

Editor's Note: Idaho U.S. Representative Mike Simpson & WA Rep. Cathy McMorris Rogers are co-sponsors of this very UNCONSTITUTIONAL bill!!!!

A UN and tribal takeover?

Hidden provisions in congressional energy bills undermine America's water and property rights



By Lawrence Kogan

A massive 792-page Senate Energy Committee bill threatens to authorize federal bureaucrats to cede extensive control over Western states' water and property rights, energy development, and forest management to Native American tribes, local UN sustainability councils, and radical environmentalist groups. Certain provisions could undermine the foundations of our nation from *within* our nation.

S.2012, the [North American Energy Security and Infrastructure Act of 2016](#), incorporates some 393 amendments. Incredibly, it is being driven forward by U.S. Senator **Lisa Murkowski** (R-AK) and other Members of Congress behind closed doors. Probably very few have read the bill in its entirety. Virtually none understand its likely impacts on Western *and other rural* land, water, and property rights, potentially throughout America, or on the families and communities whose lives will be upended.

This secretive approach – with no opportunities for meaningful public examination or comment, even by those who will be most affected – is almost unprecedented. It could well become another example of “we have to pass it to find out what’s in it.” But numerous people will have to live with the consequences, while the authors and implementers walk away exempted, unscathed, and unaccountable.



The bill's tribal government forest management provisions are extremely harmful and could severely diminish the constitutionally protected rights of private property owners throughout the United States, the Western States Constitutional Rights consortium emphasizes. Indeed, the pending legislation is itself unconstitutional, as explained in a [legal memorandum](#) the consortium sent to 13 Members of Congress.

This Montana-based nonprofit was formed to safeguard the property rights of farmers, ranchers, and other land and business owners against reckless federal, state, and local government laws, regulations, and policies. WSCR members live on or near the Flathead Irrigation Project within the Flathead Indian Reservation, and in other parts of northwestern

Montana. But their concerns are widely shared by many citizens throughout the western and rural United States. It has a long, hard road ahead on these issues.



The apparent “shell game” is likely intended to disguise a hidden agenda and confuse people. In fact, Congress is quietly considering *two versions*: a [Senate-passed](#) Murkowski version *without* forestry measures and a House of Representatives version with *both* forestry and tribal forest management measures (H.R. 2647, the [Resilient Federal Forests Act of 2015](#), sponsored by Representative **Bruce Westerman** (R-AR) and [cosponsored](#) by 11 Republicans and 2 Democrats). Bipartisan chicanery.

On September 8, the two versions were submitted to a conference committee, to be reconciled so that both chambers can pass a bill and President Obama can sign it into law. The problems are extensive.

The House/Senate versions’ forestry measures embrace Euro-UN-Agenda 21 [sustainable forest management](#) principles, plus United Nations [Indigenous Peoples Rights](#) policies that would supersede the U.S. Constitution – while implementing unscientific [climate change](#) and sustainability objectives devised by the [White House](#) and “[Forest Service Strategic Energy Framework](#).”

Tribal Forest Management (TFM) provisions in House/Senate S.2012 are more problematic, because they would [racially discriminate](#) in favor of Native American tribes. They would do so by using the [UN Declaration of the Rights of Indigenous Peoples](#) to recognize *off-reservation aboriginal pre-European* land and water rights – where none exist in U.S. law – at the expense of all other Americans’ constitutionally protected private property rights. S.2012s’ TFM provisions would also:



- * Supplant states’ authority and jurisdiction over their natural resources, as recognized by the Tenth Amendment requirement that these resources be held in “[public trust](#)” for the benefit of each state’s citizens – including incredibly hard-working Western ranchers who put so much food on your table.

- * Enable Native American tribes to treat “Federal Forest Lands” (including national forests and national parks belonging to *all* Americans) as “Indian Forest Lands,” merely by establishing that “the Federal forest land is located within, or mostly within, a geographical area that presents a feature or involves circumstances principally relevant to that Indian tribe.” That means a tribe only has to show that the lands are covered by an Indian treaty, are part of a current or former Indian reservation, or were once adjudicated by the former [Indian Claims Commission](#) as part of a “tribal homeland.”

- * Provide Native American Tribes near U.S. national forest and park lands with federal “[638](#)” [contracts](#) to manage, oversee, and control such lands and appurtenant water resources for federal regulatory and other purposes, even when they are well beyond the boundaries of Indian reservations.



- * Expand tribal political sovereignty and legal jurisdiction and control, especially over mountainous forest lands – the source of most snowpack and other waters that farmers, ranchers, and even towns and cities rely on for irrigation, drinking, and other water needs.

- * Enable tribes to impose new [federal fiduciary trust obligations](#) on the U.S. government to protect their religious, cultural, and

spiritual rights to fish, waters, and lands located *beyond the boundaries* of Indian reservations, by severely curtailing non-tribal members' constitutionally protected private water and land rights, without paying "just compensation" as required by the Fifth Amendment to the U.S. Constitution.

A recently filed [federal lawsuit](#) by the Hoopa Valley Tribe of northern California against the U.S. Bureau of Reclamation and National Marine Fisheries Service underscores the importance of this so-called federal fiduciary trust obligation. The tribe wants to compel the agencies to protect the tribe's alleged off-reservation aboriginal pre-European water and fishing rights in southern Oregon's Klamath River and Upper Klamath Lake – even though their reservation is more than 240 miles southwest of the lake!

A tribal court victory would severely curtail Klamath irrigators' ability to exercise their rights to vitally needed water. Northern California's [Yurok Tribe](#) says it will soon file its own lawsuit. A cascade of such legal actions would disrupt or destroy the entire western water rights system.



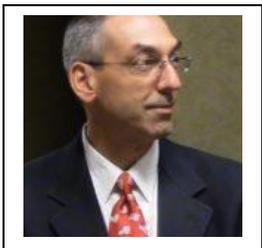
Combined with S.3013 (Montana Democrat Senator **John Tester's** [Salish and Kootenai](#) Water Rights Settlement Act), the TFM provisions would expand and codify into federal law off-reservation aboriginal water and fishing rights that the tribes now claim. That precedent could then be used by other litigious tribes to override water and private property public trust obligations that [Montana](#), [Oregon](#), [California](#) and other Western states owe their citizens under state constitutions. It could happen *throughout America!*

S.2012 would cause even more problems if Congress adds a [Wyden-Merkley Amendment](#) that provides federal funding and implementation for the controversial [Klamath Basin Agreements](#) Tribal Rights Settlement. That would greatly expand tribal water rights, in violation of U.S. constitutional requirements that any such expansion be pursuant to Congress's authority to approve or reject interstate compacts or regulate commerce with Indian tribes.

It would also create a federal and interstate template for greatly diminishing regional – and potentially *all* irrigators' – state-based private property rights, in favor of Native American tribes. Its proponents have grossly misrepresented the settlement's alleged benefits and substantially understated the damage it would impose on Klamath Basin residents.

If S.2012 is enacted into law with the tribal forest management, Wyden-Merkley Amendment, and Salish-Kootenai Settlement, Congress will cede control over Western and rural lands and waters to [Native American tribes](#) in violation of the U.S. Constitution's Fifth, Ninth, Tenth and Fourteenth Amendments.

This year's presidential and congressional elections are a referendum on the role and performance of government. *We the People* must demand an end to the secrecy, shady backroom deals, and usurpation of our natural and constitutional freedoms and property rights. Congress' immediate withdrawal or modification of this grotesque omnibus energy bill would be a good first step in this direction.



NOTE: *Lawrence Kogan* is managing principal of [The Kogan Law Group, PC](#), of New York, NY, and legal counsel to *Western States Constitutional Rights, LLC*.