



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov)
Date: May 10, 2021
Subject: Oversight Hearing titled “Environmental Justice in Indigenous Communities”

The Subcommittee for Indigenous Peoples will hold an Oversight Hearing titled “Environmental Justice in Indigenous Communities” on **Thursday, May 13, 2021, at 10:00 a.m. EDT** online via Cisco WebEx.

Member offices are requested to notify Rob MacGregor (Robert.MacGregor@mail.house.gov) by **4:30 p.m. on Monday, May 10, 2021**, if their Member intends to participate. Member offices are also requested to indicate whether their Member plans to attend in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (DavidDeMarco@mail.house.gov) or Everett Winnick (Everitt.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The United States has a treaty and trust responsibility to federally recognized Indian tribes.
- Tribal consultation, as memorialized in Executive Order 13175,¹ ensures engagement with tribal nations on federal policies that have tribal implications.
- Tribes continue to demonstrate they are the best stewards of their own lands and can implement innovative solutions to address climate change and environmental justice. Restrictions on legitimate land uses, such as energy production, only reduce the economic opportunities within tribal communities.

II. WITNESSES

- **The Honorable Melvin Baker**, Chairman, Southern Ute Indian Tribe, Ignacio, CO
[Republican Witness]

¹ <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

- **The Honorable Mike Faith**, Chairman, Standing Rock Sioux Tribe, Fort Yates, ND
- **Mr. Herb Lee, Jr.**, President & CEO, Pacific American Foundation, Kaneohe, HI

III. OVERVIEW

Committee Democrats have called this hearing to broadly analyze environmental justice in tribal communities. It is anticipated that the Majority will attempt to highlight the impacts of energy development and related activities, such as pipeline construction, mining, and oil and gas production, while ignoring the valuable economic benefits the activities provide. Democrats will likely argue that energy projects have neglected the concerns of minority communities in the past and that planning for renewable infrastructure should consider “environmental justice” (EJ).

While this is not a legislative hearing, Committee Democrats will likely promote aspects of Chair Grijalva’s Environmental Justice for All Act.² One of the major provisions of this legislation within the Committee on Natural Resources’ jurisdiction provides tribes the authority to act as a “cooperating agency” during the National Environmental Policy Act (NEPA) process. This would elevate tribal involvement during the NEPA process, allowing for tribal input on any proposed action that could impact a tribe, as determined by the tribe, extending to off-reservation land and sacred sites.

Under the legislation, tribal input could occur as early as the scoping process for a proposed action, requiring the preparation of an environmental impact statement should the tribe request that level of review. While the bill has not yet been reintroduced in the 117th Congress, staff anticipates continued Democrat effort to advance this legislation. In addition to the concepts in the legislation, this hearing will expand on specific EJ related projects.

IV. BACKGROUND

The Environmental Protection Agency (EPA) has broadly defined EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”³ Established in 2014, the EPA EJ policy for working with federally recognized tribes and indigenous peoples outlines how the agency helps protect the environment and public health in Indian country.⁴

Over the last decade, several high-profile energy projects have been subject of the Majority’s oversight. In 2017, construction on the Dakota Access Pipeline (DAPL) was completed after three years of review with numerous meetings and consultations with tribes and other stakeholders.⁵ The vast majority of the pipeline is installed underground on

² <https://www.congress.gov/116/bills/hr5986/BILLS-116hr5986ih.pdf>

³ <https://www.epa.gov/sites/production/files/2017-10/documents/ej-indigenous-policy.pdf> at 5.

⁴ <https://www.epa.gov/environmentaljustice/environmental-justice-tribes-and-indigenous-peoples>.

⁵ <https://daplpipelinefacts.com/The-Facts.html>

privately owned property in North Dakota, South Dakota, Iowa, and Illinois. The only point at which the pipeline passes through public property is under the Missouri River, at Lake Oahe in North Dakota, which is owned by the federal government.⁶ This crossing is located about a half-mile north of the Standing Rock Sioux reservation.⁷ The Standing Rock Sioux Tribe has continued to oppose the project, filing a lawsuit in 2016 alleging that consultation had not taken place.⁸ Additionally, the tribe claims that the pipeline could negatively impact their water supply, despite the fact that the Tribe's water intake is located 75 miles away from the pipeline.⁹

Another project that will likely be discussed is the Resolution Copper Mine, which was the subject of a April 13, 2021, Subcommittee on Energy and Mineral Resources legislative hearing on H.R. 1884.¹⁰ The San Carlos Tribe contends that, as planned, the mine will destroy a site known as Oak Flat, which is considered sacred by their members. According to the 2021 Final Environmental Impact Statement (FEIS) for the project, Oak Flat has been "historically used by Native Americans who hold the land as sacred and use the area for spiritual and traditional uses."¹¹ While the 2021 FEIS stated that Oak Flat will be subject to long-term subsidence from the mine and notes the possible loss of the site, the project proponent affirmed that subsidence will occur gradually over the life of the project and leave the main cultural and religious areas unaffected. The site known as Apache Leap and an additional 1,000 acres have received a Special Management Area designation by the U.S. Forest Service (USFS), meaning the project proponent has a legal obligation to leave the site in the same condition it is in now.

H.R. 1884 was introduced by Chair Grijalva and would repeal the Resolution Copper land exchange.¹² The findings of the legislation state that the land exchange circumvents standard environmental procedures regardless of findings resulting from the environmental review process. Unfortunately, H.R. 1884 ignores facts that the Forest Service's Tonto National Forest has held many formal consultation meetings and field tours with Indian tribes from surrounding areas near the Resolution Copper project. The record of these meetings is summarized in a document prepared by the USFS which can be found [here](#).

On April 28, 2021, the Committee held a mark-up of H.R. 1884, ordering the bill be favorably reported on a party-line vote 23-20. Republicans filed ten amendments to the bill, all of which were blocked by the Democrat majority.

⁶ Id.

⁷ <https://mwalliancenow.org/wp-content/uploads/2016/09/Memorandum-Opinion.pdf> at 18.

⁸ <https://mwalliancenow.org/wp-content/uploads/2016/09/Document-39.pdf>

⁹ <https://www.reuters.com/article/us-north-dakota-pipeline-water/for-standing-rock-sioux-new-water-system-may-reduce-oil-leak-risk-idUSKBN13H27D>

¹⁰ https://republicans-naturalresources.house.gov/uploadedfiles/2021-04-13_scip_leg_hrg.pdf.

¹¹ Resolution Copper Project and Land Exchange FEIS Executive summary. January 2021. E-4. <https://www.resolutionmineeis.us/sites/default/files/feis/resolution-final-eis-vol-1.pdf>.

¹² 16 U.S.C. 539p

Tribal Consultation

Out of respect for the special status of Indian tribes, the United States and its agencies consult with Indian tribes on proposed actions that may affect their interests. This obligation was formalized in Executive Order 13175 (November 6, 2000), which contained instructions for agencies to establish procedures to ensure “meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes ...”¹³

On January 26, 2021, President Biden issued a memorandum reaffirming the policy established under Executive Order 13175.¹⁴ As with the Executive Order on sacred sites, this order creates no right, benefit or trust responsibility in law or equity. However, federally recognized tribes are provided with adequate opportunity to voice concerns and provide project input.

Solutions

As previously noted, the Majority will promote the policies contained in Chair Grijalva’s Environmental Justice For All Act. The bill imposes new fees on the oil, gas, and coal industries which will drive up energy costs for disadvantaged communities.¹⁵ These proposals are more about stopping energy production and pushing for renewable energy sources, while ignoring the economic benefit current energy production provides tribal communities.

Rather than shackle economic development on tribal land, Congress should examine innovative ways to responsibly utilize domestic energy supplies while improving conditions within tribal communities. For example, the proliferation of carbon capture technology could significantly benefit tribal communities. Developed by Rodney Allam and Jeremy Fetvedt, a semi-closed loop technology leverages oxy-combustion to produce emissions-free power. This burns natural gas with pure oxygen. The resulting CO₂ is recycled through the combustor, turbine, heat exchanger, and compressor, creating lower-cost power with zero emissions.¹⁶

The Southern Ute Indian Tribe has partnered with 8 Rivers Capital, LLC to develop the Coyote Clean Power Project, locating one of the world's first zero-emissions NET Power¹⁷ natural gas-fired power plants within the Southern Ute Indian Reservation. The Coyote Clean Power Project will produce 280 MW of clean power 24/7, while capturing and

¹³ <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

¹⁴ <https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf>

¹⁵ <https://thehill.com/opinion/energy-environment/550070-congress-hijacks-environmental-justice-to-help-the-wealthy-not-the?rl=1>

¹⁶ <https://netpower.com/technology/>

¹⁷ <https://netpower.com/>

storing CO₂. 8 Rivers, through its Zero Degrees development business, and the Southern Ute plan to design and construct a NET Power plant over the next five years.¹⁸

¹⁸ <https://www.prnewswire.com/news-releases/8-rivers-capital-and-the-southern-ute-growth-fund-announce-joint-development-of-zero-emissions-net-power-plant-301269105.html>