

Art inspired by three landscapes experiencing threats of mining: Mount Taylor, New Mexico, Fajada Butte, New Mexico and Devils Tower, Wyoming.

Marty Two Bulls, Jr./High Country News

In 2024, a subsidiary of the mining company Energy Fuels revived its plans to open the Roca Honda Uranium Mine in New Mexico near Mount Taylor, a place of cultural significance to at least 30 Native nations. The company had received expedited permitting under the Trump administration last year, and in mid-September, the Forest Service announced that it would begin to analyze the mine's potential impacts under the National Environmental Policy Act, or NEPA.

That process includes tribal consultation, which is critical to upholding tribes' ability to protect cultural landscapes, wildlife and water, would change dramatically under the Bipartisan American Affordability and Jobs Act, a permitting reform bill introduced by Western Republican and Democratic senators, including Sens. Martin Heinrich, D-N.M., and **Mike Lee, R-Utah**. The Senate Committee on Energy and Natural Resources is expected to vote on it after Congress returns on Nov. 9.

The legislation is sweeping in its proposed changes, affecting core environmental laws well beyond NEPA, like the Endangered Species Act, Clean Water Act and National Historic Preservation Act. The permitting reform is meant to speed up industry' s ability to build mines, wind turbines, solar arrays, data centers, pipelines and more on federal lands. It has drawn fierce opposition from Native leaders and organizations, who argue that the increased speed comes at the cost of tribal sovereignty, and that they were not consulted before it was introduced.

Mount Taylor in New Mexico and the greater Chaco landscape in Colorado, Arizona and Utah are among the many places that would be impacted by such legislation. "Many of these places are outside our reservations. Federal law is how we have a voice when a mine, a pipeline or a transmission line is proposed that impacts our cultural resources,

our sacred sites and our communities directly," said Acoma Pueblo Gov. Charles Riley at a national conference of tribal leaders in October. "This bill would take away most of that."

If the legislation passes, a federal agency could choose not to consult with tribal nations about cultural sites at risk of being damaged by projects like the Roca Honda Mine — a project that the Acoma Pueblo does not oppose, though the Navajo Nation and Isleta Pueblo do. Timelines for reviewing complex documents would be shortened, and federal agencies would only be required to consider the impact of mining activities on federal land, even if a project covers both state and private lands, as the Roca Honda Mine does. In all, the legislation further distances tribes from federal decision-making on their ancestral lands and limits their options should a proposed project violate their rights.

"This is one of those extreme, existential threats that's in front of us right now," said Mark Macarro (Pechanga), president of the National Congress of American Indians, at the organization's conference. If senators don't make dramatic changes ahead of the November vote, Macarro said, "this bill needs to be killed."

TRIBAL LEADERS AND ORGANIZATIONS ARE RAISING ALARM about proposed changes to Section 106 in the National Historic Preservation Act (NHPA), which currently requires federal agencies to consult with a tribe if a project could impact a cultural site. The proposed alterations are expansive: Tribal consultation would become optional and the scope of what would trigger it would narrow, while cultural sites would not need to be considered at all if they weren't formally identified before a review process commences.

The proposed changes are "a direct assault on tribal sovereignty," said Ira Matt (Séliš), executive director for Indigenous Diplomacy and Federal Relations for the National Association of Tribal Historic Preservation Officers. The organization, along with the National Congress of American Indians and others, has called for senators to remove the NHPA section from the bill entirely.

According to Matt, the legislation would restrict how tribes define and protect their cultural heritage and undermine their rights to participate in decisions that affect their histories and futures. "It also places wholly unqualified federal agencies in the position of making decisions about our sacred places while threatening to assume control over tribal preservation programs developed to reflect each tribal nation's unique knowledge and lifeways," Matt said "These are not simply changes to a permitting process. They are deliberate attempts to undermine tribal self-determination."

The Section 106 process is currently "one of the most powerful tools" tribes have to inform federal decision-making, said Wesley Furlong, a senior staff attorney at the Native American Rights Fund who specializes in Section 106 reviews. State and tribal staff go through hundreds of thousands of Section 106 reviews every year, and many of those conclude without any changes needing to be made to a project. At other times, the reviews give tribes a chance to tell federal agencies how a project could damage sacred sites and cultural landscapes, many which are not on any federal agency's radar.

Even then, however, a review doesn't ensure that a place will be protected, and tribes cannot expect a specific result.

Furlong said the portion of the proposed bill involving Section 106 is a "total dumpster fire and an absolute hatchet job" that clearly did not involve anyone familiar with tribes or the existing consultation process. Native nations are being "forced to take the brunt of this 'compromise.' It's permitting reform at the expense of Indian County, tribal rights, and tribal resources."

The importance — and inadequacy — of Section 106 for tribal nations was on display during the permitting process for the 550-mile-long SunZia Southwest Transmission Project, which would funnel wind energy from New Mexico to California. In 2024, tribal nations sued over the lack of tribal consultation. Last year, courts agreed and ordered the Bureau of Land Management to re-do consultation for the project, enabling tribes to mitigate possible harm to cultural sites in the San Pedro Valley in Arizona, though most of the transmission line has already been built.

AS WRITTEN, TRIBAL ADVOCATES worry that the bill could also limit federal agencies' consideration of Indigenous knowledge by changing the definitions of the information that agencies must consider under the Endangered Species Act. It also shortens comment timelines and limits tribes' ability to pursue NEPA violations through the courts, and it lessens federal agencies' mandate to incorporate as much relevant scientific information in their decision-making as possible. This could have on-the-ground effects in places like New Mexico, since the Forest Service would not have to incorporate any research published after it began its environmental impact statement for the Roca Honda Mine.

Tribes often need to bring up their own data or information about the impacts of a project after federal analysis has begun, said Daniel Cordalis (Navajo Nation) a staff attorney at the Native American Rights Fund who focuses on tribal water rights. When Cordalis was working on the Klamath River, tribal nations had to challenge the federal data that governed the flow of water and affected salmon's survival. Across the Western U.S., tribes are experts in fisheries science, forestry and hydrology, and their data may well differ from the federal government's. "Tribes often have the best scientists doing a lot of this work," said Cordalis. But rather than acknowledge tribes' knowledge and scientific research, the bill includes no "recognition of the role of another sovereign government whose rights and resources may be at stake."

These changes could mean that tribal nations are not adequately included or considered in large-scale federal projects. And under a provision in the legislation called "project certainty," it would be much harder for the federal government to change or revoke a permit once a mine, solar array or wind project has one. That is exactly what the Biden administration did to halt the Keystone XL pipeline in 2021, after it was permitted under the first Trump administration despite the objections of numerous Native nations. Similarly, the Trump administration has sought to stop Biden-era offshore wind projects.



Ranking member Sen. Martin Heinrich, D-N.M., speaks during a hearing of the Senate Committee on Energy and Natural Resources in June 2025.

AP Photo/Mark Schiefelbein

As of early November, tribal leaders along with environmental, archaeological and community organizations were still seeking to make changes to the bill and encouraging people to contact their senators to voice their concerns before the Senate votes on Nov. 9.

In an emailed statement, a spokesperson for Sen. Heinrich said that the senator doesn't believe the bill as written hurts tribal consultation, and that the bill "defends against the Trump administration's efforts to make all Tribal consultation discretionary and eliminate consultation altogether on cultural landscapes. All of this means stronger Tribal consultation protections, lower utility bills, more good-paying jobs, and a path toward unlocking our clean energy future."

Tribal nations already have very few laws at their disposal to protect ancestral lands or culturally important wildlife, or water, and the proposed legislation chips away at all of them, Cordalis said. "The positive and the real good things that tribes have been able to protect over the years — probably wouldn't be able to have been protected under this."