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SLIDES: Tribal Perspectives on Natural Resource Policy

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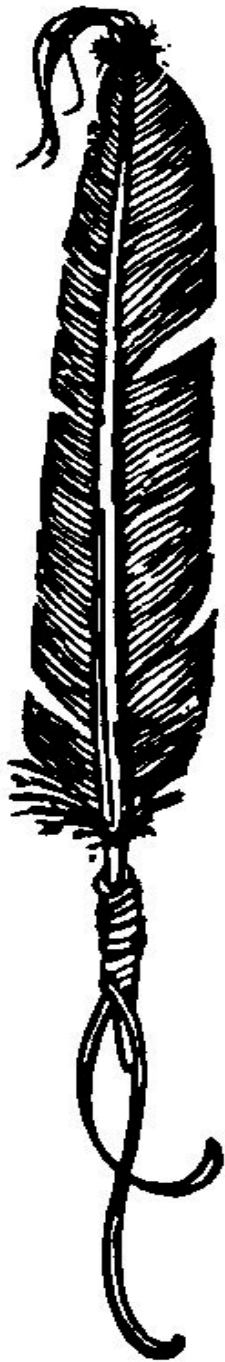
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Native American Rights Fund

I. Tribes, Pueblos and Alaskan Villages (Tribes)

- A. Approximately 560 federally recognized tribes
- B. Tribes and Individual Indians Own Approx 57 million acres of land – or about 2% of the US land base.



II. Tribal Natural Resources

• A. COAL

- Indian tribes own approx 1/3 of the reserves of Lignite and sub-bituminous coal west of the Mississippi – low sulfur, low ash, high BTU approx 12,500.
- No Tribe has ever developed their own coal reserves. All of the existing leases were signed off prior to tribes gaining control over their own resources(1920's thru the 1960's).
- Tribes are considering coal-bed methane.



- **2. OIL AND GAS**

- **Natural gas** - 20% of the on-shore reserves of, and about 4% of the production.

- **Petroleum Reserves** 10% of the onshore reserves and 4% of the production.

- **3. Tribes have significant reserves of uranium and potential for wind and solar, and bio mass (AG and Timber waste, Combustible municipal waste).**



- 4. Timber Tribes own 6.3 million acres of commercial timber – about 1% of the nation's total.
- 5. Grazing Land More than 43 million acres, and 3 million acres of crop lands.
- 6. Water Reserved water rights as yet fully quantified.



III. Tribal Governmental Structure

- A. Constitutional Most tribes have a constitutional structure adopted pursuant to the Indian reorganization Act of 1934 (25 USC Sec 461 et seq.)**

- B. Common Law or Code Based Some Tribes (E.g. Navajo and Eastern Shoshone) operate under code based governmental systems which do not have constitution based organic documents.**



- **3. Tribal Courts** Most, but not all, Tribes have tribal courts – about 385 -- and many have appellate courts – about 85. There are in addition some federally created tribal courts referred to as Indian Courts of Federal Offenses, or CFR Courts.



IV. Tribal Resource Decision Making

- **A. Early mineral development was managed and completed by the federal government**
- **B. 1938 Indian Mineral Leasing Act (25 USC Secs 396a-396g). Tribes played a minimal role in the actual decision making, although they could withhold approval of a lease.**
- **C. 1982 Indian Mineral Development Act (25 USC Secs 2101- 2108) authorized tribes to enter into non-lease mineral agreements.**



- D Title V of the 2005 Energy Policy Act
– the "Indian Tribal Energy Development and Self-Determination Act of 2005"
 - Sec 2604(a) Provides for Tribes to assume energy resource development through approval of Tribal Energy Resource Agreement (TERA)



- **Sec 2604(e)(2)(C)** TERAs must include the requirement for compliance with an environmental review process, that include:
 - (i) identification and evaluation of all significant environmental effects, including effects on cultural resources;
 - (ii) identification of proposed mitigation measures, and incorporation of appropriate mitigation measures into a resource development agreement



- (iii) a process for ensuring –
 - (I) public notification, with an opportunity to comment any environmental impacts,
 - (II) responses to relevant and substantive comments are provided prior to approval
 - (iv) sufficient administrative support and technical capability to carry out the environmental review, and
 - (v) oversight by the Tribe of energy development activities by any third party to determine whether the activities are in compliance with the TERA and applicable Federal environmental laws



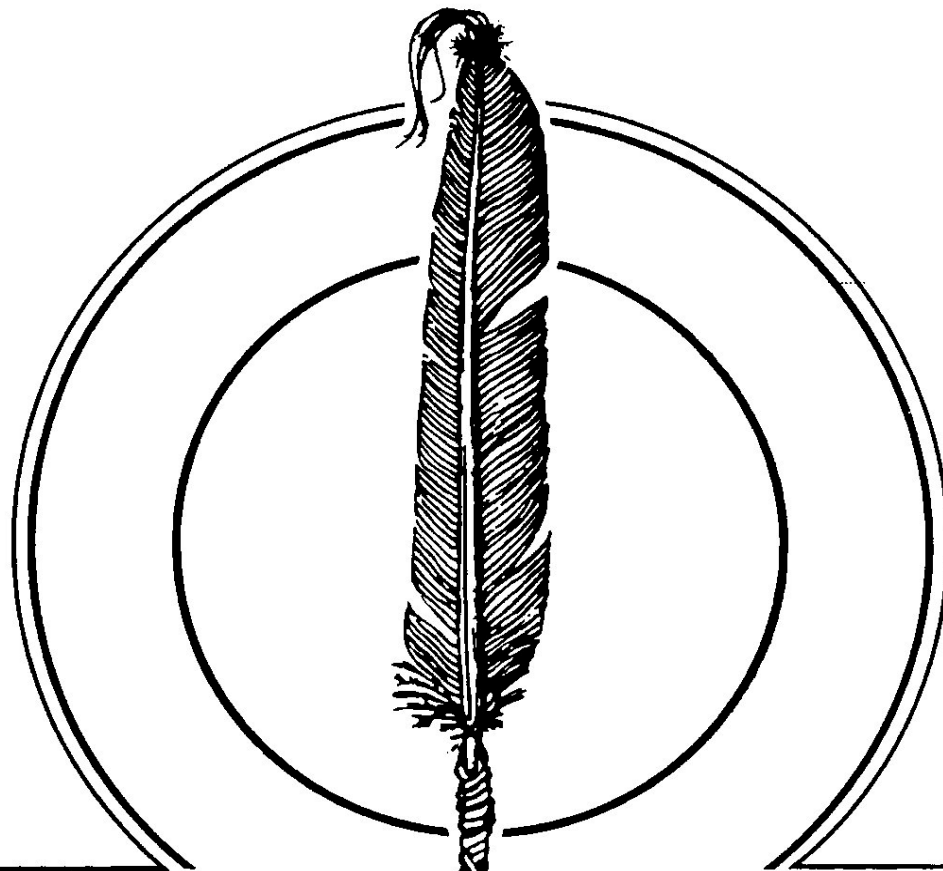
- Sec 2604 (e) Tribal Energy Resource Agreements (TERAs) may be submitted to the Sec of the Interior for approval after regulations are promulgated. (Draft at 71 FR 48626, 8/21/2006).
- Sec 2604(e)(3) requires the Sec to provide notice and opportunity for public comment on any TERA submitted for approval.
- If the Secretary determines that some 30 potential requirements are met, including most importantly that the Tribe has sufficient capability to regulate the development of energy resources of the Tribe, the Sec must approve the TERA.
- Those requirements include the following:

Citation 25 CFR 224	Section Title	Tribal Involvement
§224.51	What is a pre-application consultation between a tribe and the Director?	Requires tribes who are interested in entering into a TERA to request a pre-application consultation by writing to the Director.
§224.54	How must a tribe submit an application?	In both written and electronic formats, along with all supporting documents, to the Director of Indian Energy and Economic Development
§224.58	What is an application consultation meeting?	A meeting held at the tribe's headquarters between the Director and the tribal government and any other representatives that the tribe may designate.
§224.61	What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?	If the tribe wishes to proceed, the tribe must submit a final proposed agreement to the Director within 45 days following the issuance of the Director's report on the meeting.
§224.64	How may a tribe assume management of development of different types of energy resources?	Tribes must apply for a new agreement covering the responsibilities for the development of the other energy resources it wishes to assume.
§224.65	How may a tribe assume additional activities under an agreement?	Tribes may negotiate an amendment to the existing agreement with the Secretary to include the additional activities.
§224.76	Upon notification of disapproval, may a tribe re-submit a revised final proposed agreement?	Yes, within 45 days of receipt of the letter of disapproval, or a later date as the Secretary and the tribe agree to in writing.
§224.77	Who may appeal the Secretary's decision on a final proposed agreement or a revised final proposed agreement?	Only a tribe applying for an agreement.
§224.83	What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an agreement?	<p>The tribe must:</p> <ul style="list-style-type: none"> a) inform the public of approval of a lease, business agreement or right-of-way under the agreement; b) send a copy of the executed lease, business agreement or right-of-way or amendments to the Director within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery; and c) provide, to the Director, sufficient information and documentation of payments made directly to the tribe to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and the rights of the tribe, under a lease, business agreement, or right-of-way.

§224.102	Must a tribe establish a comment or hearing process under an agreement for addressing environmental concerns?	<p>A tribe must establish an environmental review process under an agreement that:</p> <ul style="list-style-type: none"> a) ensures that the public is notified about and has an opportunity to comment on the environmental impacts of proposed tribal action to be taken under an agreement; b) requires that a tribe respond to relevant and substantive comments about the environmental impacts of a proposed tribal action before a tribe approves a lease, business agreement, or right-of-way; and c) establishes a process for consultation with any affected States regarding off-reservation environmental impacts, if any, resulting from approval of a lease, business agreement, or right-of-way.
§224.106	If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action under an agreement, how must the tribe respond to a petitioner's challenge?	<p>The tribe must:</p> <ul style="list-style-type: none"> a) within a reasonable time issue a written decision under the tribal laws, regulations or procedures that addresses the allegation, which decision may include a determination of whether the petitioner is an interested party; and b) provide a copy of its written decision to the petitioner.
§224.139	What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?	<ul style="list-style-type: none"> a) upon receipt of the notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct or take specific action ordered by the Director as necessary to correct any condition causing imminent jeopardy to a physical trust asset; and b) within 5 days of receipt of a notice of imminent jeopardy to a physical trust asset the tribe must submit a written response to the Director that: <ul style="list-style-type: none"> 1) responds to the Secretary's finding that the tribe has failed to comply with the applicable Federal law or the terms of the agreement; 2) responds to the Secretary's finding of imminent jeopardy to a physical trust asset; 3) describes the status of the tribe's cessation of specific conduct or specific action the tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and 4) describes what further actions, if any, the tribe proposes to take to correct any condition causing imminent jeopardy to a physical trust asset.
§224.155	When must a tribe respond to a notice of intent to reassume?	<p>The tribe must respond to the Director in writing by mail, facsimile, or overnight express within 5 days of receipt of the Secretary's notice of intent to reassume. If sent by mail, the tribe must send the response by certified mail, return receipt requested, and the postmark date will be considered the date of response.</p>
§224.156	What information must the tribe's response to the notice of intent to reassume include?	<p>The tribe's response to the notice of intent to reassume must state:</p> <ul style="list-style-type: none"> a) that the tribe has complied with the Secretary's requirements in the notice of intent to reassume; b) the measures that the tribe is taking to comply with the Secretary's requirements, and when the tribe will complete such measures, if the time required under §224.154(c) to complete the required measures is greater than 5 days; or c) a declaration that the tribe will not comply with the Secretary's required measures.
§224.173	How does a tribe rescind an agreement?	<p>To rescind an agreement, a tribe must submit to the Secretary a written tribal resolution or other official action of the tribe's governing body voluntarily rescinding the agreement.</p>

I. Evolution of Tribal Resource Management

- A. **Early Federal Dominance**
- B. **1938 Indian Mineral Leasing Act – Competitive Bidding and Tribal Right of Approval – Limited possibilities for Tribes**
- C. **1982 Indian mineral Development Act opened possibilities to non-lease mineral development**
- D. **2005 Indian Tribal Energy Development and Self-Determination Act of 2005**



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