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Energy Leasing and Agreement Authorities on Tribal Lands: In Brief

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Contents

Introduction	1
Congressional Concerns	2
Types of Leases and Agreements.....	4

Figures

Figure 1. Energy Development Process on Tribal Lands	2
Figure 2. Flowchart of Potential Leases or Agreements for Tribal Energy Development on Tribal Lands	4

Tables

Table 1. Chronology of Lease and Agreement Authorities for Tribal Energy Development on Tribal Lands	3
Table 2. Comparison of Major Lease and Agreement Authorities for Tribal Energy Development on Tribal Lands	6

Contacts

Author Information.....	8
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Introduction

The United States is a major producer of many forms of energy. It produces energy from fossil fuels such as oil, natural gas, and coal, as well as from renewable energy sources such as wind, solar, hydropower, geothermal, and biomass, and other low-emission sources such as nuclear power.¹ *Federally recognized tribes*, in conjunction with the Department of the Interior (DOI), manage energy production on *tribal lands*.² There are several types of tribal lands, including trust, restricted fee, allotted, and privately owned (fee) lands.³ In FY2022, DOI reported that all tribal lands (including lands owned by Alaska Native Corporations) produced almost 350 million cubic feet of natural gas, about 81 million barrels of oil, and more than 7 million tons of coal.⁴ As of 2017, the Department of Energy found that tribal reservations, which can include various types of tribal lands, contained almost 30% of the coal reserves west of the Mississippi River, 50% of potential uranium reserves, and 20% of known oil and gas reserves.⁵

Congress has enacted many authorities for leasing and agreements that enable energy production on tribal lands. Various statutes require that the Secretary of the Interior approve tribal leases or agreements. DOI's Bureau of Indian Affairs (BIA) has primary authority for negotiating energy leases or agreements on tribal lands, in coordination with other DOI bureaus and offices.⁶ This report focuses on the leasing and agreements stage of the energy development process (see **Figure 1**), although tribes and individual tribal members (referred to in the figure as *developers*) would likely work with BIA throughout the process.

¹ For more on U.S. energy production, see CRS Report R46723, *U.S. Energy in the 21st Century: A Primer*, coordinated by Melissa N. Diaz.

² A *federally recognized tribe* is an American Indian or Alaska Native entity that is recognized as having a government-to-government relationship with the United States, which makes the entity eligible for certain programs and services. See generally CRS Report R47414, *The 574 Federally Recognized Indian Tribes in the United States*, by Mainon A. Schwartz.

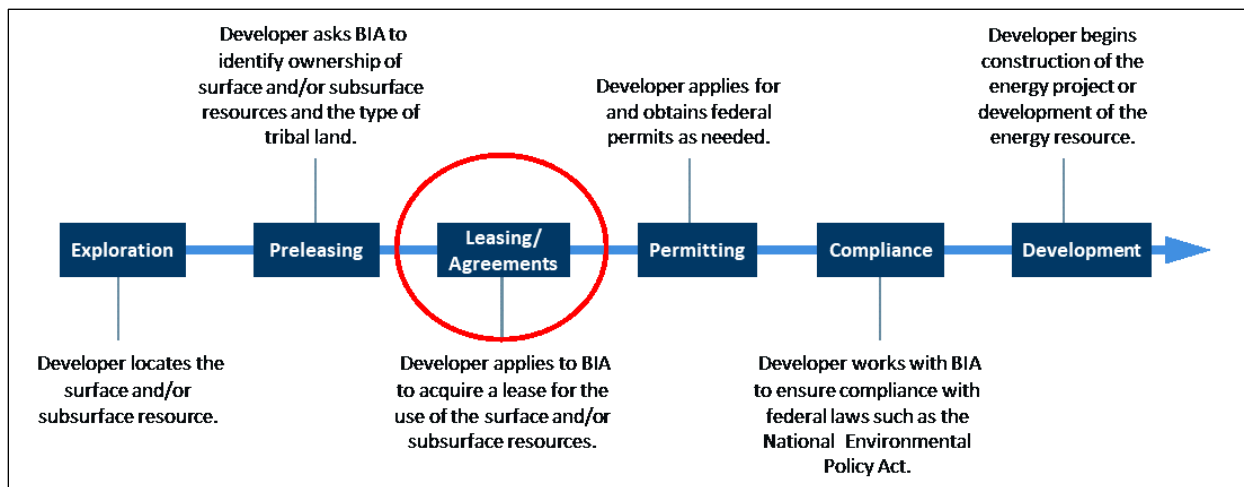
³ *Trust lands* are lands or interests in land owned by an Indian tribe or individual tribal member that are held in trust by the federal government. *Restricted fee lands* are lands restricted from being sold or transferred. The Department of the Interior's (DOI's) Bureau of Indian Affairs (BIA) is the federal government entity holding lands in trust. *Allotted lands* or *allotments* were established by the General Allotment Act of 1887, which divided tribal reservations into parcels of 40-160 acres and allotted the parcels to individual tribal members. Allotments can include trust land, restricted fee land, and/or individually owned fee land (*private property*). *Tribal reservations* are lands reserved for a tribe (or multiple tribes) under treaty, statute, or other agreement. Reservations can include a mix of tribal land types. For information on tribal lands, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray.

⁴ DOI, Office of Natural Resources Revenue, "Natural Resources Revenue Data," at <https://revenue.data.doi.gov/query-data/?dataType=Production&landType=Native%20American>.

⁵ U.S. Department of Energy (DOE), "Strengthening Tribal Communities, Sustaining Future Generations," at https://www.energy.gov/sites/prod/files/2017/09/f36/DOE-IE-brochure_0917.pdf.

⁶ The Bureau of Land Management and other DOI bureaus and offices typically manage operational aspects of energy development (Bureau of Indian Affairs, "Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures," pp. F-3 and G-vii, at https://www.bia.gov/sites/default/files/dup/inline-files/interagency_sop_09-23-13.pdf). See also BIA, "Indian Energy Service Center," at <https://www.bia.gov/bia/ots/iesc>. Note that the DOI Office of Natural Resources Revenue (ONRR)'s Federal Indian Minerals Office primarily manages oil and gas resources on tribal allotments (ONRR, "Federal Indian Minerals Office [FIMO]," at <https://www.onrr.gov/indian/assistance?tabs=federal-indian-minerals-office>.) DOI's Office of Surface Mining Reclamation and Enforcement regulates all surface coal mining and reclamation operations on tribal lands, although tribes can apply to develop their own regulatory program under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §1300).

Figure I. Energy Development Process on Tribal Lands



Source: CRS based on U.S. Government Accountability Office, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502, June 2015, at <https://www.gao.gov/assets/gao-15-502.pdf>. See also the National Environmental Policy Act (42 U.S.C. 55).

Notes: BIA = Bureau of Indian Affairs.

As this report discusses below, DOI and tribes may choose from several types of leases or agreements to develop energy on tribal lands.⁷ The appropriate type of lease or agreement to use depends on factors such as the type of tribal land and the ownership and type of energy resource (i.e., *surface* [above ground] or *subsurface* [below ground]).⁸ Some leases or agreements can be used for energy development on trust or restricted fee lands, and others can be used for individually owned allotted lands.⁹

Congressional Concerns

Congress has debated how federal oversight of energy development on tribal lands should be balanced against tribal self-determination and the possibility for increased energy development on tribal lands. Although all of the tribal energy lease or agreement authorities discussed in this report require DOI oversight, Congress has increasingly provided for *tribal self-determination*, or tribes' participation in decisionmaking about their own affairs. For example, Congress enacted the Indian Mineral Development Act of 1982 (25 U.S.C. §§2101-2108) to promote self-determination and tribal financial benefit by allowing tribes to negotiate lease and non-lease mineral development agreements.¹⁰ Congress also has authorized tribes to issue their own leases or

⁷ This report also briefly discusses the permitting and compliance stages of the energy development process. This report does not discuss the exploration or development stages.

⁸ BIA uses its surface and subsurface ownership records to determine tribal land and resource ownership. See U.S. Government Accountability Office (GAO), *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502, June 2015, p. 12, at <https://www.gao.gov/assets/gao-15-502.pdf>.

⁹ Due to Alaska's unique history, Alaska Native lands are generally owned and managed by Alaska Native Corporations rather than held in trust by DOI, pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203). Therefore, Alaska Natives are generally ineligible for the energy leases and agreements featured in this report.

¹⁰ U.S. Congress, Senate Indian Affairs Committee, *Permitting Indian Tribes to Enter into Certain Agreements for the Disposition of Tribal Mineral Resources, And for Other Purposes*, Report to Accompany S. 1894, 97th Cong., 2nd sess., June 10, 1982, S.Rept. 97-472 (Washington: GPO, 1982), pp. 2-4.

agreements, and even rights of way, after DOI approval of an initial umbrella agreement.¹¹ In addition, Congress has authorized a range of energy lease or agreement time limits that provide flexibility for tribes to meet energy development objectives. Finally, Congress has mandated that tribal energy leases or agreements include some type of environmental review process but has not always prescribed the exact process, leaving room for interpretation.

Congress continues to express interest in energy development on tribal lands. In 2014, Congress asked the U.S. Government Accountability Office (GAO) to examine tribal energy development. GAO found that BIA mismanagement, coupled with unclear or limited tribal energy statutory authorities, has hindered tribal energy development.¹² It also reported that BIA’s process for reviewing and approving tribal leases and agreements can be lengthy, resulting in “missed development opportunities.”¹³ Congress discussed the GAO report’s findings and subsequently amended several tribal energy authorities to address some of the issues raised in the report.¹⁴

Congress also has expressed interest in reforming the tribal leasing and agreement process. For example, in the 118th Congress, Congress held a hearing about potential legislation that would amend some tribal energy authorities to extend the duration of some tribal leases and authorize tribal approval of rights of way.¹⁵

Table 1 is a chronology of major laws governing energy development on tribal lands, including brief summaries of the authorized types of energy leasing or agreements on tribal lands.

Table 1. Chronology of Lease and Agreement Authorities for Tribal Energy Development on Tribal Lands

1891	1891 Act (25 U.S.C. §397, as amended): Congress authorized tribes or individual tribal members to enter into 10-year mining leases of lands, subject to the Secretary of the Interior’s approval.
1909	The Allotted Lands Leasing Act of 1909 (25 U.S.C. §396). Congress authorized mineral leasing on allotted lands owned by individual Indian “allottees.”
1934	Indian Reorganization Act of 1934 (25 U.S.C. §§5123-5124). Congress authorized tribes to adopt constitutions and create corporate charters (including mining leases, if desired), subject to the Secretary of the Interior’s approval.
1938	Indian Mineral Leasing Act of 1938 (25 U.S.C. §396a-396g). Congress created a single set of leasing procedures for all mineral development on tribal lands except allotted lands owned by individual Indians.
1955	Long Term Leasing Act of 1955 (LTLA; 25 U.S.C. §415). Congress authorized tribes to lease tribal lands, including for the development or use of certain natural resources (only surface resources).
1982	Indian Mineral Development Act of 1982 (25 U.S.C. §§2101-2108). Congress authorized tribes to negotiate and enter into any lease or other surface or subsurface development agreement, subject to the Secretary of the Interior’s approval.

¹¹ See, for example, Indian Tribal Energy Development and Self-Determination Act of 2005, as amended (25 U.S.C. §§3501-3506).

¹² See generally GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, 15-502, June 2015, at <https://www.gao.gov/assets/gao-15-502.pdf>.

¹³ *Ibid.*, p. 21.

¹⁴ U.S. Congress, Senate Committee on Indian Affairs, *The GAO Report on Indian Energy Development: Poor Management by BIA Has Hindered Energy Development*, 115th Cong., 1st sess., October 21, 2015, S. Hrg. 114-240 (Washington: GPO, 2016). See, for example, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (25 U.S.C. §415(h)).

¹⁵ U.S. Congress, Senate Indian Affairs Committee, *Business Meeting to Consider S. 1308 & Legislative Hearing to Receive Testimony on S. 195, S. 382 & S. 1322*, 118th Cong., 1st sess., May 3, 2023.

1992	Energy Policy Act of 1992 (EPACT 1992; 42 U.S.C. §13201 note). Congress established several financial and technical assistance programs in the Departments of Energy and the Interior for tribes to pursue renewable and nonrenewable energy development.
2005	Indian Tribal Energy Development and Self-Determination Act of 2005 (25 U.S.C. §§3501-3506, as amended). Congress amended EPACT 1992 to authorize “qualified Indian tribes” and “tribal energy development organizations” to enter tribal energy resource agreements without the Secretary of the Interior’s approval.
2012	Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (25 U.S.C. §415h). Congress amended the LTLA to authorize tribes to develop energy resources pursuant to tribal leasing regulations if approved by the Secretary of the Interior.

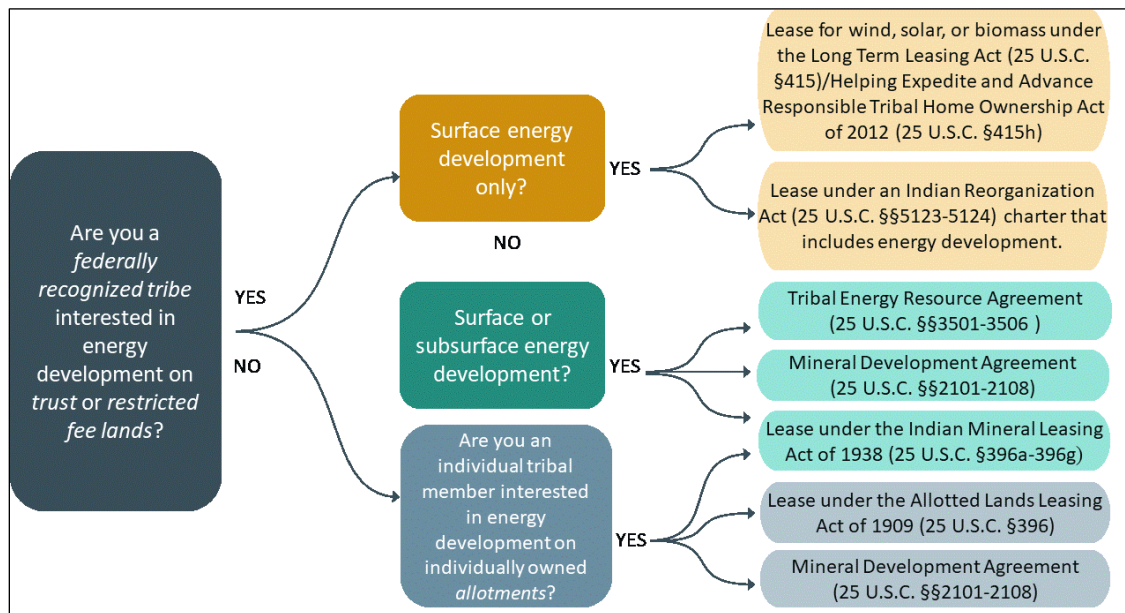
Source: Congressional Research Service (CRS).

Note: These authorities enable varying degrees of tribal control over energy development on tribal lands.

Types of Leases and Agreements

Tribes, in conjunction with DOI, have authorities to use various types of leases or agreements to develop energy resources on tribal lands. The flow chart in **Figure 2** includes a potential pathway to consider which type of tribal energy lease or agreement is appropriate in a given situation.

Figure 2. Flowchart of Potential Leases or Agreements for Tribal Energy Development on Tribal Lands



Sources: CRS based on 25 U.S.C. §§5123-5124; 25 U.S.C. §396a-396g; 25 U.S.C. §415 and 25 C.F.R. Part 162; 25 U.S.C. §§2101-2108; 25 U.S.C. §§3501-3506; and 25 C.F.R. Part 212.

Notes: These authorities enable varying degrees of tribal control over energy development on tribal lands.

A *federally recognized tribe* is an American Indian or Alaska Native entity that is recognized as having a government-to-government relationship with the United States, which makes the entity eligible for special programs and services.

There are various types of tribal lands, including *trust lands* (lands or interests in land owned by an Indian tribe or individual tribal member that are held in trust by the federal government) and *restricted fee lands* (lands restricted from being sold or transferred). *Allotted lands* or *allotments* were established by the General Allotment Act of 1887, which divided tribal reservations into parcels of 40-160 acres and allotted these parcels to individual tribal members. Allotments can include trust land, restricted fee land, and/or individually owned fee land (*private property*). *Tribal reservations* are lands reserved for a tribe (or multiple tribes) under treaty, statute, or other agreement. Reservations can include a mix of tribal land types.

Table 2 compares major lease and agreement authorities for tribal energy development on tribal lands. These authorities enable varying degrees of tribal control over energy development on tribal lands.

Table 2. Comparison of Major Lease and Agreement Authorities for Tribal Energy Development on Tribal Lands

	Eligible Entities	Type of Tribal Land ^a	Type of Energy	Lease or Agreement Duration	Secretary of the Interior's Approval	National Environmental Policy Act (NEPA) Compliance	BIA Rights-of-Way Approval
Lease under the Indian Mineral Development Act of 1938 (25 U.S.C. §396a-396g)	All federally recognized tribes, ^b with statutory exceptions.	Trust, restricted fee, and allotted lands.	Surface and subsurface: oil and gas, geothermal, and solid mineral resources.	Up to 10 years and as long thereafter as minerals are <i>produced in paying quantities</i> . ^c	Required. The Secretary must decide whether an action (such as approving a lease or permit) is in the <i>best interest</i> of the Indian mineral owner. ^d	Required.	Required.
Mineral Development Agreement under the Indian Mineral Development Act of 1982 (25 U.S.C. §§2101-2108)	All federally recognized tribes.	Trust or restricted fee. Under certain conditions, mineral leasing on allotted lands owned by individual Indians may be included in agreements.	Surface and subsurface: oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources.	No statutory limit.	Required. The Secretary must decide whether an action (such as approving a mineral development agreement) is in the <i>best interest</i> of the Indian mineral owner. ^d	Required.	Required.
Lease under the Long Term Leasing Act of 1955 (25 U.S.C. §415), as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (25 U.S.C. §415h)	All federally recognized tribes, with statutory exceptions.	Trust or restricted fee. Does not apply to mineral leasing on allotted lands owned by individual Indians.	Surface: leases for business purposes, including biomass, as well as wind and solar leases.	25 years, with the possibility of a 25-year extension (statute provides that certain tribes may have longer leases).	Required unless lease is approved under tribal regulations already approved by the Secretary.	Required unless the lease is pursuant to tribal regulations approved by the Secretary of the Interior. Those regulations must provide for an environmental review process.	Required.

	Eligible Entities	Type of Tribal Land ^a	Type of Energy	Lease or Agreement Duration	Secretary of the Interior's Approval	National Environmental Policy Act (NEPA) Compliance	BIA Rights-of-Way Approval
Tribal Energy Resource Agreement[§] (TERA) under the Indian Tribal Energy Development and Self-Determination Act of 2005, as amended (25 U.S.C. §§3501-3506)	All <i>qualified</i> federally recognized tribes and <i>tribal energy development organizations</i> . ^f Alaska Native Corporations are ineligible.	Trust or restricted fee. Does not apply to mineral leasing on allotted lands owned by individual Indians.	Surface and subsurface: both renewable and nonrenewable energy sources, including natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources.	Up to 30 years; up to 10 years for oil and gas and as long thereafter as minerals are produced in paying quantities.	Required for the initial TERA but not for leases tribes enter into pursuant to the TERA. [§]	Required for the initial TERA. TERAs must undergo an environmental review process that is similar to the NEPA process.	BIA approval is not required for activities conducted pursuant to the TERA, such as pipelines; electric transmission; distribution lines; or facilities that extract, produce, process, or refine energy resources.

Source: CRS based on 25 U.S.C. §396a-396g and 25 C.F.R. Part 211; 25 U.S.C. §§2101-2108 et seq. and 25 C.F.R. Part 225; 25 U.S.C. §415 and 25 C.F.R. Part 162; and 25 U.S.C. §§3501-3506 and 25 C.F.R. Part 224.

Notes: BIA = Bureau of Indian Affairs; NEPA = National Environmental Policy Act, 42 U.S.C. 55; TERA = tribal energy resource agreement.

- a. See CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray.
- b. A *federally recognized tribe* is generally eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- c. *Production in paying quantities* means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties (43 C.F.R. Part 3160).
- d. To determine whether an action is in *the best interest* of the *Indian mineral owner* (i.e., tribe or individual tribal member), the Secretary of the Interior shall consider factors including economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effect (25 C.F.R. Part 211 and 25 C.F.R. Part 225).
- e. For more information on TERAs, see CRS Report R46446, *Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress*, by Mariel J. Murray.
- f. A tribe can become *qualified* to enter into a TERA if the tribe has (1) carried out a contract or compact under the Indian Self-Determination and Education Assistance Act (ISDEAA; 25 U.S.C. §§5301 et seq.) for at least three years without a material audit exception relating to tribal land or natural resources or (2) substantial experience or participation in the administration, review, or evaluation of energy resource agreements on tribal land (25 U.S.C. §3501(9)).
- g. Tribes also may request an ISDEAA contract/compact to assume operation of activities normally carried out by the Secretary of the Interior, except for *inherently federal functions*. See Department of the Interior, "Secretarial Order No. 3377," December 16, 2019, at https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3377-508-compliant-1_0.pdf.

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