

Indian Law

RESOURCE DEVELOPMENT & RIGHTS OF WAY

The firm has assisted both energy companies and tribes negotiate the various kinds of permits needed for energy projects on reservations -- rights-of-ways, leases, hydroelectric licenses, etc. It brings to those negotiations the same ability to understand the other party's position and thus the ability to help its client find the common ground needed to enable a project to move forward. The kinds of permits on which the firm has assisted clients include:

Rights of Ways Across Reservation Lands

The firm helps both energy companies and tribes negotiate rights-of-ways across Indian lands. At a time when there is polarization and controversy on the issue of rights-of-ways across reservations in some parts of the energy and tribal communities, the firm has been very successful in developing innovative approaches that enable the parties to find common ground and reach successful closure within desired timeframes.

Renewable and Non-renewable Electric Generation Projects

The firm's energy and Native American law expertise enable it to counsel its clients in the siting of generation facilities on reservations and to be responsive to the increasing interest by tribes in sharing in the ownership of such facilities rather than just being passive lessors. These include wind farms and other forms of renewable energy as well a generation using fossil fuels. The firm has been a leader in advocating for federal legislation that provides tax benefits for projects on reservations in addition to developing business structures that enable the parties to maximize the tax advantages of projects. We are knowledgeable about the environmental clearances required for such projects and how a tribe's sovereign status can help to expedite such approvals.

Hydroelectric Relicensing

The firm has counseled its Public Utility District clients to obtain support from those tribes that were Interested Parties in hydroelectric relicensing process. This is an area in which there is a great opportunity for the negotiation of creative packages that benefit all parties.

Native American Graves Protection and Repatriation Act

Whether working on reservation lands or on federal lands anywhere in the country, companies engaged in development activity are required to comply with the Native American Graves Protection and Repatriation Act (NAGPRA).

Companies that had not adequately informed their employees of their responsibilities under NAGPRA, or that had not put in place adequate procedures for responding if human remains are found during the development, have had their projects closed down for long periods of time and were subjected to costly fines and remediation activities.

Van Ness Feldman has created a "how-to" package on NAGPRA that ensures the firm and its employees working on the ground are aware of their responsibilities and know how to respond when NAGPRA issues arise.

Representative Matters

- The firm counseled a large natural gas pipeline company to successfully negotiate a right-of-way with a tribe for a new pipeline across the tribe's land.
- The firm also is helping a tribe negotiate a renewal of a right-of-way held by a large energy company.
- The firm is assisting a wind energy development company identify wind energy opportunities on reservations and negotiate agreements with the tribe.
- The firm regularly facilitates discussions between tribes and hydropower licensees to arrive at mutually agreeable solutions.