



Legislative Update on Indian Tribal Energy and Other Issues

U.S. Department of Energy's Tribal Energy Program

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October 25, 2010

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The American Context

- America Needs A Stable Energy Supply
- In 2008, Americans Used 99 Quadrillion BTUs of Energy (U.S. Energy Information Administration)
- Light and Heat American Homes
- Fuel American Cars
- Power the Huge U.S. Economy

The American Context

- Energy Production by Source
 - Coal: 23.9 quadrillion BTU
 - Natural Gas: 21.2 quadrillion BTU
 - Crude Oil: 10.5 quadrillion BTU
 - Nuclear Electric Power: 8.5 quadrillion BTU
 - Biomass: 3.9 quadrillion BTU
 - Hydro, Natural Gas Plant Liquids, Wind, Geothermal, and Solar: 6.9 quadrillion BTU

The American Context

- America Undergoing Energy Policy Review
- Reduce Dependence on Foreign Energy
- Shift Away from Traditional Sources
- Cleaner and Renewable Energy
- Carbon Regulation / Climate Change

An “All of the Above” Energy Policy

- Diversified Indian Energy Resources Make Indian Country “All of the Above”
- Wind – Campo Band of Kumeyaay Indians
- Natural Gas – Southern Ute Indian Tribe
- Coal – Crow Tribe, Navajo Nation
- Oil – Three Affiliated Tribes
- Biomass, Geothermal, Solar, Hydro

Challenges to Energy Development

- Resource Assessment
- Technical and Scientific Knowledge
- Managerial and Planning Acumen
- Financial Expertise
- Regulatory Capacity
- Capital and Financing
- Physical Infrastructure

Challenges to Energy Development

- Outdated Federal Laws
- Reliance on Federal Decision-makers
- Secretary of the Interior Review Leases, Renewals, R-o-Ws, Business Agreements
- Lead to Establishment of “Tribal Energy Resource Agreements” in Title V
 - The “49 Step” Process at Ft. Berthold

Competitive Disadvantages

- \$6,500 APD Fee for activity on “Federal lands” applicable to Indian lands
- NEPA applicable by virtue of Interior Secretary’s Review of Leases, etc.
- Regulatory Uncertainty, e.g. Minor Source Permitting under the Clean Air Act
- Double Taxation of Energy Activities

Remedial Legislation: IEPA (S.3752)

- “Indian Energy Parity Act of 2010” (Dorgan)
 - Reform Appraisals, Funding and Planning
 - Bundle Access and Leases of Indian Land
 - Liberalize Indian Land Leasing Statutes
 - Prohibit APD Fees on Indian Land
 - Tribal Enforcement of NEPA
 - Weatherization, En Efficiency & Planning

Enacted Legislation - 111th Congress

- Energy and Commerce Recovery and Reinvestment Act (Part of ARRA);
- Utah Recreational Land Exchange Act;
- A Bill to Amend the Oil Pollution Act of 1990 to Authorize Advances from Oil Spill Liability Trust Fund for the Deepwater Horizon Oil Spill;
- A Bill to Extend the Deadline to Commence of Construction of Hydroelectric Project.

Legislation Pending in the U.S. Senate

- Senate Declared “High Priority” Items:
 - Advanced Clean Energy Tax Incentives Act (S.3935);
 - American Clean Energy Leadership Act (S.1462);
 - Renewable Electricity Promotion Act (S.3813);
 - Clean Energy Jobs and Oil Company Accountability Act (S.3663).

Legislation Pending in the Senate

- **Job Creation and Tax Cuts Act (S.3793).** Provides 1-year extensions of the Indian wage and health care credit; the accelerated depreciation allowance for property placed in service on Indian reservations; biodiesel and renewable energy incentives; and a credit for improving energy efficiency of homes.
- **American Clean Energy Leadership Act (S.1462).** A comprehensive energy bill, including Clean Energy Financing; Transmission Siting; Energy and Water Integration; Federal Oil and Gas Development; and Energy Markets.
- **American Power Act.** A draft climate change bill which would provide incentives for domestic production of clean energy technology; aim to reduce pollution; and create jobs.
- **Clean Energy Jobs and American Power Act (S.1733).** A climate change bill, including a 3 percent allocation of emission allowances to Indian tribes for energy efficiency and renewable energy activities and an energy efficiency retrofit program for Indian tribes.

Legislation Pending in the U.S. House of Representatives

- **Consolidated Land, Energy, and Aquatic Resources Act (H.R.3534).** A bill signed to create greater efficiencies, transparency, and accountability in the development of Federal energy resources, a/k/a a bill to reorganize the Interior Department.
- **Domestic Manufacturing and Energy Jobs Act.** A draft bill consisting of energy and green jobs tax incentives, with an estimated cost of between \$25 and \$35 billion.
- **American Clean Energy and Security Act (H.R.2454).** An energy and climate change bill intended to create clean energy jobs, achieve energy independence, reduce global warming, and create a clean energy economy.

Status of FY2011 Appropriations Bills

- Senate Energy and Water Development Related Agencies Appropriations Act, 2011 (S.3635)
 - \$28.3 billion for the Department of Energy, including \$2.3 billion for the Energy Efficiency and Renewable Energy programs;
 - \$200 million recommended for the weatherization activities and \$10 million for “tribal energy activities;”
 - \$5.5 million is recommended for activities undertaken by the Office of Indian Energy Policy and Programs; and
 - House Appropriations Committee has not unveiled its version of the measure.

Status of FY2011 Appropriations Bills

➤ Interior, Environment, and Related Agencies Appropriations Act, 2011

- Neither the Senate or the House Appropriations Committee has released their detailed FY2011 funding levels;
- The President's Budget Request for the DoI proposed to continue the \$6,500 fee for applications for permits to drill (APD) on Federal and Indian lands;
- House Appropriations Committee's summary includes: \$1.1 billion for the Bureau of Land Management; \$152 million for the Bureau of Ocean Energy; \$157 million for the Office of Surface Mining; \$2.57 billion for the Bureau of Indian Affairs; \$168 million for the Office of Special Trustee; and \$4.4 billion for the Indian Health Service.

Development, Risk and Uncertainty

- Regulation of Green House Gases (GHGs)
 - April 2010 *Massachusetts v. EPA*, 5-4 case holding that the EPA can regulate GHGs under the Clean Air Act (CAA);
 - Congressional Indecision in 111th Congress;
 - May 2010 EPA issues a Final Rule to regulate GHGs under the CAA; and
 - June 2010 Sen. Murkowski proposes S.J.Res. 26 to disapprove the EPA's rule.

Mid-Term Elections and the 111th Congress

- Currently, the Democrats have majorities in both the House (255 to 174) and the Senate (59 to 41).
- Next Tuesday, all 435 House Members and 1/3 of the Senate will face re-election.
- Polls suggest Republicans will pick up more than 50 seats in the House and 7 or 8 in the Senate.

The Lame Duck: November-December 2010

- The Senate is the key to anything being passed in the Lame Duck Session(s):
 - Leadership wants an Omnibus Appropriations Bill considered the week of November 15
 - After Thanksgiving, Senate intends to consider “other pending legislation” including legislation to extend expiring tax provisions and, perhaps, an Omnibus Energy Bill
 - IEPA, water settlements, TSGA, Cobell, HEARTH surface leasing act, remain pending

All Eyes on the Mid-term Elections

- If Republicans win the House and make significant gains in the Senate, it is possible --- PM thinks more likely than not -- that there will only be 3 items enacted during the Lame Duck Session(s):
 - A Continuing Resolution to February 2011;
 - A Bill to Extend Expiring Tax Provisions; and
 - A Resolution to Adjourn Sine Die.....and that would effectively end the 111th Congress.

Mid-Term Elections and the 112th Congress

➤ A Republican House of Representatives

- Context: emphasize traditional energy resource development
- E&C - Fred Upton (MI) / Waxman (CA)
- Nat Resources - Doc Hastings (WA) / Rahall

➤ A Democratic Senate

- A more evenly split Senate chamber
- ENR - Jeff Bingaman (NM) / Burr (NC)
- IAC - Maria Cantwell (WA) or Jon Tester (MT) / Barrasso (WY)

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