

GENERAL HISTORICAL OVERVIEW OF WRITTEN LAW SOURCES OF NAVAJO TRUST LAND RESTRICTIONS, STATUS, SIZE, USE, PROMISES, & POSSIBILITIES

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SMALL TRUST LAND USER PROJECT, INDIAN COUNTRY GRASSROOTS SUPPORT



ARTICLE 5. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land-book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Heads of family desiring to commence farming may select lands, etc.

Effect of such selection.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

Persons not heads of families.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo land-book."

Certificates of selection to be delivered, etc.

To be recorded.

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights

Survey.

“Held in Common”

- Held in joint possession or use
- Belonging equally to, or shared alike
- Pertaining or belonging equally to an entire community, nation, or culture; public
- The right or liberty to use and take common profit from

“Held in the Exclusive Possession”

- Does not impact ownership
- Does not confer the right to sell or dispose
- Does not necessarily mean exclusive control
- Right to use to the exclusion of all others



INDIAN LAND FOR SALE

GET A HOME
OF
YOUR OWN
*
EASY PAYMENTS



PERFECT TITLE
*
POSSESSION
WITHIN
THIRTY DAYS

FINE LANDS IN THE WEST

IRRIGATED
IRRIGABLE

GRAZING

AGRICULTURAL
DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

| Location. | Acres. | Average Price per Acre. | Location. | Acres. | Average Price per Acre. |
|--------------|-----------|-------------------------|--------------|------------|-------------------------|
| Colorado | 5,211.21 | \$7.27 | Oklahoma | 34,664.00 | \$19.14 |
| Idaho | 17,013.00 | 24.85 | Oregon | 1,020.00 | 15.43 |
| Kansas | 1,684.50 | 33.45 | South Dakota | 120,445.00 | 16.53 |
| Montana | 11,034.00 | 9.86 | Washington | 4,879.00 | 41.37 |
| Nebraska | 5,641.00 | 36.65 | Wisconsin | 1,069.00 | 17.00 |
| North Dakota | 22,610.70 | 9.93 | Wyoming | 865.00 | 20.64 |

FOR THE YEAR 1911 IT IS ESTIMATED THAT **350,000** ACRES WILL BE OFFERED FOR SALE

Congress approved February 28, 1931, June 9, 1932, and June 13, 1933, are hereby extended one and three years, respectively, from June 13, 1934.

Amendment.

SEC. 2. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, June 18, 1934.

[CHAPTER 576.]

AN ACT

June 18, 1934.

[S. 3645.]

[Public, No. 383.]

To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That



That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe damages for the loss of improvements not heretofore paid in such a sum as may be determined by the Secretary of the Interior, but not to exceed the cost thereof; the payment of \$1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired.

Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes; and nothing contained herein, except as expressly provided, shall be construed as authority for the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202).

SEC. 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however,* That such lands or interests

Patentee to pay, to credit of Indians, damages, for loss of improvements.

Refund, if not acquired.

Rights of way, etc., not restricted.

Vol. 46, p. 1202

No transfers of restricted Indian lands, etc.; exception.

Provisos.
Lands may descend



funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H.R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H.R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law..

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

side boundary lines of Navajo reservation.

Ante, p. 960.

Balances available until expended.

Title vested in United States in trust
Lands exempt from taxation.



Indian forestry units
Regulations govern-
ing.

SEC. 6. The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

New Indian reserva-
tions on lands acquired
by proclamation.

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

Proviso.
Additions, for exclu-
sive use of Indians.

Holdings for home-
steads outside of res-

SEC. 8. Nothing contained in this Act shall be construed to relate



Charters.
Issue of, to each tribe,
upon petition therefor.

Proriso.
Ratification condi-
tion precedent to opera-
tion.

Powers conferred.

Revocation.

Inapplicable to res-
ervation rejecting prop-

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

SEC. 18. This Act shall not apply to any reservation wherein a



25 USCS § 415(A) LEASES OF RESTRICTED LANDS 1955

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those **farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops** as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years . . . Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior.



“TRIBAL LAND ASSIGNMENTS” 25 C.F.R. § 162.003

- “A contract or agreement that conveys to tribal members or wholly owned tribal corporations any rights for the use of tribal lands, assigned by an Indian tribe in accordance with tribal laws or customs.” 25 C.F.R. § 162.003.
- Tribal land assignments have no off-reservation equivalents and are entirely within the power of tribes to define so long as they violate no federal law. They are outside the federal trust responsibility, do not need to mirror any federal land use system, and are not accepted for recording in the BIA TAAMS system. See *Indian Affairs Manual, Real Estate Services, Tribal Land Assignments*, Part 52, Chapter 10, Section 1.1-1.5.
- The full potential of such tribal land assignment systems for incorporating tribal traditions into land use management is up to each Tribe, limited only by lack of full understanding of how tribal communities operate with respect to land use practices.



have not been selected, we will be in the position to select those lands.

In other words, we are not waiting for 3 years to start on the land selection.

During this process, we are always cognizant of what Congress put in both the original act and amendments. That is the continuing right of both tribes to exchange land. This would include any exchanges involving new land.

Our plan has specific sites for relocation. We have delineated those towns and cities closest to the reservation, where most of the relocating families have chosen to live. On the Navajo Reservation itself only 1 acre of homesite leases are available. Those leases do not permit lessees to graze.

The Hopi have established a relocation site on the reservation, consisting of three acres for a homesite. They are making arrangements in their land use planning for grazing by those families which previously grazed.

We hope that, with the selection of the new land, the traditional



to moving them to the New Lands, the family was found to be in possession of a herd equivalent to 650 sheep units.

- Unwillingness of border chapters to grant homesite leases.

In order to address this impediment, the Office would recommend that it be provided with expanded authority for infrastructure development (i.e. roads, water, sewer, electricity, subdivisions, etc.) in these border chapters. This would help remove the current barriers to the Office finding relocation sites for the remaining relocatees for whom the New Lands are not an alternative. It would allow the Office to give the surrounding chapters on the NPL good reason to again consider granting homesite leases to relocatees and address the tremendous infrastructure needs in those chapters.

- Bennett Freeze development.

Providing the Office with expanded authority to assist in the infrastructure development on the Bennett Freeze would have the same effect as the item above. We have recently had

It is critical that the Bureau of Indian Affairs (BIA) implement the implementation of grazing regulation on the New Lands. The Office has been informed that the regulations have not been finalized and had passed tribal approval that they have been placed on hold by the BIA. The Office's current Range Management Plan (RMP) was previously an employee of the BIA who personally worked on the grazing regulations in 1987. The Office would be more than willing to facilitate the finalization of NPL grazing services of our Range Management Office and would be helpful in this regard.

- Ineligible extended family members.

In order to address this impediment, the Office would recommend that it be granted the authority to issue permits to household who are currently ineligible for regulations, but who are members of a household of certified, eligible HPL residents. The Office would recommend that this authority be granted to the Commissioner and that no specific conditions be applied. This authority would be used to



Navajo-Hopi Relocation Housing Program : hearing before the Committee on Indian Affairs, United States Senate, One Hundred Fourth Congress, first session, on S. 349 ... March 15, 1995, Washington, DC

by United States. Congress. Senate. Committee on Indian Affairs (1993-)



The sentiment among many stakeholders that Indian Country land “is generally not managed according to tribal priorities and does not reflect that Indian lands are intended for the use and benefit of Indian tribes and their members” but are instead “being managed according to priorities generally associated with public lands.”

U.S. Gov't Accountability Office, Report to the Chairman, Committee on Indian Affairs, U.S. Senate: Indian Energy Development: Poor Management by BIA Has Hindered Energy Development, GAO-15- 502, 25 (June 2015), cited in Monte Mills, What Should Tribes Expect from Federal Regulations? The Bureau of Land Management's Fracking Rule and the Problems with Treating Indian and Federal Lands Identically, 37 PUB. LAND & RESOURCES L. REV. 1 (2016).



SEMINOLE NATIONS V UNITED STATES, 316 U.S. 286 (1942)

Imposing exacting fiduciary standards on trust responsibility

- Fed govt. dealings with tribes are “moral obligations of the highest responsibility and trust” and should be “judged by the most exacting fiduciary standard. There are 3 main areas of trust responsibility, including protect and preserve tribal lands/assets.



PRINCIPLES FOR THE DISCHARGE OF THE SECRETARY'S TRUST RESPONSIBILITY, ORDER NO. 3215 (DOI 2000)

- Sec. 5 Trust Principles. The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee, with a high degree of care, skill, and loyalty:
 - a. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;
 - b. Assure that any management of Indian trust assets . . . promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets; . . .
 - m. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.



“CUSTOMARY LAND USE AREA”

In re Estate of Wauneka, 5 Nav. R. 79 (1986) – Defining customary land use area: hold rights to the land through continuous and exclusive use, evidence of improvements that may be inherited, confined to area traditionally inhabited by ancestors; yet “every acre of land on the reservation not reserved for a special purpose is a part of someone’s customary land use area.”



“CUSTOMARY TRUST”

- **Begay v Keedah, 6 Nav. R. 416 (1991)** -- Traditional Navajo land tenure is not the same as English common law tenure, as used in the United States. The judges of the former Navajo Court of Indian Offenses understood the concepts of communal land use and grazing permit tenure well. They also understood that the Navajo Indian agent, and later the Bureau of Indian Affairs agency superintendent, operated using a different set of rules. American law generally establishes the rights of individuals, and does not recognize the rights of groups. Therefore, the Navajo judges knew that a grazing permit would have to be in the name of one individual. However, because Navajos share grazing rights with others, there had to be a method to protect the group. That method is the Navajo "customary trust" for grazing permits, which was developed by the Navajo judges.”
- **In re Estate of Benally, 5 Nav. R. 174 (1987)** -- “Navajo land policy, which opposes dividing the land into ever smaller parcels, precludes the literal application of intestate succession laws under some circumstances. Courts probating land use and grazing permits must avoid splitting up the permits wherever possible, so long as the rights of all the heirs are protected. The primary means of achieving this goal of Navajo land policy has been the customary trust.



REALTY OR PERSONAL PROPERTY; PROBATE

- **In re Estate of Lee, 1 Nav. R. 27 (1971)** -- Statements have been made in argument in this case that a Land Use Permit as provided by § 87, Title 3, Navajo Tribal Code, is **personal property and not an interest in land**. Although this is **not an interest which may be inherited**, the Tribal Code has provided for distribution through the Tribal Courts: See Cohen, Federal Indian Law (1958 edition), P.429; Title 3, § 87, Navajo Tribal Code. Consequently **we hold that a land use permit shall be considered an interest in land that many pass by will or inheritance** or be sold or assigned all subject to the supervision in the proper case by the Navajo Courts, the Land Boards and the General Superintendent.
- **In re Estate of Nelson (1977)** -- "Because land is of primary importance" leases and permits "must be treated with the same value given to land by non-Indians."



25 USCS § 415(E) NAVAJO LEASING ACT 2000

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), and any amendments thereto, except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the **lease is executed under the tribal regulations approved by the Secretary** under this subsection and the term of the lease does not exceed—

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations.

(3) ... **The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a), and any amendments thereto, and provide for an environmental review process.**



25 USCS § 415(H) HEARTH ACT 2012

(h) Tribal approval of leases

(I) In general **At the discretion of any Indian tribe**, any lease by the Indian tribe for the purposes authorized under subsection (a) . . . except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary, **if the lease is executed under the tribal regulations approved by the Secretary** under this subsection and the term of the lease does not exceed—

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years, if such a term is provided for by the regulations issued by the Indian tribe.

The Secretary shall approve any tribal regulation issued in accordance with paragraph (I), if the tribal regulations—

(i) are **consistent with** any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and (ii) provide for an environmental review process that includes (specific components)

EVOLVED FEDERAL POLICY TOWARDS MULTI-USE. OPEN LANDS & HOLISTIC VISIONING

- Multiple Use Sustained Yield Act of 1960 -- integration concepts & comprehensive assessments in public land management planning.
- 1970-80s – integration concepts & comprehensive assessments in public land management planning extended to Indian lands.
- 1988 -- BIA Integrated Resource Management Planning (IRMP) Initiative 1988
- 2001 -- Guidelines for IRMP in Indian Country
- 2005 -- A Tribal Executive's Guide to IRMP



1. What is an IRMP?

An Integrated Resource Management Plan (IRMP) is a tribe's strategic plan for the comprehensive management of a reservation's resources. It is a tribal policy document, based on the visions that the tribe and tribal landowners have for their reservation. It serves as the base for all resource management decisions.

- ▶ A comprehensive, integrated approach to resource management is the accepted approach used by most large,

public land management organizations as well as many communities. It translates the tribe's vision into a concrete description of the desired future conditions of reservation resources and the management actions to be taken to achieve them.

- ▶ An integrated resource management planning process links the natural environment (scientific data and concepts) and social realities (human values), creating resource policies that support a healthy ecosystem while taking into account a community's cultural, economic, and social goals.
- ▶ An IRMP identifies and promotes tribal members interests, priorities, and plans.
- ▶ An IRMP is the plan under which all operational resource management plans (for example a Forest Management or Agriculture Management Plan) are designed and against which all management actions are measured.
- ▶ An IRMP is subject to tribal control and provides clear direction to tribal and BIA managers, and other agencies, as to how the tribe wishes the reservation to be managed, in effect, establishing the general direction of trust management actions.

As stated in the Jicarilla Apache Tribe's IRMP, its purpose is "Clarifying relationships among land and natural resources and tribal potential: to form the basis for coordinating policies across all resources and affected policies." (Jicarilla Apache Tribe IRMP Volume 2, p. I-1)

25 USC 3701 ET SEQ – AMERICAN INDIAN AGRICULTURAL RESOURCE MANAGEMENT ACT 1993

(3) Indian agricultural lands are renewable and manageable natural resources which are vital to the economic, social, and cultural welfare of many Indian tribes and their members; and

(4) development and management of Indian agricultural lands in accordance with integrated resource management plans will ensure proper management of Indian agricultural lands and will produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities.

SEC. 3. PURPOSES.

25 USC 3702.

The purposes of this Act are to—

(1) carry out the trust responsibility of the United States and promote the self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) authorize the Secretary to take part in the management of Indian agricultural lands, with the participation of the bene-

For the purposes of this Act:

(1) The term “Indian agricultural lands” means Indian land, including farmland and rangeland, but excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

(2) The term “agricultural product” means—

(A) crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(B) domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animal specifically raised and utilized for food or fiber or as beast of burden;

(C) forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(D) other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

(3) The term “agricultural resource” means—

and administration of Indian agricultural resources and Indian agricultural lands by the Bureau and the Indian tribal government.

SEC. 102. INDIAN PARTICIPATION IN LAND MANAGEMENT ACTIVITIES. 25 USC 3712.

(a) **TRIBAL RECOGNITION.**—The Secretary shall conduct all land management activities on Indian agricultural land in accordance with goals and objectives set forth in the approved agricultural resource management plan, in an integrated resource management plan, and in accordance with all tribal laws and ordinances, except in specific instances where such compliance would be contrary to the trust responsibility of the United States.

(b) **TRIBAL LAWS.**—Unless otherwise prohibited by Federal law, the Secretary shall comply with tribal laws and ordinances pertaining to Indian agricultural lands, including laws regulating the environment and historic or cultural preservation, and laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction. The Secretary shall—

(1) provide assistance in the enforcement of such tribal laws;

(2) provide notice of such laws to persons or entities undertaking activities on Indian agricultural lands; and

(3) upon the request of an Indian tribe, require appropriate Federal officials to appear in tribal forums.

(c) **WAIVER OF REGULATIONS.**—In any case in which a regulation or administrative policy of the Department of the Interior conflicts with the objectives of the agricultural resource management plan provided for in section 101, or with a tribal law, the Secretary may waive the application of such regulation or administrative policy unless such waiver would constitute a violation of a Federal statute or judicial decision or would conflict with his general trust responsibility under Federal law.

(d) **COMPACTS.**—This section does not constitute a

25 U.S.C. § 177 INDIAN NONINTERCOURSE ACT

First enacted in 1790, amended and extended in 1793, 1796, 1799, 1802, and 1834 and given its present form in 1875.

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.



PL 106-179 INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 2000

SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.

Section 2103 of the Revised Statutes (25 U.S.C. 81) is amended to read as follows:

“SEC. 2103. (a) In this section:

“(1) The term ‘Indian lands’ means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

“(2) The term ‘Indian tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

“(3) The term ‘Secretary’ means the Secretary of the Interior.

“(b) No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

“(c) Subsection (b) shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

“(d) The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) if the Secretary (or a designee of the Secretary) determines that the agreement or contract—

“(1) violates Federal law; or

“(2) does not include a provision that