Pipelines in Indian Country: Issues of Jurisdiction, Ownership, Compliance and Communication

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Sleeping Ute Mountain, Towaoc, Colorado
Sacred Place
Ute Historic Occupation
History of Reservations
Ute Mountain Ute Tribe

- Governed by Seven-Member Tribal Council
- Communities in Towaoc, CO and White Mesa, UT
- Population: 2200 (Resident population ~ 1500)
- Land Mass: 694 mostly contiguous square miles (CO, NM and UT) (not “checker-boarded”)
- Resources: Minerals, Water, Timber, Cultural, Livestock
- Annual per capita to Tribal Members generated from energy revenues
- Enterprise revenues fund Tribal operations and general welfare doctrine funds
- About 1/3 of the reservation excluded from any development
- 13 restricted fee properties off reservation – no mineral development
MINERAL DEVELOPMENT

Tribal Side

• Many reservations are rich in marketable coal, oil and gas.
• UMUT: Approximately 250 oil and gas wells. Approximately 300 million tons of mineable coal.
• UMUT Tribal Departments: Minerals Committee, Energy Division, Environmental Programs Department, Tribal Historic Preservation Office, Tribal Employment Rights Office, Office of Natural Resource Revenue (“638”), Natural Resources Department, Weeminuche Construction Authority, Planning and Development Department and Justice Department.
MINERAL DEVELOPMENT

Federal Side

- Federal Agencies: Bureau of Land Management, Bureau of Indian Affairs, Environmental Protection Agency, Fish and Wildlife Service, Mine Safety and Health Administration, Federal Energy Regulatory Commission


- BIA has jurisdiction over all operations and primary jurisdiction on the surface

- BLM has jurisdiction “down-hole”
MINERAL DEVELOPMENT

State Side?

- Oil and Gas Commissions
- Taxing Authority
  - Levied against non-Indian-owned operators and not against the Tribe
  - Benefits available to Tribes like any other landowner or operator
- Who is compelled to comply?
- Who is compelled to enforce?
LAND STATUS

• Reservation Land
  • Created by Treaty, Executive Order, Congress or Operation of Law
  • Held in Trust by United States. Federally protected.
  • Tribe may not encumber without federal authorization
  • Tribal and federal laws apply. State criminal laws in certain circumstances. (But see P.L. 83-280.)
• Restricted Fee
  • Tribe acquires by acquisition
  • Tribe may not encumber or dispose without federal authorization
  • Tribal and federal laws apply. State laws apply if not pre-empted
• Fee Simple
  • Tribe acquires by acquisition
  • No federal nexus
  • State and federal laws apply
  • If “Indian Country”, Tribal laws apply (Difficult to establish)
COMMUNICATION

• Tribal main point of contact is typically the Chair of the Tribal Council
• Tribes may have boards, committees and regulatory bodies established
• Tribes may default to federal agencies
• Bureau of Indian Affairs will oversee all Tribal land operations, issues rights-of-way, has authority to approve all agreements and can terminate leases and rights-of-way
• Bureau of Land Management will oversee all operations below the surface, issues Incidents of Non-Compliance and approves Applications for Permission to Drill and Sundry Notices
• State will impose regulations through its taxing authority – may not be at Tribe’s consent and is not typically a party to reservation operations
• Environmental Protection Agency will monitor and assist Tribe in compliance
THANK YOU!

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