RENEWABLE ENERGY PROJECTS ON TRIBAL LANDS:
FEDERAL PROCESSES AND APPROVALS

Sarah Walters
Shareholder
American Indian Law & Policy Group
202-383-4719 (Direct)
swalters@BHFS.com
Introduction

• Sarah Walters
  • Member of the Cheyenne River Sioux Tribe
  • Former chief of staff to the Assistant Secretary – Indian Affairs
  • Former attorney at Division of Indian Affairs at DOI

• Jason Buckner
  • Experienced in various types of energy development, worked for world’s largest mining company
  • Former director of congressional and legislative affairs at DOI
  • Former chief of staff to Rep. Dan Boren (D-OK)
Benefits of Renewable Energy Projects on Tribal Lands

- Cost savings
- Economic Development through lease income or energy sales
- Short term and/or long term job growth
- More environmentally conscious source of energy
- Can be developed on otherwise unusable lands
What types of projects are available?

- **Biomass** (woody and waste) – can be used to generate heat and power for community through incineration, gasification, etc.
- **Hydropower** – creates electric power through kinetic energy harnessed from moving water
- **Solar** – captures energy from the sun to create electricity
- **Wind** – creates electric power through kinetic energy harnessed from wind
- **Geothermal** (natural gas) – can be used to generate heat and power at community, industrial, and utility scales
First things first: What kind of land is it?

- **Trust lands** – title held in trust and managed by DOI for a tribe’s benefit. This is what we’ll be talking about in this presentation.

- **Allotted lands** – held in trust and managed by DOI for the benefit of individual Indian owners and can be developed under agreements with DOI and allottees.

- **Fee lands** – owned by Indians or non-Indians and not subject to the same rules and restrictions as trust or allotted lands. Certain rules will still apply and must be followed.
Potential Siting Issues

- Practical concerns – what’s the best place?
- Title – clear or cloudy? BIA Trust Services Realty Office
- Adjacent lands/access – rights of way and easements?
- Access to existing utilities, pipelines, buildings, etc.
- Environmental concerns
Federal Tools and Resources Available to Tribes

- If you’re not sure about whether a project is right for your tribe, Indian Affairs has resources to help you evaluate and plan:
  - **Tribal Energy Development Capacity (TEDC) Grants** – Help you develop governmental and/or business capacity to develop and maintain projects.
  - **Energy and Mineral Development Program (EMDP) Grants** – Help you decide whether a project is feasible and right for your tribe.
  - **HEARTH Act Ordinance Approval** – Allows tribes to approve their own surface leases with an approved ordinance. Cuts out BIA lease approval.
Federal Tools and Resources Available to Tribes, Continued

• Department of Energy (DOE) provides online courses on renewable energy for tribes. Visit www.doe.gov

• DOE also provides technical assistance to tribes in the following areas:
  • Technical analysis: modeling, expert review, transmission and/or utility assessment, market access, and energy efficiency
  • Financial analysis: economic or market analysis, including modeling for payback periods, net present value (NPV), and levelized cost of energy (LCOE)
  • Strategic energy planning: initial resource assessment, energy options analyses, and development of a viable roadmap for development
Federal Tools and Resources Available to Tribes, Continued

- The Division of Energy and Mineral Development at DOI provides various services for tribes: [www.bia.gov/as-ia/ieed](http://www.bia.gov/as-ia/ieed)

- DOI provides technical assistance to tribes in the following areas:
  - **Experts**, such as engineers, geologists, geophysicists
  - **Economic planning** and analysis
  - **Technical information** and assistance
  - **Marketing assistance** for tribal energy and mineral resources
  - **Liaising** between tribes and industry to develop partnerships
  - **Preparing** information needed for access to capital
TERAs and TEDOs

- **Tribal Energy Resource Agreements (TERA)** – Theoretically allows tribes to enter into lease agreements for energy related activities and sub-surface leases. No tribe has completed one to date.

- **Tribal Energy Development Organizations (TEDO)** – Tribes can create a TEDO to develop energy projects more efficiently by entering into business agreements, rights-of-way and leases directly with the TEDO without BIA involvement or approval.
  - Must be a tribal entity or partnership with at least one tribe
  - Must satisfy certain regulatory criteria and obtain certification
You’re ready to get going: now what?

- We will walk you through:
  - National Environmental Policy Act (NEPA)
  - Other Federal Approvals
  - Rights of Way and Easements
  - Lease Agreements
  - State/Local/Utility involvement
NEPA

- Enacted to protect environment and mitigate harms, provide public comment on projects
- Applies to all projects that require federal approval or funding
- Complex process, lots of moving parts
NEPA, continued

- What type of review?
  - **Categorical Exclusions** (CATEX) – certain types of projects will not require NEPA review (unlikely)
  - **Environmental Assessments** (EA) – lower level of review when it is unclear whether a project will have a significant environmental impact; results in FONSI or EIS
  - **Environmental Impact Statements** (EIS) – when significant environmental impact is anticipated
NEPA, continued

- Public involvement in the EA and EIS Process
  - Public can comment on proposed project; comments should be addressed
- Tribal government involvement
  - BIA should coordinate with the tribe on NEPA process
NEPA, continued

- Other agency involvement – cooperating agencies
  - National Parks Service – National Historic Preservation Act, National Parks, other considerations
  - Fish and Wildlife Service – Endangered Species Act
  - Bureau of Land Management – Final agreement approval, other land management concerns
  - EPA – Clean Water Act, Clean Air Act, etc.
  - Other agencies
NEPA, still

- Records of Decision
  - Mitigation
  - MOUs and MOAs with state and locals when necessary
  - Economic impacts?
Other Federal Approvals

- Leases – BIA and BLM
  - For projects where tribes are working with others
  - If no HEARTH ordinance, BIA does most of the leasing work for Indian lands
  - BLM sometimes provides approval of lease agreements
  - Analysis of market, etc. is necessary to determine lease rates
Other Approvals, continued

- **Rights of Way/Easements – BIA, BLM, etc.**
  - Do you have to cross other lands to access the project?
  - Required for pipelines, transmission lines, etc. to cross lands
  - May have to deal with allottees, non-trust lands, other federal lands, state or local governments

- **Large Projects/Transmission Lines – Federal Energy Regulatory Commission (FERC)**
  - Might have a role in approvals process if certain requirements are met
Federal Permitting Improvement Steering Council

- Created to help streamline permitting process for large projects
- Coordinates process for major infrastructure projects with multijurisdictional issues
- Aiya (Moapa) solar project began to use this process
- See examples of projects at permits.performance.gov
Dealing with State, Local Governments and Utilities

- Access to the grid requires dealing with utilities and power companies
- Depending on how land is situated, might need to coordinate with state and local governments
- Power Purchase Agreements
Questions?

Sarah A. Walters
202.383.4719 tel
swalters@bhfs.com

Jason L. Buckner
202.216.4868 tel
jbuckner@bhfs.com

www.bhfs.com
THANK YOU!