## 1AC

==REMOVE APPROVAL 1AC==

===1 – Status Quo===

====No tribe has chosen to enter a TERA – they~’re costly and have excessive requirements, making it too cumbersome for tribes that just want a few solar panels instead of making a completely new leasing regime====

\*\*Royster 12\*\* Judith V. Royster Chapman Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law. Research for this article was supported by a University of Tulsa College of Law Summer Research Grant 2012 Board of Trustees of the Leland Stanford Junior University Stanford Environmental Law Journal March, 2012 Stanford Environmental Law Journal 31 Stan. Envtl. L.J. 91 Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures

ITEDSA thus presents a solution to the problems with other ~~[\*119~~] development statutes

AND

the TERA process may be more of a barrier than an opportunity. n135

====The recently passed HEARTH Act isn~’t much better- it maintains tribes~’ positions as passive lessors and has the same prohibitive restrictions as TERA====

\*\*Royster 12\*\* Judith V. Royster Chapman Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law. Research for this article was supported by a University of Tulsa College of Law Summer Research Grant 2012 Board of Trustees of the Leland Stanford Junior University Stanford Environmental Law Journal March, 2012 Stanford Environmental Law Journal 31 Stan. Envtl. L.J. 91 Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures

The proposed HEARTH Act, should it become law, thus promises only a limited

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without secretarial approval, only leases, not other types of development instruments.

===2 – Tribal Economies===

====Investors shy away because of regulations, and they are critical to any projects on tribal lands====

\*\*Committee on Indian Affairs 12\*\*ENERGY DEVELOPMENT IN INDIAN COUNTRY HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS SECOND SESSION FEBRUARY 16, 2012 http://www.indian.senate.gov/hearings/upload/CHRG-112shrg75746.pdf

The CHAIRMAN. So thank you very much for sharing that. Vice President Jim

AND

So these are some of the critical issues that we need to address.

====Partnerships with outside businesses is critical to get projects off the ground. ====

\*\*Sullivan 10 \*\*Bethany C. Sullivan J.D. Candidate, University of Arizona James E. Rogers College of Law. 52 Ariz. L. Rev. 823 Changing Winds: Reconfiguring the Legal Framework for Renewable-Energy Development in Indian Country, lexis

Overall, neither of these approaches rectify the tax incentive disparity in an effective and

AND

decisions, management, and future of their on-reservation projects. 79

====Native renewable energy is key for Natives to lift themselves out of poverty.====

\*\*Bloomberg 12 \*\*"Navajo community banks on proposed solar array" April 26 http://www.businessweek.com/ap/2012-04/D9UCRUB00.htm

This flat, dusty stretch of prairie in central New Mexico is where the leaders

AND

Look at that," she said. "Now that~’s a good sign."

====Poverty on Native American reservations is equivalent to an ongoing genocide.====

\*\*Churchill ~’03\*\* (Ward, American Writer and Political Activist, former professor of ethnic studies at the University of Colorado at Boulder, Routledge,Acts of Rebellion: The Ward Churchill Reader pg 70-1)

All of this is, unfortunately, on paper. The practical reality is that

AND

for a semblance of postoperational clean up of mining and processing sites.~’

====There is a distinction between political sovereignty and practical sovereignty - absent giving all decision making control to tribes and making them responsible for their actions economic development is impossible.====

\*\*Royster 8\*\* PRACTICAL SOVEREIGNTY, POLITICAL SOVEREIGNTY, AND THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELFDETERMINATION ACT♦ by Judith V. Royster Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law. http://law.lclark.edu/live/files/9506-lcb124art6roysterpdf

The Harvard Project on American Indian Economic Development has spent more than a decade and

AND

providing information and technical assistance and serving as a resource for tribes.19

===3 – State-Tribal Conflict===

====Conflicts exist on lots of issues- because states think relations are zero sum, tribal govs are not competent, and tribes authority causes a race to the bottom====

\*\*Cornell and Taylor 2K\*\* Sovereignty, Devolution, and the Future of Tribal-state Relations Stephen Cornell and Jonathan Taylor National Congress of American Indians Mid-Year Session Juneau, Alaska, June 26, 2000 Stephen Cornell is director of the Udall Center for Studies in Public Policy at The University of Arizona, where he also is professor of sociology and of public administration and policy. He co-founded and continues to codirect the Harvard Project on American Indian Economic Development. Jonathan Taylor is a senior policy scholar with the Udall Center, a research fellow at the Harvard Project, and a senior consultant with Lexecon, Inc. http://nni.arizona.edu/pubs/tribal%20state%20relations.pdf

One consequence of devolution is already apparent. We~’ve been talking to tribal leaders around

AND

power, and tribal self-determination becomes increasingly hostage to state actions.

====States trump tribal authority which guts sovereignty and self-determination- the only way to reverse it is show tribal capacity and benefits to states====

\*\*Cornell and Taylor 0 \*\*Sovereignty, Devolution, and the Future of Tribal-state Relations Stephen Cornell and Jonathan Taylor National Congress of American Indians Mid-Year Session Juneau, Alaska, June 26, 2000 Stephen Cornell is director of the Udall Center for Studies in Public Policy at The University of Arizona, where he also is professor of sociology and of public administration and policy. He co-founded and continues to codirect the Harvard Project on American Indian Economic Development. Jonathan Taylor is a senior policy scholar with the Udall Center, a research fellow at the Harvard Project, and a senior consultant with Lexecon, Inc. http://nni.arizona.edu/pubs/tribal%20state%20relations.pdf

Devolution has enormous potential benefits to Indian nations. They already have benefited from devolution

AND

with which they increasingly have to interact stand to benefit from the results.

====Giving Native tribes a seat at the table is essential to incorporating indigenous epistemologies into decision making practices- that~’s essential to global survival.====

Robyn 2 Linda Robyn is part of the Anishinabe (Chippewa) nation. She received her Ph.D. from Western Michigan University in 1998 and is currently an assistant professor in the Criminal Justice Department at Northern Arizona University. The American Indian Quarterly 26.2 (2002) 198-220

Through the realization that holistic Indigenous knowledge concerning the environment is important and essential to

AND

examine the alternatives used throughout history to achieve the survival of Native societies.

===Plan===

====The United States federal government should remove the requirement that the Secretary of Interior approve leases of Indian lands and allow tribes to enter into non-lease arrangements for solar production in the United States.====

===Solvency===

====Current options for tribal solar development are cumbersome and inefficient and reinforce federal paternalism and destroy native sovereignty. Tribes can only be passive lessors of their land rather than active participants in a vibrant business agreement.====

\*\*Royster 12\*\* Judith V. Royster Chapman Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law. Research for this article was supported by a University of Tulsa College of Law Summer Research Grant 2012 Board of Trustees of the Leland Stanford Junior University Stanford Environmental Law Journal March, 2012 Stanford Environmental Law Journal 31 Stan. Envtl. L.J. 91 Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures

This instrument-by-instrument approval process introduces both delay and potential federal override

AND

would allow tribes a more direct route to participate in renewable energy development.

====Federal approval sucks- current policies are paternalistic and cause delays====

\*\*Kronk 13\*\* TRIBAL RENEWABLE ENERGY DEVELOPMENT UNDER THE HEARTH ACT: AN INDEPENDENTLY RATIONAL, BUT COLLECTIVELY DEFICIENT OPTION Elizabeth Ann Kronk Assistant Professor of Law and Director, Tribal Law and Government Center University of Kansas School of Law March 11, 2013

Although the federal government places numerous limitations on development within Indian country, one of

AND

far too cumbersome to be helpful to those it~’s designed to protect."74

===4 – Impact Framing===

====When presented with the aff you should change your decision calculus- we must move away from short-term low probability fetishized economy impacts and evaluate policies that affect Native culture and future generations. Any other impact frame justifies total Native genocide and risks the survival of the planet. ====

\*\*Tsosie 9 \*\*Rebecca Tsosie Professor of Law, Willard H. Pedrick Distinguished Research Scholar, and Executive Director of the Indian Legal Program at the Sandra Day O~’Connor College of Law at Arizona State University. 4 Envt~’l %26 Energy L. %26 Pol~’y J. 188 "climate change, sustainability and globalization: charting the future of indigenous environmental self-determination" lexis

The accelerated rate of climate change poses an environmental reality that no nation can afford

AND

tensions over development evoke intercultural norms of value, sustainability, and justice.

====Probability should be evaluated before magnitude- each internal link makes their scenario less likely.====

\*\*Rescher in 83\*\*, Prof. of Philosophy Nicholas Rescher, University of Pittsburgh Professor of Philosophy, "Risk: A Philosophical Introduction to the Theory of Risk Evaluation and Management" 1983

On this issue there is a systemic disagreement between pro- babilists working in mathematics

AND

. Probabilities below the     threshold are treated as though they were zero.~’3

====People have a cognitive bias against high probability-low magnitude impacts. You should undervalue their DAs – the longer the chain of events the less likely the scenario====

\*\*Yudkowsky 6 \*\*~~[Eliezer, 8/31/2006. Singularity Institute for Artificial Intelligence Palo Alto, CA. "Cognitive biases potentially affecting judgment of global risks, Forthcoming in Global Catastrophic Risks, eds. Nick Bostrom and Milan Cirkovic,[[singinst.org/upload/cognitive-biases.pdf-http://singinst.org/upload/cognitive-biases.pdf]].

4. The Conjunction Fallacy Linda is 31 years old, single, outspoken,

AND

a futurist, disjunctions make for an awkward and unpoetic-sounding prophecy.

====Obsession with short-time frame impacts obscures ongoing violence that doesn~’t fit neatly within conventional temporal frames ====

\*\*Nixon 10\*\* (Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pp 1-14)

When Lawrence Summers, then president of the World Bank, advocated thai the bank

AND

how our rhetorical conventions for bracketing violence routinely ignore ongoing, belated casualties.

## 2AC

### T restrictions 2AC

====We meet- tribes can~’t produce energy without BIA approval====

====Restrictions on native lands should be evaluated differently- ====

====1- the US has all lands in trust so everything is restricted====

====2- Native nations think it is a restriction====

\*\*Jim 12 \*\*PREPARED STATEMENT OF HON. REX LEE JIM, VICE PRESIDENT, NAVAJO NATION ENERGY DEVELOPMENT IN INDIAN COUNTRY HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS SECOND SESSION FEBRUARY 16, 2012 http://www.indian.senate.gov/hearings/upload/CHRG-112shrg75746.pdf

Native Nations have struggled to find avenues for economic development to provide for their people

AND

concomitant EIS/EA (SPELL OUT) (absent a categorical exclusion).

====Reduce is to bring down to smaller extent====

\*\*Websters ~’12\*\* re·duce ~~[ri-doos, -dyoos~~] Show IPA verb, re·duced, re·duc·ing. verb (used with object)

1.

to bring down to a smaller extent, size, amount, number, etc.: to reduce one~’s weight by 10 pounds.

Subst arb- bad debate

====Restrictions are the equivalent of conditions on action====

\*\*Plummer 29 \*\*J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

The word "restriction," when used in connection with the grant of interest in

AND

a particular event, or the performance or nonperformance of a particular act.

====Literature and functional limits check the topic- no one writes about tiny regulations and you would just beat teams on they can~’t solve any of their advantages====

====There~’s not a T version of the aff- On the topic of energy production it is uniquely important to talk about Native American energy because their view has been excluded and marginalized in energy policy-making====

====Reasonability should be the standard- ====

====1- competing interpretations leads to T for the sake of T and can~’t solve judge intervention at the margins====

====2- reasonability is key to inclusion- when deciding what definition is best you should include Native worldviews whose voices think the plan lifts a restriction instead of technical comparisons of government definitions====

### ==2- k==

====Conditionality~’s a voting issue-====

====1. Destroys 2ac strategy====

====A. Kills time allocation—forces 2ac to defend against multiple contradictory arguments-discourages the best args against the CP/K====

====B. Undermines aff offense—impossible to straight turn the disad since the CP solves the offense—incentivizes no risk arguments which destroys cost benefit analysis====

====2. Encourages shallow argumentation====

====A. No in-depth discussion—impossible to test ev or critically reflect about arguments since there~’s no punishment for throwing bad arguments out====

====B. Topic specific education—destroys testing of the affirmative by encouraging multiple topic generics====

====3. Dispositionality solves their offense-deters bad arguments by creating the possibility of getting stuck with them====

====(\_) Kritik conditionality is uniquely abusive – involves distinct frameworks and worldviews that we should debate as in depth as possible ====

====Natives are different but this is not a stereotype - The mountain is sacred to the Western Shoshone and fundamental to New Creation stories and worship.====

LaVelle 1 Associate Professor of Law, the University of South Dakota School of Law. J, John P, Great Plains Natural Resources Journal, Spring / Summer

While one should avoid endorsing conventional stereotypes about Indians and the environment, n228 one

AND

this principle in developing management strategies and procedures for the Black Hills. n233

====Ruptures in the law must come before to change public opinion and educate the public.====

\*\*Lutz 10 \*\*Ellen L. Lutz is the executive director of Cultural Survival. May 7, 2010 Review: Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the History of Racism in America Author: Ellen L. Lutz CSQ Issue: 29.4 (Winter 2005) Water Rights and Indigenous Peoples http://www.culturalsurvival.org/publications/cultural-survival-quarterly/united-states/review-loaded-weapon-rehnquist-court-indian-r

Many would argue, as Sandra Day O~’Connor once did, that legal change happens

AND

overtly overturning two centuries of discriminatory legal rhetoric that perpetuates discrimination in fact.

====Philosophizing about destroying America can~’t change oppression- only practical efforts have a chance of challenging global structures====

Ackerly %26 Vandenbergh 8 — BROOKE ACKERLY, Professor of Political Science, Vanderbilt University. MICHAEL P. VANDENBERGH, Professor of Law, Co-Director, Regulatory Program, and Director, Climate Change Research Network, Vanderbilt University Law School. Georgetown International Environmental Law Review, Summer

Public and private measures are necessary to address the global justice issues that arise from

AND

even when there has been a global political will to address them. P

olitical leaders have not figured out how to combat terrorism without fueling it. Government

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global justice, thereby laying the ground work for global public governance solutions.

### ==3- tix==

====Guest worker fights stop passage and pc fails====

\*\*Nakamura, 3-28\*\*-~’13 (David, "Guest-worker program dispute may delay immigration bill" AZ Central, http://www.azcentral.com/news/politics/free/20130328immigration-reform-guest-worker-program-dispute-may-delay-bill.html)

 A bipartisan deal on immigration is at risk of stalling because of a worsening

AND

will throw business to the wolves and throw future immigrants under the bus."

====Slower agreement key to getting the GOP on board====

\*\*Fox\*\*, US News, \*\*3-20\*\*-~’13 (Lauren, "For Some in GOP, Immigration Reform Moving Too Fast" http://www.usnews.com/news/articles/2013/03/20/for-some-in-gop-immigration-reform-moving-too-fast)

Some Republicans are nervous that the immigration sea change happening in their party is moving

AND

consequences. … The whole atmosphere on this issue has moved so quickly."

====Gun control will drain pc====

\*\*Birn, 3-29\*\*-~’13 (Steven, "Obama~’s Failed Gun Control Shaming Speech" http://stevenbirnspeaks.com/2013/03/29/obamas-failed-gun-control-shaming-speech/)

Obama have a speech yesterday on gun control wherein he tried to shame the country

AND

enough of a narcissist that he won~’t let this issue die quickly enough.

====Too far and XO solves====

\*\*Neyoy 2-8\*\*

Cesar, "Grijalva: Debate on immigration may take time", http://www.yumasun.com/news/reform-85153-congress-immigration.html

Congress could begin debate within six months on an immigration reform measure that could give

AND

we don~’t have any concrete proposal. We are practically starting from scratch."

====Reducing federal control is bipartisan- the goal is to remove all federal leasing====

\*\*Congressional Record 12 \*\*May 15, 2012 CONGRESSIONAL RECORD — HOUSE H2683 http://www.gpo.gov/fdsys/pkg/CREC-2012-05-15/pdf/CREC-2012-05-15-pt1-PgH2682.pdf

Under current law, each and every nonmineral lease that a tribe executes with a

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regulation of Indian lands is poised to pass with very strong bipartisan support.

====The plan is only for solar- they have to prove that it generates as much uproar as their evidence says which is about removing restrictions for all energy development.====

1. No opposition to the plan

\*\*The Examiner 12 \*\*"Obama energy policy cripples justice for Native Americans" Feb 23 http://washingtonexaminer.com/obama-energy-policy-cripples-justice-for-native-americans/article/307486~~%23.UPpMgaFU6MM

President Obama~’s heavy-handed energy regulations and Big Green~’s egregious legal delays have crippled

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on an important bill were it not for the unexpected lack of opposition.

### ==4==

====Solar serves as a rallying point for tribes and is essential to sovereignty.====

\*\*Dreveskracht 11 \*\*Ryan D. is an attorney licensed in Washington State, where he focuses on issues critical to Indian Country. "Solar development opportunities ripe in American Indian Country" Jan 12 http://www.pv-magazine.com/opinion-analysis/blogdetails/beitrag/solar-development-opportunities-ripe-in-american-indian-country\_100001951/~~%23ixzz2IeGq5y55

Of real benefit to tribes with solar developments is energy independence. In the past

AND

as integrating the tribe~’s traditional knowledge and the cultural norms of the community.

====Now is the critical time to prevent tribal infighting====

Fink 3-2 -13 Elaine, Chairperson of the 1,950-tribal-citizen North Fork Rancheria of Mono Indians of California. She has served in that position for most of the past decade. Indian Country Today, http://indiancountrytodaymedianetwork.com/opinion/open-letter-tribal-leaders-tribes-fighting-tribes-hurts-all-indians-147952

By fighting one another, we risk losing our Native ways and dignity — our

AND

nations. It~’s time for tribes to unite behind tribal sovereignty and solidarity.

====Infighting leads to extinction of native Americans====

Porter 97 (Robert B, Associate Professor of Law and Director of the Tribal Law and Government Center at the University of Kansas. Winter 1997. "Strengthening Tribal Sovereignty Through Government Reform: What are the Issues." Lexus. Accessed: 7/7/09)

Against this backdrop, infighting can be a matter of life or death for tribal

AND

, then we simply cannot expect to survive very long as sovereign nations.

==6- liab==

### TERA

====You can~’t solve smaller for tribes.====

\*\*Pierson 10 \*\*Developing Affordable Housing in Indian Country Brian L. Pierson leads the Indian Nations law team at Godfrey %26 KahnJournal of Affordable Housing %26 Community Development Law19. 3/4 (Spring 2010) proquest American Bar Association Spring 2010

A promising development in 2009 was the introduction of House Bill 2523, the Helping

AND

the responsibility of conducting environmental reviews and other burdens associated with lease administration.

====Under the CP the gov maintains a serious management role.====

\*\*Kronk 12\*\*—Assistant Professor, Texas Tech University School of Law (Elizabeth, Tribal Energy

Resource Agreements: The Unintended "Great Mischief for Indian Energy Development" and

the Resulting Need for Reform, 29 Pace Envtl. L. Rev. 811)

In addition to apparent consistency with the federal trust responsibility, federal liability under the

AND

after a tribe enters into a TERA with the Secretary of the Interior.

====2- They don~’t trust the gov- Navajo coal case proves====

Royster 8 \* Judith V. Professor of Law and Co-Director, Native American Law Center, University of Tulsa College of Law. Lewis %26 Clark Law Review, Winter, 12 Lewis %26 Clark L. Rev. 1065

The coal lease at issue called for adjustment of the royalty rate after twenty years

AND

off is worthwhile is a decision for each tribe to make for itself.

====Congress doesn~’t want liability- it would be super expensive for them====

\*\*Kronk 13\*\* TRIBAL RENEWABLE ENERGY DEVELOPMENT UNDER THE HEARTH ACT: AN INDEPENDENTLY RATIONAL, BUT COLLECTIVELY DEFICIENT OPTION Elizabeth Ann Kronk Assistant Professor of Law and Director, Tribal Law and Government Center University of Kansas School of Law March 11, 2013

As explained more fully elsewhere in this article, the HEARTH Act may be indicative

AND

v. Salazar between the federal government and individual Indian trust account holders.

See National Congress of American Indians, Cobell Settlement Final, Supreme Court Denies Appeals (Nov. 20, 2012), available at: http://www.ncai.org/news/articles/2012/11/20/cobell-settlement-final-supreme-court-denies-appeals. Although the Cobell settlement did not involve energy development in Indian country, Congress is certainly aware of the considerable size of the settlement and may, as a result, shy away from any potential future liability in Indian country.