

# Tribal Lands: Status of the Navajo Nation's Expanded Leasing Authority

GAO-23-106542

Report to Congressional Committees

September 25, 2023

## Why This Matters

Through treaties, statutes, and historical relations, the U.S. has undertaken a unique trust responsibility to protect and support federally recognized Tribes.<sup>1</sup> Congress has enacted several laws to maintain, strengthen, and protect the Navajo Nation's leasing power over its tribal lands.<sup>2</sup> In 2000, Congress passed the Navajo Nation Trust Land Leasing Act of 2000 (Trust Leasing Act). This act authorizes the Navajo Nation to lease its tribal lands for certain terms and purposes—such as agricultural and business—without obtaining approval from the Department of the Interior, if the leases are issued under tribal regulations approved by Interior.<sup>3</sup>

However, the Trust Leasing Act excluded, from the authority granted to the Navajo Nation, leases for the exploration, development, or extraction of mineral resources. To address concerns that this and other restrictions limited Tribes' ability to tap into the economic potential of resources on their lands, Congress enacted the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (Tribal Energy Act).<sup>4</sup> The Tribal Energy Act authorizes the Navajo Nation to lease its tribal lands for mineral resource purposes and issue agricultural and business leases for longer terms without obtaining Interior's approval, provided the leases are issued under Interior-approved tribal regulations.<sup>5</sup> The Tribal Energy Act also includes a provision for us to review progress made in carrying out the Navajo Nation's expanded leasing authority provided for in the act. This report describes the progress.

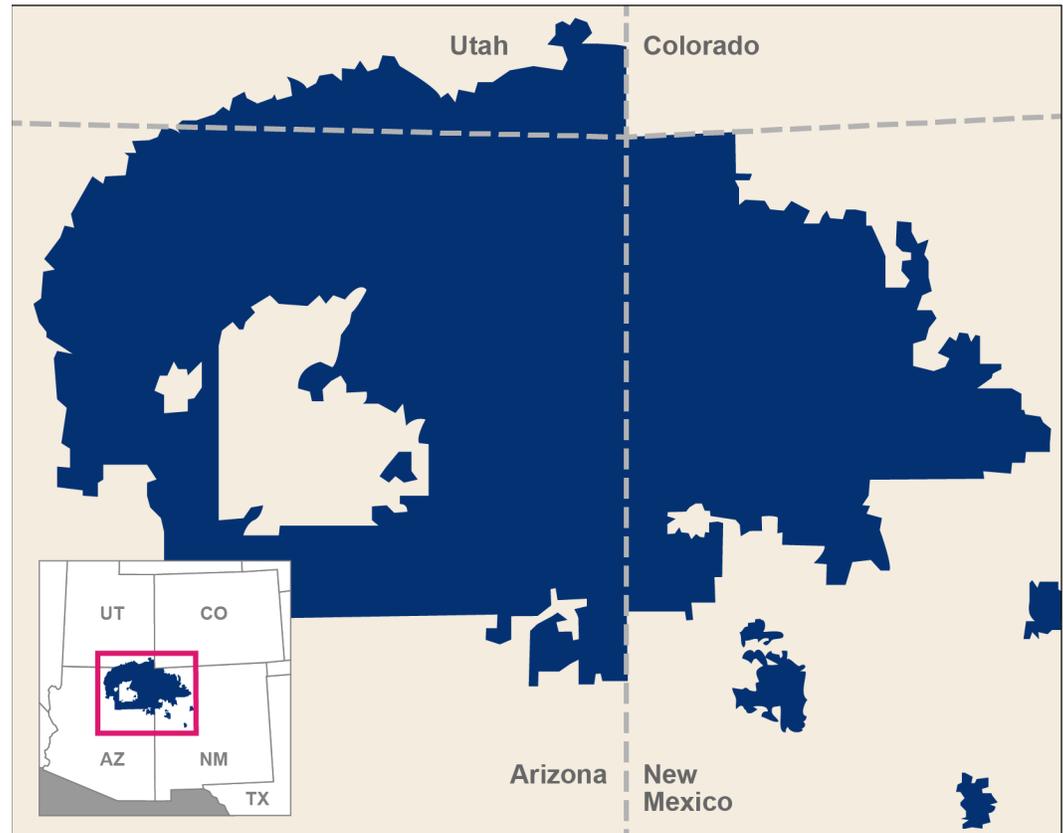
## Key Takeaways

- The Trust Leasing Act and the Tribal Energy Act do not require the Navajo Nation to assume the expanded leasing authority, and the laws do not specify a deadline by which the Nation must act to take on the authority.
- Interior's role is to review any tribal leasing regulations it receives from the Navajo Nation and approve those regulations if they meet the statutory requirements. At the Navajo Nation's request, Interior can provide technical assistance to the Nation during this process, according to Interior officials.
- To assume the expanded leasing authority provided for in the Tribal Energy Act, the Navajo Nation must first develop tribal regulations governing mineral leasing and providing for longer-term business and agricultural leases and then submit those regulations to Interior for approval, according to Interior officials.
- As of September 2023, the Navajo Nation had not developed regulations for Interior's review or approval or taken other steps to assume the expanded leasing authority, according to the Navajo Nation officials. These officials told us this was in part, because of limited tribal capacity—such as limited funding and staffing—and concerns regarding access to Interior's databases, which contains data the Nation believes it would need to manage mineral leases.

## Background

The Navajo Nation's reservation, which consists of over 27,000 square miles in Arizona, New Mexico, and Utah, is geographically the largest reservation in the U.S. (see fig. 1). The Navajo Nation has over 410,000 enrolled members, according to a Navajo Nation official; approximately 170,000 members live on the reservation. The Navajo Nation has three branches of government—executive, legislative, and judicial. The legislative branch consists of delegates that represent 110 communities.

**Figure 1: Map of Navajo Reservation**



Sources: GAO analysis of Environmental Protection Agency and Department of Energy data; Map Resources (map). | GAO-23-106542

Historically, federally recognized Tribes, such as the Navajo Nation, could only lease their tribal lands with approval from Interior. In 2000, the Trust Leasing Act authorized the Navajo Nation to lease its tribal lands for agricultural, business, public, religious, educational, recreational, and residential purposes without Interior's approval, as long as the leases are executed under tribal regulations approved by Interior. The Trust Leasing Act, however, excluded leases for the exploration, development, or extraction of mineral resources from the authority granted to the Navajo Nation. The Trust Leasing Act also specified the maximum allowable lease terms for different lease purposes.

The Trust Leasing Act, as amended, requires Interior to approve the Navajo Nation's tribal leasing regulations if the regulations (1) are consistent with certain leasing regulations promulgated by Interior and (2) provide for an environmental review process. Within Interior, the Bureau of Indian Affairs (BIA) assists Tribes with managing, protecting, and developing their trust lands and natural resources. BIA's Division of Real Estate Services is responsible for reviewing the Navajo Nation's tribal leasing regulations to ensure that they meet requirements.

Interior has approved the following Navajo Nation tribal regulations pursuant to the Trust Leasing Act:

- **Navajo Nation Business Site Leasing Regulations of 2005.**<sup>6</sup> In 2006, Interior approved the Navajo Nation’s leasing regulations that govern any lease for a business purpose on Navajo Nation trust lands, except for leases for the exploration, development, and extraction of mineral resources.
- **Navajo Nation General Leasing Regulations of 2013.**<sup>7</sup> In 2014, Interior approved the Navajo Nation’s general leasing regulations that apply to all other leases for the use of Navajo Nation trust lands authorized under the Trust Leasing Act, including leases for the development and use of natural resources (e.g., renewable energy and agriculture); telecommunication site leases; and leases for public, religious, educational, recreational, or residential purposes. These regulations do not apply to mineral leases.

The Navajo Nation’s leasing regulations describe lease requirements and provide for an environmental review process by the Navajo Nation, as required by the Trust Leasing Act. Figure 2 shows the timeline of relevant legislation and Interior’s approvals of Navajo Nation leasing regulations.

**Figure 2: Timeline of Certain Laws and Regulations Pertaining to Leases of Navajo Nation Tribal Lands**



Interior = Department of the Interior

Source: GAO analysis of relevant laws and regulations. | GAO-23-106542

<sup>a</sup>Business site leases include any lease for a business purpose, but not leases for the exploration, development, or extraction of mineral resources.

<sup>b</sup>General leases include agricultural leases; renewable energy leases; telecommunications site leases; and leases for public, religious, educational, recreational, or residential purposes, and exclude mineral leases.

The Navajo Nation must provide a copy to Interior of any lease it issues under its Interior-approved tribal regulations. BIA maintains records of tribal land leases, including those issued by the Navajo Nation.

The Navajo Nation’s Division of Economic Development administers business site leases under the tribal regulations approved by Interior in 2006. The Navajo Nation’s General Land Development Department, within the Division of Natural Resources, administers all other lease types under the tribal regulations approved by Interior in 2014. Several other offices within the Division of Natural Resources also have a role in processing leases, according to Navajo Nation officials. The Navajo Nation has also developed an electronic process to expedite lease processing.

## How did the Tribal Energy Act expand the Navajo Nation’s leasing authority?

The Tribal Energy Act, enacted in 2018, removes the Trust Leasing Act’s exclusion of mineral leases, thereby allowing the Navajo Nation to lease its tribal lands for the exploration, development, or extraction of mineral resources without Interior’s approval. As mentioned above, the Navajo Nation must issue any such leases under Interior-approved tribal regulations. The Tribal Energy Act also

extended the authorized maximum lease term for agricultural and business leases and specified the allowable term for mineral leases, as table 1 shows.

**Table 1: Maximum Allowable Terms for Navajo Nation Tribal Land Leases under the Trust Leasing Act and Tribal Energy Act, by Lease Purpose**

Lease purpose	Trust Leasing Act (2000) maximum lease terms		Tribal Energy Act (2018) maximum lease terms	
	Base term	Renewal term	Base term	Renewal term
Agricultural	25 years	Two 25-year terms	99 years	No
Business	25 years	Two 25-year terms	99 years	No
Mineral, other than oil and gas	N/A	N/A	25 years	One 25-year term
Oil and gas	N/A	N/A	10 years	Yes <sup>a</sup>
Public, religious, educational, recreational, or residential	75 years	No	75 years	No

Legend: N/A = Not applicable.

Source: GAO analysis of Navajo Nation Trust Land Leasing Act of 2000 (Trust Leasing Act) and Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (Tribal Energy Act). | GAO-23-106542

Notes: For the purposes of this report, tribal lands refers to tribal trust and restricted fee lands. The Trust Leasing Act authorized the Navajo Nation to lease its tribal lands for specified purposes without the Department of the Interior’s approval, subject to certain requirements, and specified maximum allowable terms for different lease purposes. The Tribal Energy Act expanded the Navajo Nation’s leasing authority for tribal lands to encompass mineral leases and extended the allowable terms for agricultural and business leases.

<sup>a</sup>Leases for oil and gas purposes may be extended for an additional period that the Navajo Nation determines appropriate in any case where the oil or gas resource is produced in paying quantity.

The Trust Leasing Act and the Tribal Energy Act do not require the Navajo Nation to assume the leasing authority, and the laws do not specify a deadline by which the Nation must act to take on the authority.

**What steps are required for the Navajo Nation to assume the expanded leasing authority?**

The Navajo Nation and Interior must take certain steps for the Navajo Nation to assume the expanded leasing authority provided for in the Tribal Energy Act. The Navajo Nation is the initiating party, while BIA has a limited and specified role.

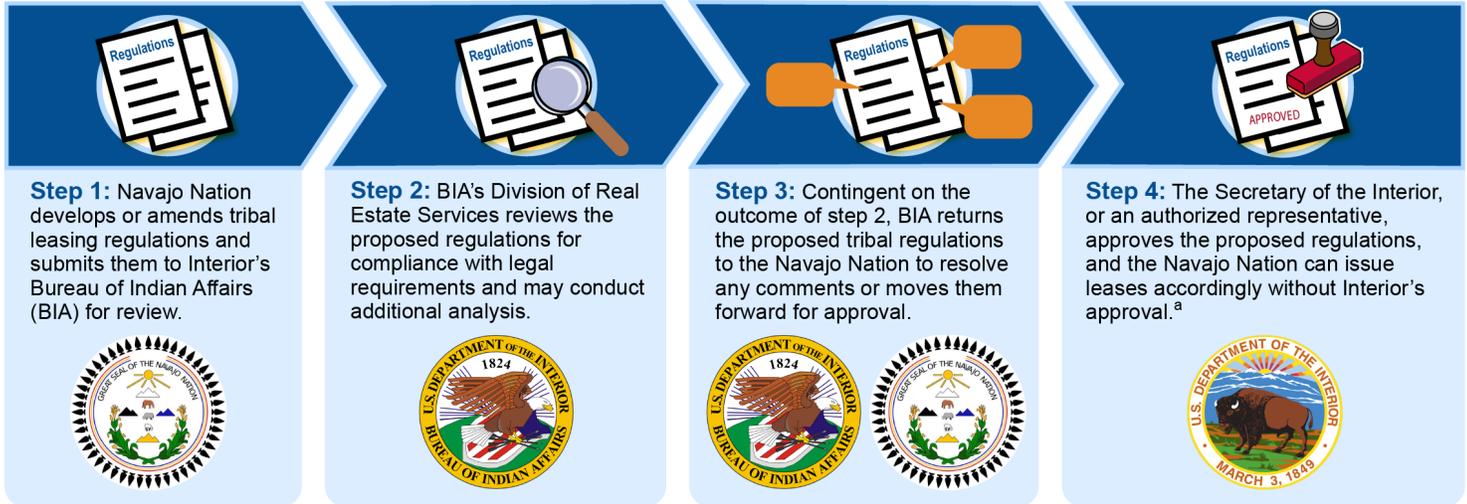
First, the Navajo Nation needs to either develop or amend existing tribal regulations to govern mineral leasing and authorize longer terms for business and agricultural leases. Then the Navajo Nation must submit the new or amended regulations to BIA’s Division of Real Estate Services for review, according to BIA officials.

Once BIA receives the proposed regulations from the Navajo Nation, the Division of Real Estate Services must review them and determine if they are consistent with legal requirements. As part of its review, according to BIA officials, BIA may analyze the Navajo Nation’s capacity to assume certain mineral leasing functions that BIA currently performs under applicable federal regulations.<sup>8</sup> Such functions could include ensuring compliance with applicable federal regulations, such as environmental regulations, and collecting royalties and rents, according to BIA officials.

If BIA has no comments on the proposed regulations, it will send the regulations to the Secretary of the Interior, or an authorized representative, for approval. In reviewing prior Navajo Nation leasing regulations, BIA worked with the Navajo Nation to resolve any comments, according to Navajo Nation and BIA officials.

Once the Navajo Nation and BIA resolve any comments, BIA will follow the same approval process. Once the Secretary or an authorized representative approves the tribal regulations, the Navajo Nation can begin issuing leases under these regulations without Interior’s approval. Figure 3 summarizes the steps in the process.

**Figure 3: The Department of the Interior’s Review and Approval Process for the Navajo Nation’s Tribal Leasing Regulations**



Sources: GAO analysis of federal statutes and interviews with Navajo Nation and Bureau of Indian Affairs officials; GAO (illustrations); Navajo Nation (Navajo Nation seal); BIA (BIA seal); Interior (Interior seal). | GAO-23-106542

Note: Interior’s review and approval process for the Navajo Nation’s tribal leasing regulations depicted above is, pursuant to the Navajo Nation Trust Land Leasing Act of 2000, as amended by the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.

<sup>a</sup>Prior to approving any Navajo Nation tribal leasing regulations, the Secretary of the Interior, or an authorized representative, must ensure that those regulations satisfy the requirements set forth in 25 U.S.C. § 415(e)(3).

At the Navajo Nation’s request, BIA can provide technical assistance to the Nation throughout this process, according to BIA officials. These officials also stated that the Navajo Nation may also apply for grants from BIA to obtain funding to support this process. Such grants could provide financial assistance for various eligible activities, such as developing or enhancing tribal regulations related to energy resources or studying the feasibility and the marketable types of minerals.

### What progress has been made in implementing the expanded authority?

While the Navajo Nation expressed interest in assuming the expanded leasing authority, the Nation had not taken steps to do so as of September 2023, according to Navajo Nation officials. Specifically, these officials told us that the Navajo Nation has not developed proposed regulations governing mineral leases and continues to use existing tribal regulations to issue agricultural and business leases, although these officials said that there is interest in revising the regulations to permit longer-term leases. The Navajo Nation also had not requested technical assistance from BIA related to the expanded leasing authority provided in the Tribal Energy Act, according to Navajo Nation and BIA officials.

- **Mineral leases.** The Navajo Nation has not submitted proposed regulations for mineral leasing to BIA for approval, according to Navajo Nation and BIA officials. Interior continues to approve mineral leases for Navajo Nation tribal lands under the applicable federal regulations.
- **Agricultural leases.** The Navajo Nation has not developed new regulations or amended existing regulations to extend the maximum allowable lease term from 75 to 99 years for agricultural leases, as

authorized by the Tribal Energy Act, according to Navajo Nation officials. Tribal officials told us that the Navajo Nation is considering the potential effects of leases of up to 99 years on agricultural land use.

- **Business leases.** Similar to agricultural leases, the Navajo Nation has not taken steps to modify tribal regulations to extend the maximum allowable lease term for business leases from 75 to 99 years, according to Navajo Nation officials. The officials told us that they had discussed revising regulations to attract business with longer-term leases but had not yet decided whether to do so.
- **Technical assistance.** The Navajo Nation has not requested technical assistance from BIA related to the Nation's expanded leasing authority, according to BIA and Navajo Nation officials. While BIA and the Navajo Nation discussed mineral leases in 2018, according to Navajo Nation officials, they have not specifically discussed topics related to the expanded leasing authority provided in the Tribal Energy Act, according to Navajo Nation and BIA officials.

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### What factors are affecting progress?

While the Navajo Nation expressed interest in assuming the leasing authority for mineral resources, it has not taken steps to do so because of factors related to limited tribal capacity—such as limited staffing and funding—according to Navajo Nation officials. These officials also said another factor that is affecting progress is concerns about access to Interior's databases. These factors relate to the following areas:

- **Developing regulations.** The Navajo Nation does not currently have the capacity to develop new mineral leasing regulations, according to Navajo Nation officials. Many different departments, such as the Navajo Nation's Department of Justice and the Division of Natural Resources, would likely need to be involved in developing mineral regulations. The Navajo Nation, including these departments, does not have the resources to develop new mineral leasing regulations at this time, according to Navajo Nation officials.
- **Processing mineral leases.** According to Navajo Nation officials, the Navajo Nation plans to establish an Energy Office that could potentially process mineral leases, similar to its General Land Development Department that manages general leases.<sup>9</sup> As envisioned, this office would function as a central point for assessing energy projects. Navajo Nation officials told us that the office may also be responsible for leading the development or amendment of tribal leasing regulations to cover mineral-related leases and for approving mineral leases, such as conducting required environmental reviews and issuing exploration permits for minerals, according to Navajo Nation officials. However, the officials said that the Navajo Nation had not decided which office would develop the new or amended regulations or process mineral leases. They also stated that assuming the expanded leasing authority would be difficult without additional funding because the Navajo Nation would need to establish the office and hire personnel with the expertise to complete this work.
- **Managing mineral leases.** Navajo Nation officials expressed concerns and uncertainty about whether it would have access to Interior's leasing, production, and royalty databases if the Navajo Nation takes over final

approval of mineral leases from Interior. For example, an official said Interior's data systems includes lease information, production formations, production volumes, royalties, and economic and contract data, among other information and that having access to this data would improve Navajo Nation's ability to negotiate and oversee mineral leasing. Navajo Nation officials also expressed concerns and uncertainty about whether, if the Navajo Nation takes over final approval of mineral leases from Interior, it would also have to assume responsibility for certain functions that Interior currently manages under federal regulations for all aspects of mineral leasing on tribal lands. This could include ensuring compliance with applicable federal regulations and addressing the management of bonds, royalties, rentals, and payments; conducting inspections; and providing technical examination of exploration and mining operations. Navajo Nation officials said that they do not believe they can easily assume some of these functions, particularly without access to certain Interior databases. For example, the officials said that Interior's data systems provide complex data on mineral resources—such as revenue data—that the Navajo Nation could not readily replicate.

BIA officials agreed with Navajo Nation officials that management of the functions associated with mineral leasing could change if the Navajo Nation assumes the expanded authority for mineral leasing. BIA officials also said that while the Navajo Nation currently demonstrates capacity in this area—such as through managing its own business and agricultural leases—they do not know if the Nation currently has the capacity to manage all parts of the federal regulatory process that pertain to mineral leasing on tribal lands. BIA would likely assess, as part of its review of any submitted Navajo Nation tribal regulations governing mineral leases, whether the Navajo Nation has the capacity to perform certain functions associated with mineral leasing currently performed by Interior, according to BIA officials.

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### Agency Comments and Third-Party Views

We provided a draft of this report to Interior and the Navajo Nation for review and comment. Interior did not provide any technical comments. The Navajo Nation provided technical comments and we incorporated them as appropriate.

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### How GAO Did This Study

To describe progress that Interior and the Navajo Nation have made in carrying out the Navajo Nation's expanded leasing authority, we reviewed relevant laws, including the Trust Leasing Act and the Tribal Energy Act, to identify changes to the Navajo Nation's land leasing authority. We reviewed documents from BIA and the Navajo Nation to understand what actions would be necessary to implement the expanded authority and to identify any progress made related to these actions. These documents include the Navajo Nation's Business Site Leasing Regulations of 2005 (approved by Interior in 2006) and General Leasing Regulations of 2013 (approved by Interior in 2014).

We met with officials from Interior and the Navajo Nation to discuss progress related to carrying out the Nation's expanded leasing authority, including any factors affecting such progress. The Interior officials included staff from BIA's Office of Trust Services, Division of Energy and Mineral Development, Indian Energy Service Center, and Navajo Region. The Navajo Nation officials included those from offices that would likely have a role in developing new leasing regulations and approving leases for the Navajo Nation, such as the Division of Natural Resources, Minerals Department, and Department of Justice.

We conducted this performance audit from January 2023 to September 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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## List of Addressees

The Honorable Brian Schatz  
Chair  
The Honorable Lisa Murkowski  
Vice Chair  
Committee on Indian Affairs  
United States Senate

The Honorable Bruce Westerman  
Chair  
The Honorable Raúl M. Grijalva  
Ranking Member  
Committee on Natural Resources  
House of Representatives

We are sending copies of this report to the appropriate congressional committees, the Secretary of the Interior, and appropriate Navajo Nation officials.

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## GAO Contact Information

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## Endnotes

<sup>1</sup>See Indian Trust Asset Reform Act, Pub. L. No. 114-178, § 101(3), 130 Stat. 432 (2016), codified at 25 U.S.C. § 5601(3) (“[T]hrough treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians”). For the purposes of the Indian Trust Asset Reform Act, an “Indian tribe” includes “any Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. §§ 5611; 5304(e).

<sup>2</sup>For the purposes of our report, tribal lands refers to tribal trust and restricted fee lands. As a general matter, tribal trust lands are those that the U.S. government holds legal title to for the benefit of a federally recognized Indian Tribe. Tribal restricted fee lands are those that a federally

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recognized Indian Tribe holds legal title to but that (similar to trust lands) are generally subject to legal restrictions against alienation and encumbrance.

<sup>3</sup>Navajo Nation Trust Land Leasing Act of 2000, Pub. L. No. 106–568, tit. XII, §§ 1201-1203, 114 Stat. 2886, 2933-36 (Dec. 27, 2000)(Trust Leasing Act), codified as amended at 25 U.S.C. § 415).

<sup>4</sup>Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, Pub. L. No. 115–325, 132 Stat. 4445 (Dec. 18, 2018) (Tribal Energy Act).

<sup>5</sup>*Id.* § 205, 132 Stat. at 4464 (codified at 25 U.S.C. § 415(e)).

<sup>6</sup>Navajo Nation Business Site Leasing Regulations of 2005.

<sup>7</sup>Navajo Nation General Leasing Regulations of 2013, codified at 16 N.N.C. § 2301, et seq.; see also Navajo Nation Trust Leasing Act of 2000 Approval of Navajo Nation Regulations, 80 Fed. Reg. 69692, 69692-93 (Nov. 10, 2015).

<sup>8</sup>See 25 C.F.R. Part 211.

<sup>9</sup>The Navajo Nation Energy Policy of 2013 states that it is the intent of the Navajo Nation Council to establish a Navajo Energy Office.