



NATIONAL CONGRESS OF AMERICAN INDIANS

May 3, 2013

Mr. Dan Ashe
Director, U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street NW, Room 3358
Washington, DC 20240-0001

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NCAI HEADQUARTERS

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RE: REQUEST FOR MEETING – TRIBAL CONCERNS REGARDING STREAMLINED ENERGY PROJECTS AND EAGLE TAKE PERMITS

Dear Director Ashe,

On behalf of the National Congress of American Indians (NCAI), the oldest and largest national organization representing tribal nations, I write to request an immediate meeting with you to discuss our concerns about streamlined wind energy development and its impact on tribal cultural resources and sacred objects, namely eagle populations.

Tribal and traditional religious leaders support clean energy and jobs, and hope that these projects will generate both, but are alarmed that these projects are being fast-tracked under Executive Order 13604, *Improving Performance of Federal Permitting and Review of Infrastructure Projects*, in a manner that does not allow for meaningful consultation with and input from Native nations. The current expedited framework places a tremendous burden on tribes, undermines—and in some cases precludes—government-to-government consultation, and endangers tribal sacred objects, places, ancestors, and cultural rights. We would like the opportunity to meet with you as soon as possible to discuss these and other related issues.

TRIBAL CONCERNS – STREAMLINED ENERGY PROJECTS

Tribal leader-driven policymaking at NCAI has always advocated advancing tribal ‘self-determination’ in regards to sustainable energy development. The NCAI supports a consensus-based, tribal government-centric energy agenda that allows tribal leadership to operate in their capacity as ‘decision-maker’ for their respective communities. It is inherently a tribal government decision to pursue energy development, implement preservation efforts, or — as in most cases — put into practice a combination of development and conservation programs. However, energy projects initiated on tribal reservations without the tribal government’s consent present clear and pressing concerns regarding federal-tribal collaboration.

NCAI has previously expressed concerns over expedited energy projects due to their potential impacts on cultural and sacred places. On September 20, 2012, NCAI submitted a letter to Mr. Dion Killback, Counselor to the Assistant Secretary – Indian Affairs, outlining these concerns. While these comments focused on the impact of streamlined energy development on Indian sacred places, NCAI recognizes that such development has much more far reaching, damaging impacts. In fact, in June 2012 at NCAI’s Mid-Year Conference in Lincoln, Nebraska, NCAI members passed a resolution stating that these types of expedited energy projects are, among other things, “destroying our cultural resources, desecrating our sacred places, [and] impairing our abilities to practice our

traditional and religious beliefs.”¹ In the case of eagles—a bird held sacred in many tribal religions and cultures—we must protect eagle nests, areas of migration, and other activities to ensure the longevity of the species. Disturbance of these areas in any form or magnitude inevitably disturbs eagle populations and tribal cultural, religious, and spiritual practices that Native peoples have exercised since time immemorial.

USFWS EAGLE TAKE PERMITTING PROCESS

Of equal concern to us as these energy projects are the eagle take permits that will necessarily accompany them. We understand that the U.S. Fish & Wildlife Service (USFWS) is currently considering changes to its regulations that would extend the maximum term for programmatic permits for “take” of bald and golden eagles from a period of five years to 30 years. This additional attempt to streamline regulations meant to protect bald and golden eagles for the benefit of the wind energy industry threatens not only the vitality of eagle populations across the United States, but many of the tribal religions and cultures that depend on them.

Specifically, it has come to our attention that a wind energy company planning development on fee lands within the reservation of the Osage Nation of Oklahoma is seeking an ‘eagle take’ permit to engage in its development activities. Based on the recent conversations with the Osage Nation tribal leadership, we are alarmed by the determination to proceed with the project despite fierce opposition from the tribe. While we applaud USFWS’s attempts to engage in a process of consultation and collaboration with the tribe surrounding the proposed project, such discussions are meaningless if the tribe lacks the ultimate say as to whether or not the project should proceed on its own lands.

While an extreme example of pursuing energy projects against the wishes of local tribes, the situation on Osage is not an isolated case. We are aware of other wind farm proposals—including one in eastern North Carolina near the Pocosin Lakes Wildlife Refuge—that could kill dozens of eagles a year. These numbers are shocking and unacceptable. All federal agencies have a trust obligation to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. Programmatic take permits sought for wind energy development should not be granted until the USFWS has held preliminary discussions with affected tribal governments, tribal religious and spiritual leaders, and tribal conservation and environmental experts before development is initiated. Moreover, if the energy project is to be constructed within reservation boundaries, tribal consent should be required.

To our knowledge, USFWS has never issued an ‘eagle take’ permit for a wind energy project. We believe granting such a permit could set a very harmful and detrimental precedent for tribes and future eagle protection efforts. Therefore, we formally request a meeting with you and appropriate agency officials to discuss these and other critical concerns raised by current energy development. Please contact me or NCAI Legislative Associate, Brian Howard, at (202) 466-7767 or bhoward@ncai.org, to set up a meeting date and time.

Sincerely,



Jacqueline Pata
Executive Director
National Congress of American Indians

Cc. Ms. Jodi Gillette, White House Senior Policy Advisor for Native American Affairs
Mr. Kevin Washburn, Assistant Secretary for Indian Affairs, Department of the Interior

¹ See National Congress of American Indians, Resolution #LNK-12-036. Available at http://www.ncai.org/attachments/Resolution_OeIuFtIdSkFGLegasHKxpZbfgoapAICtwAXhfibMxwXRmxVyELi_LN K-12-036.pdf.