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Subject: Energy Corridor Programmatic EIS Comment 80097
Date: Monday, November 28, 2005 9:54:24 PM
Attachments:

Thank you for your comment, kathy helms.

The comment tracking number that has been assigned to your comment is 80097. Please refer to the tracking number in all correspondence relating to this comment.

Comment Date: November 28, 2005 09:54:11PM CDT

Energy Corridor Programmatic EIS Scoping Comment: 80097

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NOTE: ALSO FAXING COMMENTS, WITH HARD COPY OF COMMENTS AND EXHIBITS TO FOLLOW IN U.S. MAIL.

November 28, 2005

U.S. DEPARTMENT OF ENERGY

OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

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In the Matter of)
)
WEST-WIDE ENERGY CORRIDOR PEIS)
)
(Programmatic Environmental Impact Statement))

**REQUEST FOR PUBLIC SCOPING MEETINGS ACROSS NAVAJO NATION
AND MOTION FOR AN EXTENSION OF PUBLIC COMMENT PERIOD
IN REGARD TO THE WEST-WIDE ENERGY CORRIDOR PEIS**

Petitioner Kathy Helms, a resident of the Navajo Nation living in the Nation’s headquarters of Window Rock, Ariz., as well as an individual of Cherokee/German descent, hereby files this motion respectfully requesting a time extension of 90 days from the ending date of the November 28, 2005, comment period for the West-Wide Energy Corridor Programmatic Environmental Impact Statement (PEIS), and a request for public scoping meetings to be held immediately at each of the Navajo Nation’s 110 chapters, in accordance with U.S. treaty obligations and provisions of the National Environmental Policy Act of 1969 (NEPA), before this process moves forward. It is also requested that the Department of Energy (DOE) have an interpreter on hand, as many of the Navajo Nation’s residents do not speak or understand the English language.

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The motion for extension of the comment period and request for hearings are based on the United States’ apparent violation of its trust responsibility in consulting with Indian Nations, specifically the Resources Committee of the Navajo Nation Council which has oversight authority regarding permits for resource exploration and development of any rights-of-way for energy corridors which might cut trails across the Navajo Nation.

Portions of the Navajo Nation lie within Arizona, New Mexico and Utah, so it is reasonable to assume that at least one or two of those energy corridors planned around the Nation’s borders ultimately will come through Navajoland. As El Paso Natural Gas has said in its negotiations with the tribe over right-of-way value: It is not cost-effective to “go around” the Navajo Nation.

The Navajo Nation Resources Committee has authority over leasing tribal natural resources for energy development, permitting rights-of-way for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. As oversight committee, Resources is empowered to negotiate those rights in the best interest of the Navajo people.

Until the week of Nov. 14, 2005, members of the Resources Committee had no knowledge of any proposed U.S. Energy Corridor and had not been contacted regarding the matter. (Exhibit 1, "Energy Corridor May Impact Reservation Land," Gallup (N.M.) Independent, Monday, Nov. 14, 2005)

President Bush's Executive Order 13175 of Nov. 6, 2000, "Consultation and Coordination With Indian Tribal Governments" describes the United States' unique relationship with Indian tribal governments and recognizes "Indian tribes exercise inherent sovereign powers over their members and territory."

The Executive Order further states "To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications ..." without first following a number of steps set forth in that Order.

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To date (Nov. 28, 2005), no federal entity has approached the Navajo Nation Resource Committee regarding this discussion, according to Committee Chairman George Arthur.

Section 368 of the Energy Policy Act of 2005, Public Law 109-58 (H.R. 6) enacted Aug. 8, 2005, directs the Secretaries from the Departments of Agriculture, Commerce, Defense, Energy and the Interior to designate corridors on federal lands in 11 Western states for oil, gas and hydrogen pipelines and electricity transmission and distribution facilities (energy corridors).

Each agency would be required to amend its land use plan by designating a series of energy corridors effective upon the signing of the Record(s) of Decision.

The Bureau of Land Management (BLM) and U.S. Forest Service (FS) Western U.S. Lands Map included on the EIS Information Center Web site showing federal lands in states included in the Energy Corridor PEIS depicts the Navajo Nation surrounded by those lands potentially impacted by the proposed energy corridors.

Given Indian right-of-way study provisions contained within the Energy Policy Act of 2005, sponsored by U.S. Sen. Pete Domenici and U.S. Sen. Jeff Bingaman, both R-N.M., and recent requests to U.S. Secretary of the Interior Gale Norton to expedite that study and other requests in the interest of "national energy security," a prudent person might reasonably conclude that the federal government is preparing to make Indian Nations -- particularly the Navajo Nation -- an offer they can't refuse.

A prudent person also might conclude that the Navajo Nation's abundant oil, gas, water and mineral resources will have a sizable role to play in the success of any U.S. energy corridor and, therefore, the appropriate Navajo Nation representatives should be given a seat at the table in any such discussion.

In my job as a newspaper reporter covering portions of the Navajo Nation, I am in a position to see requests for permits which come before the Resources Committee. In the

two

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years that I have observed such requests, the committee has approved rights-of-way for Transwestern Pipeline -- an Enron entity -- and Enterprise. It is still in negotiation with El Paso Natural Gas for renewal of its 900-mile pipeline right-of-way and possible construction of a helium plant in the Four Corners area.

Files for some of those oil and gas companies are a foot thick, documenting leases approved inside the Navajo Indian Irrigation Project within the last two years.

While I do not profess to be a rocket scientist, I was taught early in life that 1+1 generally equals 2. From my unique position here on Navajoland, it appears that 1+1 equals a major push by billion-dollar corporations to obtain rights to the Navajo Nation's oil, gas, and mineral reserves, along with water from the proposed San Juan River Basin settlement, while paying the least amount of compensation that can be negotiated whether the tribe accepts the offer or not.

The Department of Interior does not have a good track record in its dealings with the Navajo Nation, i.e. the as-yet-unsettled Cobell v. Norton lawsuit pertaining to payments for oil and gas leases.

Following Navajo Nation Council approval of the proposed San Juan River Basin Water Rights Settlement in December 2004, the number of oil and gas companies seeking permits has been on the upswing.

The Nation has approved numerous oil and gas drill permits from Calpine, Energen, Dugan, XTO , and ConocoPhillips, to name just a few. The majority of permits issued appear to be within the area of the Navajo Indian Irrigation Project (NIIP), which has a diversion right of 508,000 acre-feet of water per year from the San Juan River Basin at its disposal, with a depletion right of 270,000 acre-feet per year.

During Navajo Nation negotiations with the State of New Mexico and federal representatives regarding the San Juan water settlement, Sen. Domenici insisted that NIIP not be

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included in the final draft legislation and also said he would not promote any water settlement to Congress which did not include the Navajo-Gallup Pipeline, which would receive a diversion right of 22,650 acre feet per year.

The Navajo-Gallup Pipeline would carry water to 43 Navajo Nation chapters through a main distribution line, but once again, the Navajo people will be left largely high and dry.

Any distribution to individual Navajo homes would hinge largely on funding made available through Indian Health Service (IHS). Given the Bush Administration's drastic budget cuts proposed this year and Washington's "take from the poor and give to the war" mentality, it is highly unlikely that IHS is going to have a large pot of money at its disposal to pipe water to individual homes.

A prudent person then might question whether Sen. Domenici, architect of the national Energy Policy, is pushing for the Navajo-Gallup project as a first step to providing water

for proposed in-situ leach mining of uranium projects in the Navajo Eastern Agency chapters of Crownpoint and Church Rock, N.M. Domenici's previous attempt at a national energy policy included funding for companies deploying in-situ leach mining technology, however, that perk was removed from this year's final version of the Energy Policy Act.

Construction of NIIP was authorized in 1962. To date, more than 40 years later, the federal government has not fulfilled its promises regarding the irrigation project. The Navajo Nation later allowed construction of the San Juan-Chama Diversion project, which diverts water to Albuquerque, in exchange for completion of NIIP. The Chama project was completed in 10 years. After more than 40 years, NIIP is still only a little over halfway complete.

This further demonstrates the U.S.'s failure to live up to its trust responsibility.

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SOVEREIGNTY ISSUES

This is not the first time the United States has attempted to do away with tribal consent in the issuance of rights-of-way across Indian lands, according to an Albuquerque attorney consulted by the tribe regarding the impact of the Energy Policy Act of 2005 on tribal sovereignty.

Attorney Paul E. Frye stated that the Department of the Interior proposed rules in 1967 to take away the right of tribal consent for non-IRA tribes concerning rights-of-way.

"These proposed rules were directed at the Navajo Nation, which was feared to be an obstacle to energy development in the Southwest, on and through Navajo lands. (See "Disposal of Rights in Indian Tribal Lands without Tribal Consent," H.R. Rep. No. 91-78 (1969).

"Congress rightly reprovved the Department for this attempt to undermine tribal sovereignty, and the proposed regulations abrogating the rights of non-IRA tribes was withdrawn," Frye said. (Exhibit 2, Navajo Nation Legislation 0436-05, "Summary of Legislation Opposing Section 1607 of the Proposed Energy Policy Act of 2005," June 2, 2005, including various attachments to the legislation).

Since at least 2000, Domenici and Bingaman have spoken out about exploring tribal resources and are streamlining processes which would make that exploration more doable. The two congressmen have championed a number of energy and water bills through Congress. One of those streamlining processes is a Domenici-backed "one-stop-permitting" pilot project for oil and gas leasing in the Four Corners area -- including Navajoland -- which is designed to speed up the approval of applications to drill.

It appears that the federal government, through its various departments, is changing the rules to make it easier to legally help itself to mineral-rich tribal lands, and in doing so, is once again failing to live up to its trust responsibility to consult with Indian Nations.

CONCLUSION

In accordance with the Treaty of 1868, President Bush's Executive Order 13175, and provisions of NEPA, including Environmental Justice regulations, it is incumbent upon the Department of Energy to consult with the Natural Resources Committee of the Navajo Nation Council and to conduct a series of public scoping hearings at the 110 chapters that make up the Nation.

Conducting hearings in Albuquerque, Phoenix, or Salt Lake -- hundreds of miles away from the Navajo Nation -- do not serve the needs of the Navajo people or residents of the Navajo Nation, such as myself.

Helms respectfully requests that the Department of Energy give due consideration to the Navajo Nation and its residents by extending the comment period for 90 days and conducting scoping meetings throughout the reservation before proceeding with what appears to be a legal "taking" of tribal lands.

Respectfully submitted,

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November 28, 2005

EXHIBIT 1

NOTE: NOT POSTED ON WEB SITE; printed copy to follow in U.S. Mail

Monday, Nov. 14, 2005
Number 268 Volume 118
Gallup Independent
Southwest Page 5

Energy corridor may impact reservation land

By Kathy Helms
Dine Bureau

WINDOW ROCK -- U.S. government plans to designate national "energy corridors" on federal lands in 11 western states surrounding the Navajo Nation, appear to be building toward a legal takeover of Indian land through rights-of-way agreements the tribe could be forced to accept.

The Energy Policy Act of 2005 enacted in August directs the secretaries of

Agriculture, Commerce, Defense, Energy and the Interior to designate federal land in 11 western states for oil, gas and hydrogen pipelines, and electricity transmission and distribution facilities, or “energy corridors.”

The federal agencies must amend their land use plans to designate the series of corridors on federal lands in Arizona, New Mexico, Colorado, Utah, Nevada, California, Oregon, Washington, Idaho, Montana and Wyoming and have been conducting hearings on the issue, though none in Navajo Indian Country.

Federal lands are a combination of public domain lands, including state property and lands administered by agencies such as the Bureau of Indian Affairs, which holds 56 million acres in trust status on behalf of Indian nations and individuals.

Exhibit 1, page 2

Federal land under Interior stewardship amounts to 437 million acres. The USDA Forest Service manages another 192 million acres -- including Coconino National Forest where the San Francisco Peaks are located. The Department of Defense oversees 25 million acres on 425 major installations. The feds also control 1.76 billion acres of the U.S. Outer Continental Shelf.

Designating energy corridors as required by Section 368 of the 3-month-old energy policy could significantly impact the environment, the federal agencies said, prompting them to publish a notice of intent to prepare the West-Wide Energy Corridor Programmatic Environmental Impact Statement in the Sept. 28 edition of the Federal Register. Deadline for comment is Nov. 28.

The Department of Energy and the Bureau of Land Management, co-lead agencies in the effort, with the Forest Service acting as a cooperating agency, held a series of public meetings Oct. 25-27 in Denver, Albuquerque, Salt Lake City, Cheyenne, Wyo., and Helena, Mont. Meetings also were conducted Nov. 1-3 in Boise, Idaho; Sacramento, Calif.; Las Vegas; Portland, Ore.; Phoenix and Seattle.

The Navajo Nation holds rights to a wealth of oil, gas, coal, uranium and other minerals -- as well as hundreds of thousands of acre feet of precious water needed to sustain an ambitious energy corridor.

NATION LEFT IN THE DARK

Though the proposed corridors completely surround the Navajo Nation, Resources Committee Chairman George Arthur said Wednesday (Nov. 9) that committee members have not been told anything about it and have not been involved in federal discussions.

Exhibit 1, page 3 Resources has oversight on issues pertaining to lease permits for oil, gas and mineral development on Navajoland.

The Office of Navajo Nation President Joe Shirley Jr. has yet to respond to queries from The Independent regarding whether the Nation has been consulted.

Resources' Arthur said, "In as far as the U.S. energy corridor is concerned, at least for us as oversight on that part of the discussion, we have never been apprised of it.

"The Navajo Nation Resources Committee has never been at the table, has never participated in any shape or form in any of these discussions. Furthermore, if there is such a discussion, you've got to keep in mind that the Nation is a sovereign state. Whether people realize it or not, everything stops at the border."

The Navajo Nation is still in the process of developing its own energy policy which would reflect the objectives and mission statement of the Nation in regard to energy development in local, national, and international arenas, according to Arthur.

One of this greatest concerns in the designation of energy corridors is the vulnerability of the Eastern Agency of the Navajo Nation "because of the land structure and the relationship that it has with the federal government with the trust responsibility.

"I guess you could look at it as the Nation is a bigger figure in trust lands than individual allottees, so the vulnerability of individual allottees in respect to the pressure and impact of federal regulations and big corporations coming in is very open.

Exhibit 1, page 4

They're very vulnerable," Arthur said.

Uranium mining companies already are leasing land in Church Rock and Crownpoint within the Eastern Agency, despite the Nation's ban on uranium mining and processing passed in April by the 20th Navajo Nation Council.

President Shirley signed an Executive Order Nov. 4 prohibiting Navajo Nation employees from communicating with uranium mining companies without first receiving guidance from the Nation's Department of Justice.

Shirley said the move was necessary because some companies have been willfully disrespecting the Dine Natural Resources Protection Act of 2005 which banned uranium mining and processing.

GOVERNMENTAL GROUPS ISSUE ENERGY MEMORANDUM

A memorandum of Understanding was signed in August 2001 among DOE, the Interior, U.S. Department of Agriculture, U.S. Environmental Protection Agency, Council on Environmental Quality, and members of the Western Governors' Association. The MOU was to establish cooperation between western states and the federal government to address the West's growing energy problems.

An August 2002 letter to Vice President Dick Cheney from then-Energy Secretary Spencer Abraham and Interior Secretary Gale Norton advised Cheney that an interagency task force, the National Energy Policy Development Group, had been formed to address issues associated with "renewable energy" production on federal lands.

"Our response to the national Energy Policy reflects a commitment to increase our energy security by expanding the use of indigenous resources on
Exhibit 1, page 5

Federal lands, while accelerating the protection of our environment," they said.

The Energy Policy Act co-sponsored by New Mexico Sens. Pete Domenici and Jeff Bingaman contains a section on energy right-of-way corridors on federal land. Section 368 directs the secretaries of the various agencies to ensure that additional corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land "are promptly identified and designated as necessary." The secretaries also are instructed to "expedite applications."

El Paso Natural Gas, now in trespass on Navajoland after the two entities failed to reach agreement on the value of El Paso's right-of-way renewal, has teamed with a Washington, D.C.-based lobby group, the Fair Access to Energy Coalition, which goes by the acronym FAIR, to "ensure the movement of energy across tribal lands on reasonable terms."

Other members of FAIR include: New Mexico Oil and Gas Association, the Association of Commerce and Industry of New Mexico, Arizona State Chamber of

Commerce, Arizonans for Electric Choice and Competition, California State Chamber of Commerce, and Enterprise, which had its right-of-way agreement approved last month on the same day El Paso's expired.

The Enterprise contract is worth approximately \$23 million over the next 20 years for right-of-way access across 318 miles of fee land. The tribe is seeking \$400 million from El Paso for its 900-mile stretch of pipeline right-of-way and associated projects.

Exhibit 1, page 6

NOT IN TUNE WITH THE TIMES

El Paso representatives were in Window Rock Thursday (Nov. 10) hoping to get an extension from the Resources Committee; however, they failed to get on the agenda but will try again later this month.

El Paso has asked Interior Secretary Norton for an opinion regarding right-of-way status on Indian land. El Paso contends the federal government actually owns the land and that it's just held in trust for the Navajo Nation.

The New Mexico Oil and Gas Association is seeking Domenici's support in amending the Indian Right of Way statute to allow the Secretary of the Interior to grant pipeline rights-of-way over tribal lands despite objections by the affected tribes.

Resources' Arthur said, "In the discussion of the rights-of-way ... it's been very difficult because they perceive the Nation as not having to have been in tune with today's market value and the industry as a whole.

"But I think that people in the industry need to realize that we've been down that road, and we're not going to go down the same road twice and be expected to conclude our business settlement on the same terms and conditions as it was in the 1980s or the mid-1990s."

ON THE NET (to view map):

<http://corridoreis.anl.gov/guide/maps/map2.html>

Questions about submitting comments over the Web? Contact us at:
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