The Tribal Role in Preserving and Protecting Health and Environmental Quality

Tribal Lands & Environment Forum, Spokane WA - August 15, 2018
Overview

I. Welcome/Introduction

II. Opportunities to Influence Environmental Policy On and Off Tribal Lands.

III. The Value of Community Organization to Support the Development of Environmental Policies.

IV. How to Effectively Interact with Policy Makers.
Environmental Policy on Tribal Lands

Tools available to help protect and regulate environmental, energy, and natural resources on Tribal Lands:

- Tribal Law
- Federal Statutes and Regulations
- Treaty and Executive Order Rights
- Federal Trust Doctrine
- State/Tribal Partnerships
**Environmental Policy on Tribal Lands**

**Inherent Authority – Tribal Law**

- Tribal powers of self-government are recognized by the Constitution, legislation, treaties, executive orders, judicial decisions, policies of federal agencies, administrative rules, and administrative practice.
- Tribes maintain sovereign authority over their members and territory to the extent not limited by federal law.
- Tribes generally have the authority to enact environmental laws protecting the health and welfare of their citizens within their territories.
Tribal Law on Tribal Lands

Recognizing the limitations of tribal jurisdiction, tribal environmental laws are strengthened by incorporation of the Montana factors.

- Consensual Relationship:
  “Each person either residing on or doing business within the exterior boundaries of the Leech Lake Reservation ("Reservation Population") benefits from a healthful environment and each person has a responsibility to preserve and protect the quality of the Reservation Environment.”

- Health and Welfare of the Tribe:
  “The Tribe further finds that this Tribal Hazardous Waste Ordinance will only adequately protect the health of the Reservation Population and the quality of the Reservation Environment if it applies with equal force to Tribal members and nonmembers and is a remedial measure that is intended to address both future as well as past releases of hazardous substances that pose a substantial risk to human health and the quality of the land, waters and resources of the Leech Lake Reservation.”

-Leech Lake Band of Ojibwe, Hazardous Substances Control Act
Federal Environmental Laws on Tribal Lands

As sovereigns, tribes receive special treatment under federal environmental statutes and related regulations.

- Delegated Authority
- Consultation Requirements
Federal Statutes and Regulations on Tribal Lands

• The National Environmental Policy Act (NEPA) requires preparation of an environmental impact statement (EIS) for any proposed major Federal action that may significantly affect the quality of the human environment.

• NEPA is a procedural statute, it does not require a specific outcome, it only requires consideration of environmental impacts of a project.
Executive Orders

Executive Orders ("EO")

• EO 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (1994)
• EO 13007, “Indian Sacred Sites” (1996)
• EO 13175, “Consultation and Coordination with Indian Tribal Governments” (2000)
Environmental Policy On and Off Tribal Lands

Treaty Rights

• Acknowledge a tribe’s sovereign right to self-governance, religious and cultural freedom, hunting, fishing and gathering rights, etc.

• Treaties did not create these rights; treaties uphold the rights that were never ceded by tribes.

• Treaty rights are a powerful legal tool that can significantly influence activities both on and off tribal lands.
Environmental Policy On and Off Tribal Lands

Federal Trust Doctrine

• Indian lands are held in trust for tribes and individuals. The federal government must administer Indian lands in a manner that specifically helps Indian beneficiaries, rather than the public as a whole.

• Many federal agencies are either not aware of or are unwilling to recognize this basic concept. Instead, they are more inclined to make “judgment calls” seeking to balance of political interests. However, this is impermissible.
Community Organizing in Support of Environmental Policies

Community Organizing

• Benefits of community organizing
• Types of actions
• When community actions are appropriate
• When community actions may not be appropriate
• Preparing a community for action
Community Organizing in Support of Environmental Policies

Reasons to pursue community organizing

• To prevent harm to the community or to preserve something of historical or cultural value.
• To include in policy considerations the interests and voices of those who have traditionally been ignored.
• To institute fairer policies and eliminate discrimination.
• To right past wrongs, as in renegotiating unfair contracts contrary to tribal interests.
Community Organizing in Support of Environmental Policies

Types of activities:

- Group direct communications
- Media efforts
- Meetings with decision makers
- “Classic” social actions
Community Organizing in Support of Environmental Policies

When community actions are appropriate

• When being reasonable isn’t proving effective.
• When the community needs to be energized and empowered.
• When a dramatic statement is necessary to galvanize public opinion in your favor about an issue or about your organization or community.
• When the resources are available to make the action possible and effective.
Community Organizing in Support of Environmental Policies

When community actions may **not** be appropriate

- Where being reasonable can be effective and a resolution is available through negotiation, persuasion, and/or compromise.
- Where the resources are not available to mount a convincing action.
- Where facts have not been established. Credibility is essential.
- Where the action, even if successful, may have other significant negative social or political consequences.
Community Organizing in Support of Environmental Policies

Preparing a community for action

- Get to know the community.
- Identify and contact key individuals and groups.
- Identify the unifying issues and the dividing issues, develop clear messaging.
- Recruit community members and existing organizations
- Build a communication system
- Create a structure or organization to help accomplish the goal
- Encourage community leadership
Interacting with Policy Makers

Effective Engagement with Policy Makers:

• Who to approach and what to expect
• Framing an issue
• What motivates a policy maker?
• Community organizing efforts role in influencing policy makers
Interacting with Policy Makers

Who to approach and what to expect:

• What office should I contact?
• Community forums or scheduled meetings?
• Staff roles
• Process and persistence
Interacting with Policy Makers

Framing your issue

• Framing is the system of interpretation that individuals rely on to understand and respond to events. People build a series of mental "filters" that are used to make sense of the world. The choices they then make are influenced by those mental shortcuts.

• As applied to politics, frames explain why an issue matters, who or what might be responsible for a problem, and what should be done. In this manner, frames offer both a diagnosis and a prescription to a complex problem or event.

• Framing is used to construct, refine, and deliver messages. Framing in politics is essential to effectively communicating an issue to the public.
Interacting with Policy Makers

What motivates a policy maker?

• Elected officials
• Administrative policy makers
Influencing Policy Makers

The role of community organizing in influencing policy makers:

• Education
• Amplification
• Accountability
QUESTIONS?

Andrew S. Fuller
Attorney
afuller@omwlaw.com
www.omwlaw.com