

UNITED STATES

Native American Lands and Natural Resource Development

By Maura Grogan
with Rebecca Morse and April Youpee-Roll



The Revenue Watch Institute promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

Cover Image

The Navajo Generating Station, Navajo Indian Reservation, Arizona.

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Revenue Watch Institute

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LIST OF ACRONYMS

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CERT	Council of Energy Resources Tribes
DEMD	Division of Energy and Mineral Development
DIEPD	Division of Indian Energy Policy Development
DOE	Department of Energy
DOI	Department of the Interior
EPA	Environmental Protection Agency
IEED	Office of Indian Energy and Economic Development
IMDA	Indian Mineral Development Act
IMLA	Indian Mineral Leasing Act
IRA	the Indian Reorganization Act
FOGRMA	the Federal Oil and Gas Royalty Management Act
GAO	Government Accountability Office
MGS	Mojave Generating Station
MMS	Minerals Management Service
NARP	Native American Resources Partners
NCAI	the National Congress of American Indians
NGS	Navajo Generating Station
NNOGC	Navajo Nation Oil and Gas Company
ONRR	Office of Natural Resources Revenue
OSM	Office of Surface Mining
OST	Special Trustee for American Indians
RMMLF	Rocky Mountain Mineral Law Foundation
STRAC	State and Tribal Royalty Audit Committee
TERA	Tribal Energy Resource Agreement
TEEIC	Tribal Energy and Environmental Information Clearinghouse
USGS	United States Geological Survey

EXECUTIVE SUMMARY

Tribal lands in the United States contain significant amounts of nonrenewable energy resources, with ownership of major energy resources concentrated within a relatively small number of tribes in the western United States.

Although several tribes already have sufficient expertise to oversee mining and oil and gas production on their lands, most remain reliant on the U.S. government for support. Despite recent legislation offering tribes greater decision-making authority over natural resources, barriers to Indian economic development—including minerals development—remain formidable.

American Indian lands are estimated to include nearly 30 percent of the nation's coal reserves west of the Mississippi, as much as 50 percent of potential uranium reserves, and up to 20 percent of known natural gas and oil reserves. These lands also may contain rare earth minerals, increasingly sought after for use in manufacturing.

Only recently have tribes had opportunities to decide how to develop these resources in line with their development priorities. From the late nineteenth to late twentieth centuries, Native Americans were afforded mostly a passive role in mineral extraction and often saw their mineral-rich lands expropriated under federal legislation designed to transfer land rights to white settlers. Yet some tribes retained lands that contain potentially vast amounts of mineral wealth, and they have taken an increasingly larger role in managing these assets.

Today, tribes engaged in significant extraction continue to build their capacity to manage mining and oil and gas development. A few—such as the Southern Ute Indian Tribe—have created exploration and development companies that control virtually every aspect of the extractive process. However, even in these cases, the federal government retains final approval authority, due to the nature of its trust responsibilities to tribes.

The federal trust doctrine calls for protection of Indian trust lands and Indian rights to use those lands; protection of tribal sovereignty and rights of self-governance; and the provision of basic social, medical and educational services. It requires the federal government to act “in the best interests” of tribes, a mandate often colored by political agendas that can foster a lingering paternalistic attitude within government agencies.

The federal bureaucracies and regulations that govern tribal resource development are complex. Depending on the resource being extracted, and on the land containing the resource, at least four federal agencies are involved in the execution of each lease. These agencies are chronically underfunded and understaffed, and have been implicated in lawsuits brought by tribes seeking redress for the mismanagement of tribal trust assets.

In 2010, the resolution of the landmark lawsuit *Cobell v. Salazar* led to congressional approval of a \$3.4 billion class action settlement for the federal government's historical mismanagement of individual Indian trust funds. Cases like this have drawn attention to the accountability of federal authorities involved in oversight of resources and revenues on Indian lands. They also have highlighted the critical role that oversight functions play in ensuring that tribes and individuals receive the benefits due from their natural resource assets.

Mining and oil and gas production are as controversial in Indian Country as they are elsewhere in the United States. Many tribal citizens do not want mining on their lands—regardless of how large or valuable their natural resource endowments may be—while others see development of those resources as the surest way out of poverty. The overarching issue facing American Indian tribes and their leadership, however, is their ability to make this sovereign decision independently and in accordance with tribal priorities.