

From: corridoreiswebmaster@anl.gov
To: [Corridoreisarchives;](#)
CC:
Subject: Energy Corridor Programmatic EIS Comment 80042
Date: Monday, November 28, 2005 2:12:02 PM
Attachments: [atnicorridorcommentsf_80042.doc](#)

Thank you for your comment, Lawrence Spottedbird.

The comment tracking number that has been assigned to your comment is 80042. Please refer to the tracking number in all correspondence relating to this comment.

Comment Date: November 28, 2005 02:11:46PM CDT

Energy Corridor Programmatic EIS Scoping Comment: 80042

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Privacy Preference: Don't withhold name or address from public record

Attachment: C:\Documents and Settings\Administrator.MARGARET-3666RX\My Documents\atnicorridorcommentsf.doc

Questions about submitting comments over the Web? Contact us at: corridoreiswebmaster@anl.gov or call the Energy Corridor Programmatic EIS Webmaster at (630)252-6182.



Affiliated Tribes of Northwest Indians

Economic Development Corporation

November 28 2005

Julia Souder
U.S. Department of Energy
Office of Electricity Delivery and Energy Reliability
1000 Independence Avenue S.W.
Washington, DC 20585
Fax: 202-586-1472

RE: Notice of Intent to Prepare a Programmatic Environmental Impact Statement,
Amend Relevant Agency Land Use Plans, Conduct Public Scoping Meetings, and Notice
of Floodplain and Wetlands Involvement

Dear Ms. Souder,

Section 368 of the Energy Policy Act of 2005 obligates the “Designation of Energy Corridors on Federal Land in the 11 Western States”. This process is the beginning of the public scoping process under the National Environmental Policy Act for fulfilling this mandate. Please allow the Affiliated Tribes of Northwest Indians Economic Development Corporation to submit the following initial comments. ATNI-EDC’s members comprise the 54 Native American Indian Tribes in the states of Washington, Oregon, Idaho and Western Montana. ATNI-EDC represents issues relevant to its membership including issues related to energy matters.

Indian lands are federal lands, however they are held “in trust” for Indian tribes, which gives Indian lands a special status that should not be confused with federal lands under the sole control of federal agencies. The federal trust responsibility is the fiduciary responsibility of the federal agencies that manage resources that impact tribal resources. A fiduciary responsibility is the obligation to manage resources in the best interests of the beneficiaries, in this case, the Indian Tribes. All natural and cultural resources that belong to Indian Tribes can be impacted by federal actions. The federal agencies making decisions impacting tribal resources have a trust responsibility to actively protect tribal resources.

Indian lands are currently home to numerous energy facilities including pipelines, electric transmission lines and substations, dams, power plants, and oil and gas production. These energy facilities were often sited on tribal lands without tribal approval or consent. Such siting on tribal lands was likely in a breach of the federal trust responsibility. Only in more recent years has there been the recognition that tribes have a right to consent to their land uses, and must approve of the terms and conditions for any uses of their lands.

Tribal consent includes the absolute ability of tribal governments to outright reject the use of their lands for energy or other purposes inconsistent with tribal policy. There is no right of eminent domain on Tribal Trust lands. This absolute right of tribes to set policies for trust lands stems from the inherent sovereignty of tribes, and the fact that tribal reservations, and tribal rights to resources, such as the rights to hunt and fish in the usual and customary places (including lands off of the reservations) were recognized by the United States government by treaties or other federal actions that have the force and effect of federal statute. The treaties were negotiations for which Indian people fought and died in order to maintain certain rights and resources for their people and for all their future peoples. These treaties and the land rights and other rights held by Indian people may not now be abrogated through regulatory processes.

Therefore, Indian lands must be excepted from any designation as energy corridors under this process. No Indian lands may be designated for uses that are inconsistent with the purposes for which they were “reserved” under federal treaties or other federal laws. Indian Reservations were created and reserved as homelands for Indian people and as places for which Indian people could practice their cultures and religions, and for which the tribes themselves are solely able to set policies for land uses. Indian tribes are sovereign governments that have absolute authority over the uses for their lands.

Indian rights to hunt and fish or to maintain their cultural places extend off reservation lands, and are also rights that are subject to the federal trust responsibility. The Department of Energy maintains a Tribal policy and is obligated to enter into Government to Government consultation when tribal resources are or may be impacted. This consultation must be had with each and every tribe which may be impacted by the designation of energy corridors. Each tribe may have specific treaty or trust issues to be addressed. The Departments of Energy and Interior are required during this process to honor existing federal laws and to honor its trust responsibility.

Thank you for consideration of these comments.

Sincerely,

Lawrence Spotted Bird

Lawrence Spotted Bird
Executive Director