

## AMERICAN INDIAN LAW AND POLICY ALERT



### DEPARTMENT OF THE INTERIOR PUBLISHES FINAL RULE FOR TRIBAL ENERGY RESOURCE AGREEMENTS (TERA)

The Indian Tribal Energy Development and Self-Determination Act of 2005, Title XXVI, Section 2604 of the Energy Policy Act, as amended, authorizes Indian tribes, at their discretion, to apply for and enter into tribal energy resource agreements (TERAs) with the Secretary of the Interior. Upon Secretarial approval of a TERA, tribes may enter into energy-related business agreements and leases, and grant rights-of-way for pipelines and electric transmission and distribution lines, on tribal lands without the Secretary's review and approval. Yesterday, the Department published final regulations implementing this section by setting forth the process under which a tribe may apply for, and the Secretary may grant, authority for an Indian tribe to review and approve leases and business agreements and grant rights-of-way for specific energy development activities on tribal lands through an approved TERA.

These TERAs are intended to provide the general framework for Indian tribes to use in entering into individual business arrangements for energy development. The range of business agreements that would be covered by a TERA without individual Department of the Interior (Interior) approval would be energy mineral exploration, extraction and processing agreements; infrastructure construction and operation agreements; and right-of-way agreements for pipeline or electric transmission and distribution lines designed to serve facilities on Indian land. All such agreements have a term of 30 years or less. Oil and gas extraction agreements need to be for a term no longer than 10 years, and as long thereafter as the resource is produced in paying quantities.

The TERA program will provide significant independence to Indian tribes that participate in the program, and will give such tribes an ability to craft individual business agreements tailored to their individual needs, once a TERA is approved for the tribe.

Detailed criteria must be satisfied in the review process of TERA by the Interior. These criteria include a determination by the Interior that the Indian tribe has sufficient capacity to regulate the development of energy resources, and that sufficient detail will be provided regarding individual agreements under a TERA, including economic returns to the tribe, term of the agreement, renewal provisions, technical requirements, environmental review and compliance, public notice and adequate state participation regarding impacts off-reservation.

Each individual agreement under a TERA must be consistent with the approved TERA provisions, and must be filed with the Interior to become effective. The Interior will have periodic and annual review rights to monitor performance related to energy resource development, and the Interior will have an ability to intervene in, and suspend operations related to, situations where violations of TERA have occurred.

The overarching purpose of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. For those tribes that exercise their discretion to pursue this authority, TERAs provide an opportunity to retain significant oversight and control with respect to access to and development of tribal energy resources.

## CONTACT INFORMATION

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