the eight roundtable discussions with tribal leaders that I mentioned earlier, we learned about these as well as the needs, priorities, and possible solutions related to: conventional and renewable energy development; transmission and infrastructure; public-private partnerships; energy efficiency and management; education and workforce development; funding and tax incentives; and leveraging, coordinating, and optimizing federal resources and programs. The feedback from tribal leaders and organizations fed into Secretary Chu's Tribal Summit in May 2011 and the program initiatives developed by the Office of Indian Energy to fulfill its statutory mandates and the Administration's energy policy priorities. We also have taken time to evaluate the thrust of many of our programs to date, including the grants offered through the Office of Energy Efficiency and Renewable Energy's Tribal Energy Program. Below are important lessons learned we would like to highlight:

#### Legal uncertainty prevents renewable investment

Sullivan 10—J.D. Candidate, University of Arizona James E. Rogers College of Law (Bethany, CHANGING WINDS: RECONFIGURING THE LEGAL FRAMEWORK FOR RENEWABLE-ENERGY DEVELOPMENT IN INDIAN COUNTRY, <http://www.tribesandclimatechange.org/docs/tribes_25.pdf>)

Another major roadblock in the path to tribal energy partnerships is the jurisdictional rigmarole created by the United States Supreme Court--a direct result of nonexistent federal statutory guidance. The civil jurisdiction that tribes have over nonmembers on the reservation is determined by a series of judicially-created tests with outcomes more reflective of the Justices' personal views of tribal sovereignty than of any underlying, coherent legal doctrine. 80 Virtually anyone \*836 who has dealt with Indian civil jurisdiction law can attest to its notorious complexity and amorphous set of “rules.” 81 Furthermore, this judicial labyrinth must be successfully navigated regardless of whether a tribe is attempting to exert its regulatory authority or exercise civil adjudicatory jurisdiction over non-members. 82 Perhaps more troublesome are the clearer aspects of civil jurisdiction in Indian Country; primarily, the Court's sanctioning of state and local government taxing authority over the same non-members for the same activities on the reservation as tribes may tax. 83 For reasons discussed below, this legal framework creates formidable obstacles in the eyes of many tribes and potential business partners. The case law concerning tribes' ability to tax and regulate non-members acting within reservation boundaries has converged over time into a single set of rules, commonly known as the Montana test. 84 This test, based on categorical distinctions of race and land status, asserts that tribes may not ordinarily exercise civil jurisdiction over non-Indians acting on fee simple lands within the reservation. 85 There are two exceptions to this rule: (1) where non-Indians have entered into consensual relations with the tribe or its members; and (2) where the non-Indian conduct “threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” 86 It was formerly understood that tribes have presumptive civil authority over non-members acting on Indian trust land or Indianowned allotted lands. 87 \*837 Under that viewpoint, the Montana test only applies in circumstances where non-members act on non-Indian owned land held in fee simple within the reservation boundaries. 88 Accordingly, a tribe would not doubt its authority over the often substantial portion of its reservation that qualifies as trust or Indian-held land. But recent Supreme Court decisions have cast doubt upon that understanding. It is now possible that Montana could apply whenever a tribe asserts civil jurisdiction over a non-member on the reservation, regardless of the ownership status of the land. 89 The practical result of such a legal reality would be that any time a tribe attempted to exert civil authority over a non-Indian--whether in order to enforce environmental regulations, recoup tribal taxes, or exercise civil adjudicatory jurisdiction--the tribe's authority would be vulnerable to a case-by-case determination by the federal courts. 90 This, in turn, would cast enormous doubt on the legitimacy of tribal authority and could lead to severe limitation--or, in the worst case scenario--utter paralysis of tribal governmental functions. At present, most practitioners assume that the categorical rule by which tribes may regulate non-Indians acting on tribally-held land remains intact. However, the shift in presumptions and rationales underlying Supreme Court tribal jurisdiction cases-- such as the degradation of the understanding that tribes have sovereign authority over all people, Indian and non-Indian, acting on tribal land--illustrates the unpredictability of this field of law and the recent trend of \*838 unfavorable decisions toward Indian sovereign interests. 91 In the mind of a potential business partner, this situation can cultivate uncertainty as to which regulatory and adjudicative rules will apply. Such uncertainty seriously discourages the formation of tribal energy partnerships with private actors. 92

#### Renewables aren’t cost-competitive --- nuclear, natural gas, and clean coal will outcompete them in 2013

Dallas Kachan 13, A former managing director of the Cleantech Group, Dallas Kachan is executive director of the international Clean Mining Alliance. He is also managing partner of Kachan & Co., a cleantech research and advisory firm that does business worldwide from San Francisco, Toronto and Vancouver., “Predictions for Cleantech in 2013,” 1-16-13, <http://www.environmentalleader.com/2013/01/16/predictions-for-cleantech-in-2013/>

Solar proponents point to the falling silicon photovoltaic (PV) price per kWh and extrapolate the planet will be covered in the stuff in the future. But factor in the cost of flow batteries, molten salt, compressed air, pumped hydro, ice, moving mass or other technology to store that power today, **and the effective cost of reliable, dispatchable solar and wind power is much higher.**¶When you also add into the equation continued progress in cleaner baseload power from sources like **new nuclear technologies** (see Kachan’s report on Emerging Nuclear Innovations), **natural gas** (see Kachan’s report The Bio Natural Gas Opportunity) **and cleaner coal power**, it feels to us like the projected growth rates of solar and wind might need to be revised downwards. Expect this reality check to be felt in 2013.

#### Natural gas boom has wrecked the renewable expansion

Kevin Doran 12, institute fellow and assistant research professor at the Renewable and Sustainable Energy Institute (RASEI), a joint institute of the National Renewable Energy Laboratory and the University of Colorado at Boulder. His research focuses on the legal, regulatory and public policy dimensions of energy development. Adam Reed is a research associate at RASEI, Natural Gas and Its Role In the U.S. Energy Endgame, 8-13-12, <http://e360.yale.edu/feature/natural_gas_role_in_us_energy_endgame/2561/>

The natural gas boom also presents the prospect of imminent harm to the deployment of renewable energy, and dire environmental consequences that will follow from a failure to cease adding greenhouse gases to the atmosphere. The growing swell toward a utility sector dominated by natural gas **has already resulted in collateral damage throughout the renewables industry.** Wind, for example, had previously been capable of competing with natural gas generation on a cost basis, thanks to advances in technology and a federal production tax credit that seems poised to expire at the end of this year. Installation of new renewable energy facilities has now all but dried up, unable to compete on a grid now flooded with a low-cost, high-energy fuel that can provide power on demand. What little support there is for renewables is mostly found in state renewable portfolio standards — a policy subsidy that many states appear to be rethinking in light of hard economic times and cheap natural gas.

# Tribal Econ Adv

## 1NC

#### Lack of property rights make economic development impossible

Koppisch 11 (John, Forbes Staff, “Why Are Indian Reservations So Poor? A Look At The Bottom 1%”, 12/13, http://www.forbes.com/sites/johnkoppisch/2011/12/13/why-are-indian-reservations-so-poor-a-look-at-the-bottom-1/2/)

When customers who live and work on the nearby Crow Indian reservation don’t make their car payments, there’s not much Square One Finance of Billings, Montana, can do. Going to state court to repossess the car or garnish wages is not an option. Instead, Square One enters the murky realm of international affairs. The reservation is a separate nation—judgments in American courts can’t be enforced. And the chances of finding the customer and the car on the sprawling rural reservation, or winning in the unpredictable Crow courts, are slim. “We take on such a huge extra risk with someone from the reservation,” says Square One’s Nancy Vermeulen. “If I knew contracts would be enforced, then I could do a lot more business there.” At a time when there’s a spotlight on America’s richest 1%, a look at the country’s 310 Indian reservations–where many of America’s poorest 1% live–can be more enlightening. To explain the poverty of the reservations, people usually point to alcoholism, corruption or school-dropout rates, not to mention the long distances to jobs and the dusty undeveloped land that doesn’t seem good for growing much. But those are just symptoms. Prosperity is built on property rights, and reservations often have neither. They’re a demonstration of what happens when property rights are weak or non-existent. The vast majority of land on reservations is held communally. That means residents can’t get clear title to the land where their home sits, one reason for the abundance of mobile homes on reservations. This makes it hard for Native Americans to establish credit and borrow money to improve their homes because they can’t use the land as collateral–and investing in something you don’t own makes little sense, anyway. This leads to what economists call the tragedy of the commons: If everyone owns the land, no one does. So the result is substandard housing and the barren, rundown look that comes from a lack of investment, overuse and environmental degradation. It’s a look that’s common worldwide, wherever secure property rights are lacking—much of Africa and South America, inner city housing projects and rent-controlled apartment buildings in the U.S., Indian reservations. More than a third of the Crow reservation’s 2.3 million acres is individually owned, and the contrast with the communal land—often just on the other side of a fence—is stark, as Google satellite maps show. Terry Anderson, executive director of the Property & Environment Research Center in Bozeman, Montana, co-authored a study showing that private land is 30-90% more productive agriculturally than the adjacent trust land. And this isn’t because the land is better: A study of 13 reservations in the West put 49% of the land in the top four quality classes, while only 38% of the land in the surrounding counties was rated that highly. For the Crow reservation, 48% of the land made the top four classes; only 33% of the adjacent land did. “The raw quality of the land is not that much different, it’s the amount of investment in that land that’s different,” he says. Canada faces the same issues with its 630 bands—as tribes there are called—but thanks to the effort of a dogged reformer, there’s a push to allow reservation land to be privatized. Manny Jules, a former chief of the Kamloops Indian band in British Columbia, is lining up support for the First Nations Property Ownership Act, which would allow bands to opt out of the government ownership of their land and put it under tribal and private ownership. Reserves would become new entities that would have some of the powers of municipalities, provinces and the federal government to provide schools, hospitals and other services, and to enact zoning laws. He expects that the bill will be introduced in Parliament early in 2012 and is confident of approval by the end of the year. What’s forcing the issue is an acute housing crisis on the reserves. Without private property rights, little housing is being built even as the Indian population grows, and the Assembly of First Nations estimates that the reserves need 85,000 new houses immediately; the government is building only 2,200 a year. “Markets haven’t been allowed to operate in reserve lands,” says Jules. “We’ve been legislated out of the economy. When you don’t have individual property rights, you can’t build, you can’t be bonded, you can’t pass on wealth. A lot of small businesses never get started because people can’t leverage property [to raise funds]. This act would free our entrepreneurial spirit, but it’s going to take a freeing of our imagination. We have to become part of the national and global economies.”

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#### Business uncertainty makes investment impossible

Koppisch 11 (John, Forbes Staff, “Why Are Indian Reservations So Poor? A Look At The Bottom 1%”, 12/13, http://www.forbes.com/sites/johnkoppisch/2011/12/13/why-are-indian-reservations-so-poor-a-look-at-the-bottom-1/2/)

The problems of the reservations go well beyond residents not having the right incentives to upgrade their surroundings. With some exceptions, even casinos haven’t much benefited the several dozen reservations that have built them. Companies and investors are often reluctant to do business on reservations—everything from signing up fast food franchisees to lending to casino projects—because getting contracts enforced under tribal law can be iffy. Indian nations can be small and issues don’t come up that often, so commercial codes aren’t well-developed and precedents are lacking. And Indian defendants have a home court advantage. “We’re a long way from having a reliable business climate,” says Bill Yellowtail, a former Crow official and a former Montana state senator. “Businesses coming to the reservation ask, ‘What am I getting into?’ The tribal courts are not reliable dispute forums.” Many reservations are rich in natural resources, but there’s no big rush to develop them, given the tangled issue of property rights and the risk of making a big investment without a secure legal footing. “We have 9 billion tons of high-quality coal sitting under the reservation, going largely untapped,” says Yellowtail. “Natural gas, too. Potential development galore, but that potential is never realized.” Indeed a $7 billion coal-to-liquids plan fell apart in April, though it was revived in a scaled-down version in July. Anderson adds that with any investment, “the tribe could change the deal after the fact because it’s sovereign.”

#### Legal uncertainty prevents economic development

Anderson and Parker 12 (Terry Anderson is the Executive Director of the Montana-based Property and Environment Research Center (PERC) and the John and Jean DeNault Senior Fellow at the Hoover Institution, Stanford University. Dominic P. Parker is the Assistant Professor of Agricultural Economics and Economics, Montana State University and a PERC Senior Research Fellow, “Another route to native prosperity: Property Rights”, http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/articles/another-route-to-native-prosperity-property-rights.pdf)

Canadian First Nations reserves and United States Indian reservations are islands of poverty in a sea of wealth. In 2000, the income of First Nations people amounted to only 39 percent of the income of the average Canadian. In the US, the income of Native Americans living on reservations was only 36 percent of the income of the average American. A robust explanation for this poverty has remained elusive. As with many explanations of economic development, the poor performance of reservation economies has been mainly attributed to poor land, geographic isolation, and inadequate human capital to manage what few assets First Nations have. To be sure, some reservations have few natural resources and low rates of education and training. But other Native lands are rich with natural resources and have skilled and energetic populations with unrealized entrepreneurial ideas and plans. Why have these physical and human resources not been used for greater economic gain? Our research focuses on the importance of institutions or the rules of the game under which Native American economies operate as a cause of economic stagnation. We compare economic growth for Native Americans under two systems of governance. On some reservations tribal judiciaries have exclusive jurisdiction over most contracts involving American Indians. On other reservations state legal systems have jurisdiction. The variation is due to a US federal law (Public Law 280), implemented during the 1950s and 1960s, which gave states jurisdiction on some reservations without the consent of affected tribes. The legislation was controversial because it weakened the sovereignty that tribes have fought long and hard to retain, but, according to our results, that sovereignty has been an economic liability for tribes. After controlling for other important variables, per capita income for Natives on reservations subjected to state jurisdiction grew 30 percent more than per capita income for those not subjected to state jurisdiction between 1969 and 1999. Our findings add to a growing consensus in the economic development literature that legal institutions play a fundamental role in discouraging or encouraging growth. For example, countries scoring high on country-level measures of secure property rights and a stable rule of law have higher rates of growth than countries with low scores. But the reservation setting enables a closer view of institutions than what is afforded by cross-country analysis. On reservations, it is easier to control for the impact of non-institutional factors such as geography, resource endowments, and culture. Because we can control for these factors, it is quite clear that the legal environment on Native lands is a key reason why poverty persists. In particular, we know that some outsiders perceive tribal courts as biased, incompetent, or even corrupt. This perception will deter businesses from investing resources on reservations and block wealth from entering. However, another reason may be even more fundamental. Because reservations are poor and sparsely populated-in 2000, the United States only had one Native population exceeding 15,000-it is very difficult for tribal courts to build legal precedent on contract litigation. Will courts hold debtors accountable for repayment? How will courts interpret ambiguities in contracts? Instead of operating in this uncertain legal environment, many would-be investors take their money elsewhere and economic stagnation on reservations persists. Tribes wanting robust economic growth need court systems that allow their tribal members to commit to adhering to contracts, but this may not require the imposition of state jurisdiction. Some tribes are creating inter-tribal court systems of appeal by forming regional legal bodies that will adjudicate cases arising on multiple reservations. This federalist system of tribal law could, in principle, work better than forcing tribes under state courts. On one hand, it leaves original authority in local tribal courts where there is the best place-specific knowledge. On the other hand, the system augments precedent on tribal cases because all regional cases will be subject to appeal in a broader court system. The system also provides a check on local corruption and abuse by any particular tribal court. It is clear: that a secure, impartial, and predictable rule of law is key if reforms are to be successful in creating prosperity.

# State Tribe Adv

## 1NC

#### TERA removal alone fails

Sullivan 10—J.D. Candidate, University of Arizona James E. Rogers College of Law (Bethany, CHANGING WINDS: RECONFIGURING THE LEGAL FRAMEWORK FOR RENEWABLE-ENERGY DEVELOPMENT IN INDIAN COUNTRY, <http://www.tribesandclimatechange.org/docs/tribes_25.pdf>)

Unfortunately, the IEED's TERA program has produced unsatisfactory results. Not a single tribe, as of present, has successfully attained a TERA. 54 This may partially be a consequence of the multi-step TERA application requirements, including: submission of documentation demonstrating a tribe's financial and personnel capacity to administer energy agreements and programs, establishment of a tribal environmental review process, and consultative meetings with the Director of the Indian Energy and Economic Development Office. 55 Perhaps more problematic are conflicting sentiments within tribes over distancing tribal energy development from federal government protection, an issue strongly debated among Indian law practitioners and scholars. 56 So, although tribes could arguably benefit \*832 from the decreased federal oversight that TERAs would provide, it appears that this mechanism, on its own, is insufficient to truly stimulate renewable development. In summary, the Act has provided for federal programs that encourage the development of tribal renewable resources, yet its policy goals of tribal economic and energy development and tribal self-determination have not yet been met. In part, this may be a function of inadequate appropriations for the Act's provisions. 57 An alternative explanation, however, is that the Act fails to address substantial obstacles to tribal renewable-energy development. The most significant obstacles can be generally divided into two categories: (1) tribal inability to take advantage of federal tax incentives in the renewable-energy industry and (2) unfavorable case law concerning tribal civil jurisdiction.

#### Self-determination is impossible—it threatens state sovereignty

Picq 12 (Manuela Picq has just completed her time as a visiting professor and research fellow at Amherst College, “Struggling to secure indigenous rights”, 8/9, http://www.aljazeera.com/indepth/opinion/2012/08/20128810421383560.html)

The politics of property rights The constitution of space is central to the practice of political authority. That is why the establishment of property is a legitimate function of the state - even if the practices underlying property are frequently coercive, illegitimate and extra-judicial in nature. That is also why indigenous peoples insist on having authority over their own territories. The expansion of international law recognising the collective rights of indigenous peoples inevitably clashes with the sovereign practices of governments. In fact, it's hard for states to fully recognise the rights of the peoples it has always relegated to outsider status. Indigenous peoples were not only written out of history and framed as uncivilised, but were also kept out of the system of property. This was the very foundation of the modern nation-state, which claimed native lands as empty political spaces that were thrown up for grabs through the doctrine of discovery. It is because there was no concept of indigenous property that the modern state imposed its political authority over native territories. Indigenous assertions of land rights were always challenges to states that had been forged on conquest, a fundamental tension only accentuated by recent innovations in international law. This is why numerous governments are beginning to reject international systems of justice that defend indigenous collective rights, notably the Inter-American Court of Human Rights. As it holds states accountable to indigenous rights, the Inter-American Court validates the claims of peoples traditionally cast as illegitimate outsiders whose authority precedes that of the modern nation-state. International law that confirms collective indigenous rights to clean water and autonomous territories threatens much more than mega-projects for resource extraction. These laws also destabilise the very political foundations of state sovereignty. The collective rights of indigenous peoples are so difficult to implement because they imply a redistribution of state authority. They invite alternative models of authority, non-traditional ways of practicing politics.

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