

SHARED STORIES

- ✧ Potential for a wind project identified
- ✧ Significant tribal, federal, and private resources dedicated to determining feasibility
- ✧ Anemometer installed and monitored for years
- ✧ PPA & interconnection negotiations
- ✧ NEPA studies start
- ✧ Surface lease submitted to BIA
- ✧ Project never gets developed

SHARED STORIES

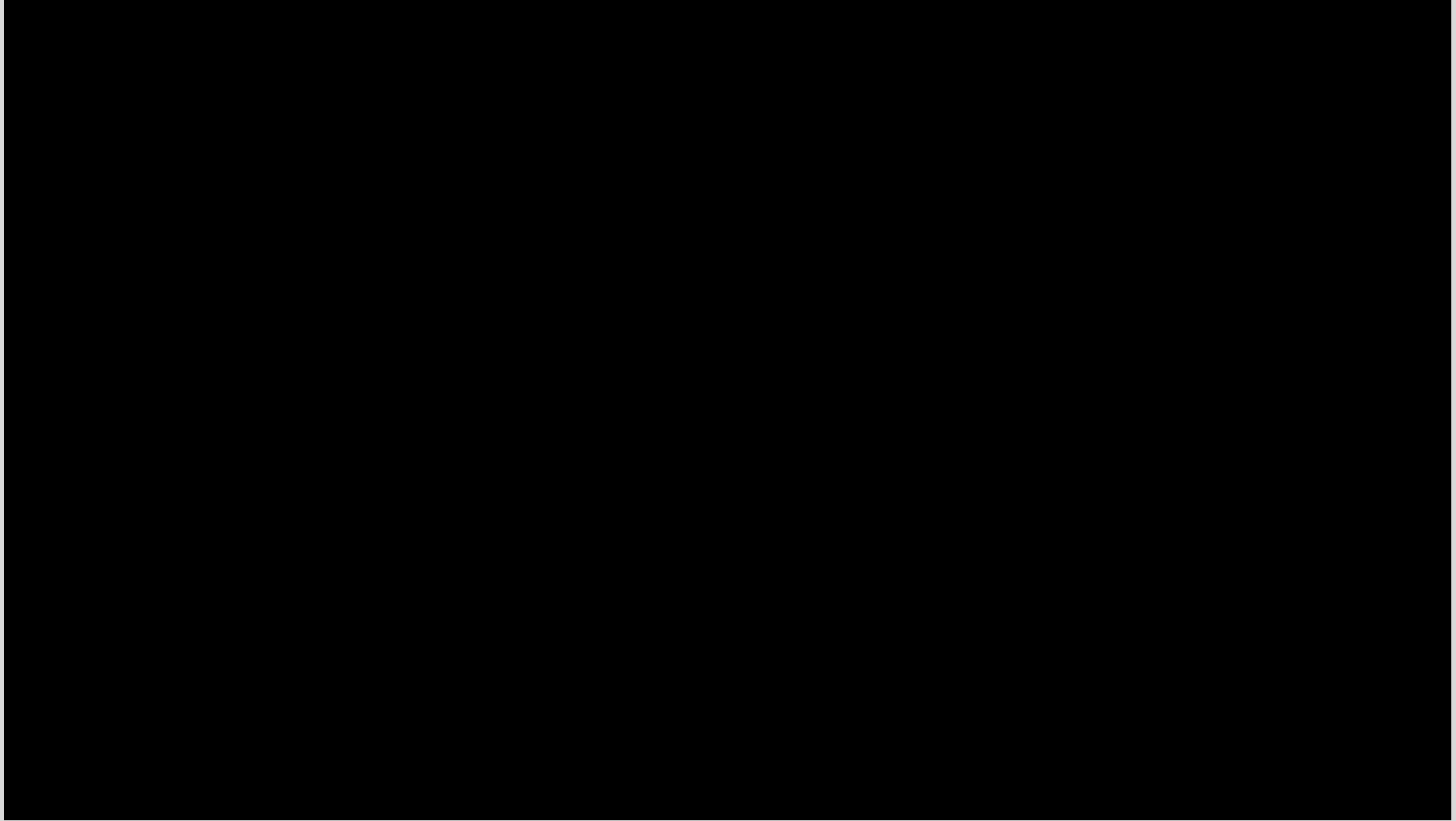
- ✧ Oil and gas resources identified
- ✧ Tribe and members see development all around
- ✧ Seek developers to open negotiations
- ✧ Developer requests land title status reports to BIA
- ✧ Developer and tribe submit request for a lease sale
- ✧ Oil and gas resources remain undeveloped

WHY?

- ✧ Chairman Barrasso from Senate Committee on Indian Affairs submits a request to GAO to identify the factors that are leading to these shared experiences.

- ✧ The Committee wanted GAO to examine the following:
 - (1) Factors that have hindered Indian energy resource development
 - (2) Factors that have deterred tribes from seeking Tribal Energy Resource Agreements (TERA)
 - (3) The effectiveness of Tribal Energy Development Capacity grants to build tribes' capacity to enter into TERAs

GAO



Report released in June 2015

INDIAN ENERGY DEVELOPMENT: Poor Management by BIA Has Hindered Energy Development on Indian Lands

Oversight hearing before Senate Committee on Indian Affairs in October 2015

GENERAL BACKGROUND

- ✧ **Federal policy** promotes and supports opportunities for increased tribal self-governance and **greater tribal autonomy**
- ✧ According to literature we reviewed, successful tribal economic development depends in part on **tribal control and decision-making authority** over the activities that affect the tribe and its tribal members.

BACKGROUND

- ✧ Federal government's transition from decision maker to advisor, from controlling the process to providing information and technical assistance to tribes.
- ✧ Guiding principles of the trust relationship:
 - supporting tribal **sovereignty**
 - Indian tribes have the right to make important decisions about their own best interests
 - Interior agencies are to practice **responsiveness and timeliness**
(*Secretarial Order 3335*)

BACKGROUND

- ✧ **HEARTH Act:** Tribes can develop and implement their own regulations governing leasing of Indian lands for residential, business, renewable energy, and other purposes. Upon approval of its regulations by Interior, **a tribe may process these leases without first obtaining approval from BIA.**

BACKGROUND

- ✧ Indian Tribal Energy Development and Self-Determination Act (ITEDSA) of 2005 provides an option for tribes to **exercise greater control of decision-making authority over their own energy resources.**
- ✧ The ITEDSA provides for interested tribes to pursue a Tribal Energy Resource Agreement (TERA)—an agreement between a tribe and the Secretary of the Interior that allows the tribe, at its discretion, to enter into leases, business agreements, and ROW agreements for energy resource development on tribal lands **without review and approval by the Secretary.**

SENATE COMMITTEE ON INDIAN AFFAIRS



HINDERING FACTORS

Shortcomings in BIA's management:

- ✧ BIA does not have comprehensive data identifying ownership and use of Indian resources
 - Cadastral surveys cannot be found or are outdated
 - BIA does not have comprehensive GIS mapping data identifying resource ownership and use of resources
 - Troubles obtaining information that does exist
- ✧ As a result, for example, leases cannot be approved or use of resources cannot be identified in a timely manner.

HINDERING FACTORS

Shortcomings in BIA's management:

- ✧ BIA does not have a documented process or data to track its review and response times
- ✧ We could not identify how long it takes BIA to complete reviews
 - Lost documents
 - Refusal to take action

HINDERING FACTORS

- ✧ BIA's review process can be lengthy and increase development costs and project development times, resulting in **missed development opportunities, lost revenue, and jeopardized viability of projects.**
- ✧ Energy-related documents taking years for BIA review and approval.
 - ROW agreements that took up to 8 years for approval
 - Communitization agreements
 - Surface leases

HINDERING FACTORS

Shortcomings in BIA's management:

- ✧ Some BIA regional and agency offices do not have staff with the skills needed to effectively evaluate energy-related documents or adequate staff resources.

HINDERING FACTORS

Complex regulatory framework with multiple jurisdictions:

- ✧ More steps, increased development costs, longer timelines
- ✧ According to an industry representative, development of Indian resources can cost almost 65% more for regulatory compliance.
- ✧ Stakeholders told us that:
 - Development is generally not managed according to tribal priorities.
 - Current framework does not reflect that Indian lands are intended for the use and benefit of Indian tribes & members.
 - Indian lands being managed according to priorities generally associated with public lands.

HINDERING FACTORS

Fractionated land ownership interests:

- ✧ Can create a problem for leasing

Tribes' access to capital and federal tax credits:

- ✧ Limited opportunities to take advantage of federal tax credits to develop their own resources

Dual Taxation:

- ✧ Tribal & state severance taxes
- ✧ Renewable energy equipment

HINDERING FACTORS

Tribal capacity:

- ✧ Concerns about underdeveloped tribal legal infrastructure, outdated tribal governance structures, and politicized business management.
- ✧ Need for modern, comprehensive, and culturally appropriate business and commercial laws or codes.

Infrastructure limitations:

- ✧ Lack proximate access to connect with the electrical grid.
- ✧ Limited access to transportation linkages to processing facilities.

RECOMMENDATIONS

- 1) BIA should improve GIS mapping capabilities.
- 2) BIA should identify cadastral survey needs.
- 3) BIA should develop a process to track its review and response times.
- 4) BIA should ensure it has the data needed to track its review and response times.
- 5) Interior should provide additional guidance on unclear provisions of TERA.
- 6) Interior should evaluate effectiveness of TEDC grants.
- 7) Interior should identify features of the TEDC program that can limit effectiveness of the program.

CURRENT REVIEW

- ✧ Solutions focused
- ✧ What has been done?
- ✧ What is being pursued?
- ✧ What can be done?
- ✧ Federal assistance?
- ✧ Tribal solutions

CURRENT REVIEW

- ✧ Financial and technical assistance available from federal agencies
 - Access to assistance?

DISCUSSION TOPICS

- ✧ Tribal energy needs/ goals/ interests
- ✧ Experiences with energy development
- ✧ Experiences with federal assistance
- ✧ Suggestions for improvements
- ✧ Increased tribal control over development process or providing access to energy

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