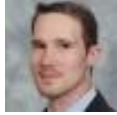


# INDIAN COUNTRY TODAY

## Going Green and Buying Indian



By [Ryan D. Dreveskracht](#)

March 16, 2011

The [American Recovery and Reinvestment Act \(ARRA\)](#) has presented numerous opportunities for investment in solar projects, including: renewable energy tax credits, federal grants, clean energy renewable bonds, production tax credits, residential energy efficiency tax credits, green schools programs, and energy efficient appliance rebate programs—just to name a few.

### **The Economics of Clean Energy**

Demand, the Administration has done a good job providing. But what of supply?

The consensus is that U.S. is currently lagging on production. Indeed, a great part of the ARRA stimulus funds assigned to solar investment are heading overseas.

China, to be exact. With its low labor costs, relatively low environmental standards, and newly introduced stimulus package, China is now the world's largest exporter of solar panels.

Congress has taken some precautions to ward off the trend. Under Section 1605 of the ARRA, stimulus-funded public works projects must adhere to “Buy American” requirements for “all iron, steel, and manufactured goods.” Photovoltaic panels constitute “manufactured goods.”

But the devil is in the details. Components and subcomponents of construction materials used in federal projects funded by the ARRA may be of foreign origin, provided that the final product is “manufactured” in the United States. There are also numerous exceptions that can be—and are being—evoked by stimulus recipients. In whole, the ARRA's safety measures have remained largely ineffective.

At the same time, China has itself implemented protectionist measures, including a requirement that 75% of the content of government-purchased solar panels be Chinese-made.

### **Green Energy Investment in Indian Country**

On January 19, 2011, the [U.S. Energy Secretary Steven Chu announced](#) unyielding support for the tribes in their efforts to use alternative energies to “improv[e] the environment and support[] long-term clean energy jobs.” Part of Secretary Chu's plan includes making up to \$10 million available for renewable energy projects on tribal lands. This is on top of the numerous federal programs that are already available.

But will this investment be going overseas as well?

### **The Buy Indian Act**

The Buy Indian Act (BIA) grants a purchasing priority to “the products of Indian industry.” The law also directs prime contractors to use their best efforts to give Indian organizations and Indian-owned economic enterprises the “**maximum practicable opportunity**” to participate in subcontracts that it awards.

The **Energy Policy Act of 2005** authorized federal agencies to provide a preference for the purchase of any energy product or byproduct from a tribal business. Solar power generated by a tribal venture qualifies as one of these products, as do solar panels created by a majority Indian-owned company.

Currently, the Obama Administration is in the process of promulgating **a new set of rules for BIA implementation**. Many tribes hope that the Administration will implement the BIA as soon as possible, particularly as to its expenditures on solar projects and green energy investment. Certainly, two of the most overwrought subjects in Indian country, at least rhetorically, have been green tribal energy and “buy Indian” policies. Following through is the next step.

### **Indian Country: Buy Indian**

Tribes are already taking advantage of the opportunities available in solar development. Florida’s **Seminole Tribe is currently developing an entirely self-sustaining casino expansion**. The **Forest County Potawatomi Community** has recently announced that it has purchased enough green power to meet 100% of the Tribe’s electricity usage. A **Navajo Nation project** is bringing solar energy to many of its over 20,000 homes without electricity. The Jemez Pueblo Tribe is in the process of constructing the Nation’s first utility-scale solar plant on tribal land.

With these projects, the fact that tribes are doing much of the buying gives Indian Country the opportunity to take Buy Indian into its own hands, regardless of what the Administration decides to do.

The most significant step that a tribal government can make is the adoption of a “Buy Indian” resolution pursuant to these projects that includes supportive, enforceable policies and set-aside purchases dedicated to Indian business. The Minnesota Indian Business Alliance has created an **Example Draft Tribal Resolution** that provides a great model. Likewise, the Hoopa Valley Tribe has adopted Buy Indian policies into their **business code**. Other tribes are in the process of following suit.

In many instances, investment in solar projects present an enormous opportunity for tribes to build up their nations and governing institutions by implementing their own laws, regulations, and enforcement mechanisms; and to do so cautiously, responsibly, and with care. In so doing, tribes should be careful to ensure that any laws or regulations passed pursuant to these projects include Buy Indian mandates. In this way, tribes can ensure that their investments escape the unfortunate “economics of clean energy” that are currently stifling the general market.

*Ryan D. Dreveskracht is an attorney licensed in Washington State, where he focuses on issues critical to Indian Country. He can be reached at [dreveskrachtlaw@gmail.com](mailto:dreveskrachtlaw@gmail.com) or by phone at (360) 430-3783.*