

West-Wide Energy Corridors

Hearing before the

Subcommittee on National Parks, Forests and Public Lands
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives

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My name is Charlie Vaughn and I am the Tribal Chairman of the Hualapai Indian Tribe of Arizona. On behalf of the Hualapai Tribe, I thank the Committee for the opportunity to present testimony today.

The Hualapai Reservation in northwestern Arizona is comprised of nearly one million acres, which is about one-tenth of the territory that our tribe historically inhabited. We continue to have concerns regarding traditional and sacred places and other cultural resource sites occurring on lands that our ancestors inhabited but which are not within our current reservation boundary. Much of our ancestral lands are now federal lands under the administration of the Bureau of Land Management or the Forest Service.

We have reviewed the West-wide Energy Corridor Draft Programmatic Environmental Impact Statement (Draft PEIS) that has been prepared pursuant to section 368 of the Energy policy Act of 2005.

We are concerned about a number of energy corridors that have been proposed on BLM lands and National Forest lands. In particular, we are concerned about the proposed corridors designated as: 47-68, 61-207, 47-231, 41-47, 41-46, 46-270, 46-269 and 27-41. With respect to all of these proposed corridors, we are mainly concerned about the potential for adverse impacts on historic properties and other cultural resources.

With respect to proposed corridor 47-231, we note that its easternmost point is at the boundary of our reservation. As such, it is clearly envisioned as connecting to energy facilities that cross our reservation. Any such facilities located within our reservation would of course be subject to federal laws and regulations governing rights-of-way over tribal trust lands.

We understand from the Draft PEIS that after any decisions are made to designate energy corridors, there will have to be site-specific decisions to authorize any earth disturbing

activities within those corridors and that prior to the land managing federal agency deciding to authorize any such activities there will be another round of site specific environmental review in accordance with applicable laws and regulations. We anticipate participation in such site specific reviews with respect to any of the proposed corridors listed above. Our participation would mainly be through our Tribal Historic Preservation Officer, in accordance with the consultation process established by the regulations issued by the Advisory Council on Historic Preservation pursuant to the National Historic Preservation Act.

Based on our review it is also apparent that although the land managing federal agencies may attempt to comply with the NHPA section 106 process; including consultation with state historic preservation officers; they must still comply with Section 101(d) of the statute which requires that when a proposed federal undertaking may affect a historic property that a tribe regards as holding religious and cultural significance, the federal agency must include the tribe in the section 106 consultation process. In its present form the energy corridor PEIS seems to be silent in regard to this issue at the present time.

Early consultation with tribes in the section 106 process is important because many of the sites we are concerned about-especially those traditional cultural properties and other historic properties that have religious significance; may require avoidance by a project or other forms of mitigation determined to be acceptable by the tribe.

For an agency to decide on a route before consulting with tribes to identify such properties and evaluate their importance is an invitation to failure. The present approach based on the federal agencies interpretation of what a consultative process is; conveys the message that they will define the consultation process and they really don't much care about tribes' concerns.

Moreover, there is a public interest in preserving places on federal lands that hold religious and cultural importance for tribes. After all, the record of our history is many times set in stone and that record is either compromised or destroyed by selfless disregard for federal law. It seems that the public is now recognizing that the history of this country, an American history, is being destroyed as well.

It must be understood that efforts such as this must comply with federal law that includes the National Register of Historic Places, the American Indian Religious Freedom Act and Executive Order 13007 that proclaims a national policy of preserving such places and protecting the access of traditional practitioners to such places.

We recognize that the federal agencies have sought to engage tribes in the Western U.S. in government to government consultation. However, it should be understood that tribal consultation is not a broad based effort that includes multiple tribes in a single setting, although that satisfies the definition of consultation for the federal agencies, it does not

satisfy this tribes' definition of meaningful consultation which is consultation that is personal and individual to the Hualapai Tribe.

We also want to note that while we feel it important to respond to all requests we receive for consultation. Doing so rapidly diminishes tribal resources. As much as we believe that it is important for federal agencies to engage in consultation with tribes on proposals such as the energy corridors project, we also believe that federal agencies should provide tribes with sufficient resources so that consultation can be a meaningful endeavor. This would be directly associative to their trust responsibility to tribes.

As noted earlier, one of the proposed energy corridors butts up against our reservation boundary. We know that the scope of the energy corridors DEIS is limited to federal lands and that the subject matter of energy rights of way on tribal lands has been the subject of a separate study conducted pursuant to section 1813 of the Energy Policy Act of 2005. We want to call to your attention one of the issues that tribal representatives raised in the section 1813 study and that is the implications of recent Supreme Court decisions on tribal sovereignty on rights of way over trust lands.

Tribal governments have a range of sovereign responsibilities for trust lands, including those that are subject to rights of way for energy facilities such as transmission lines and pipelines. Tribal sovereign responsibilities include environmental protection, emergency response and cultural resources management.

In conjunction with such sovereign responsibilities, many tribal governments, including our own, have enacted legislation imposing taxes on various kinds of business activities and/or personal property within rights of way.

In 1997, however, in the case of *Strate v. A-1 Contractors*, 520 U.S. 438, the U.S. Supreme Court reached a decision saying that a right of way over tribal trust land is like privately owned land for jurisdictional purposes. After that decision, a number of lower federal courts issued rulings striking down tribal tax laws as applied to rights of way. See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 8.04[2][b].

These court rulings have made it hard for tribes to raise revenue to fund their government and self sufficiency. Tribal governments need to be able to develop non-federal sources of funding, like other sovereign governments in our federal system.

In addition to our concerns with the energy corridor PEIS, we suggest the Committee look into ways that help tribes develop and preserve non-federal sources of revenue, including the ability to levy taxes on rights of way over trust lands.

Thank you again for the opportunity to testify before the committee.

Sincerely,

Charlie Vaughn, Chairman
Hualapai Tribe