

Basics of Federal Indian Law

Land Use, Environment & Energy

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Federal Indian Law Overview

Federal Indian law deals with the relationship between the Federal government and the tribal governments it recognizes as sovereign, or self-governing

- Tribes are political bodies – tribal membership is a political classification
- Tribal sovereignty is inherent – derived from its own authority, but has been limited by the Federal government
- Tribes are generally subject to Federal, but (usually) not state laws
- Congress has plenary authority over tribes
- Currently 574 federally recognized tribes
- Federal government holds certain lands and resources in trust for the benefit of tribes



Photo credit: Bureau of Indian Affairs

What Does this Mean in Practice?

How is Federal Indian law implicated in land use and environmental issues?

- Federal government has a basic fiduciary duty of care and loyalty to tribes and for tribal assets held in trust
- Government-to-government consultation is an inherent part of the trust responsibility
- Executive Orders require Federal Agencies to develop consultation policies
- Agencies in process of updating consultation policies
- Agencies currently determining how Indigenous Knowledge will be collected, maintained and incorporated into Federal decision-making process
- May be state consultation policies or other state law obligations



Photo credit: Bureau of Land Management

Tribal Environmental Law and Regulation

Jurisdiction and Enforcement

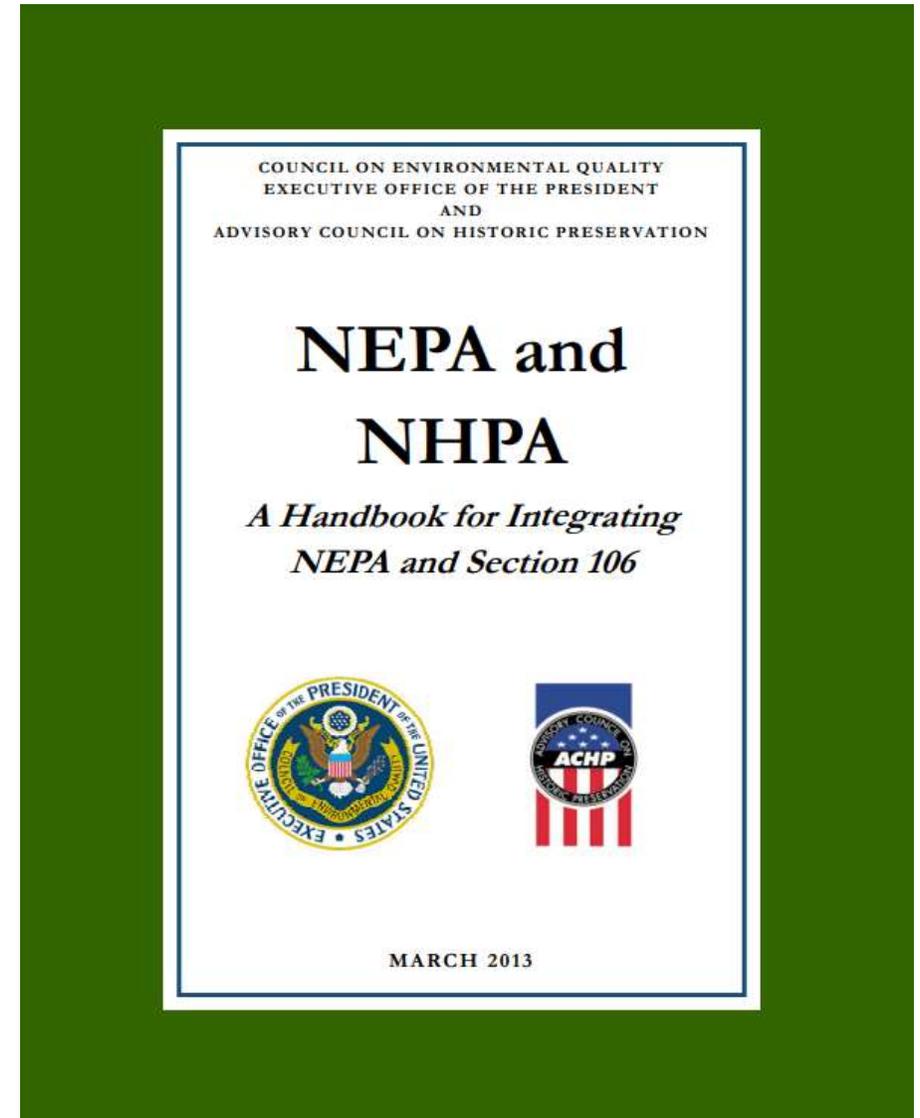
- Tribes have inherent authority to develop environmental laws and regulations
- Congress has delegated certain authorities to both states and tribes – “Treatment as a State”
- Tribal environmental laws may be applied on-reservation or incorporated into permits for off-reservation activities
- Tribal law may be applied to on-reservation activity by non-Indians if it meets two exceptions under *Montana v. U.S.*, 450 U.S. 544 (1981)
- Some federal laws do not apply to tribal lands (Federal Land Policy and Management Act)
- Some legal schemes – oil and gas and mineral development – apply differently to tribal trust land than to federal lands (Indian Mineral Development Act)

Montana exceptions:

Tribes may regulate “the activities of nonmembers who enter consensual relationships with the tribe or its members” and “the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”

National Environmental Policy Act and National Historic Preservation Act

- National Environmental Policy Act does not explicitly require consultation, but federal agencies are required to comply with their own policies and CEQ Regulations
- Where cultural or archaeological resources may be implicated, National Historic Preservation Act is triggered
- Tribal consultation required under NHPA Section 106
- NEPA and NHPA obligations are distinct
- Only applies to federal projects or federal undertakings – those on federal land, requiring federal approval or using federal funding



Current Issues in Land Use

Photo credit: Robert Lundberg, Earthjustice



- Land Back, Water Rights
- Free Prior and Informed Consent
- Traditional Ecological Knowledge, Indigenous Knowledge
- Co-Stewardship and Co-Management
- Water Quality Standards Tribal Reserved Rights Rule
- Bureau of Land Management Public Lands Rule
- International Indigenous Rights issues





Current Issues in Energy Development

- Oil & Gas
- Pipelines
- Mining
- Hydropower
- Clean Energy Development
- Transmission

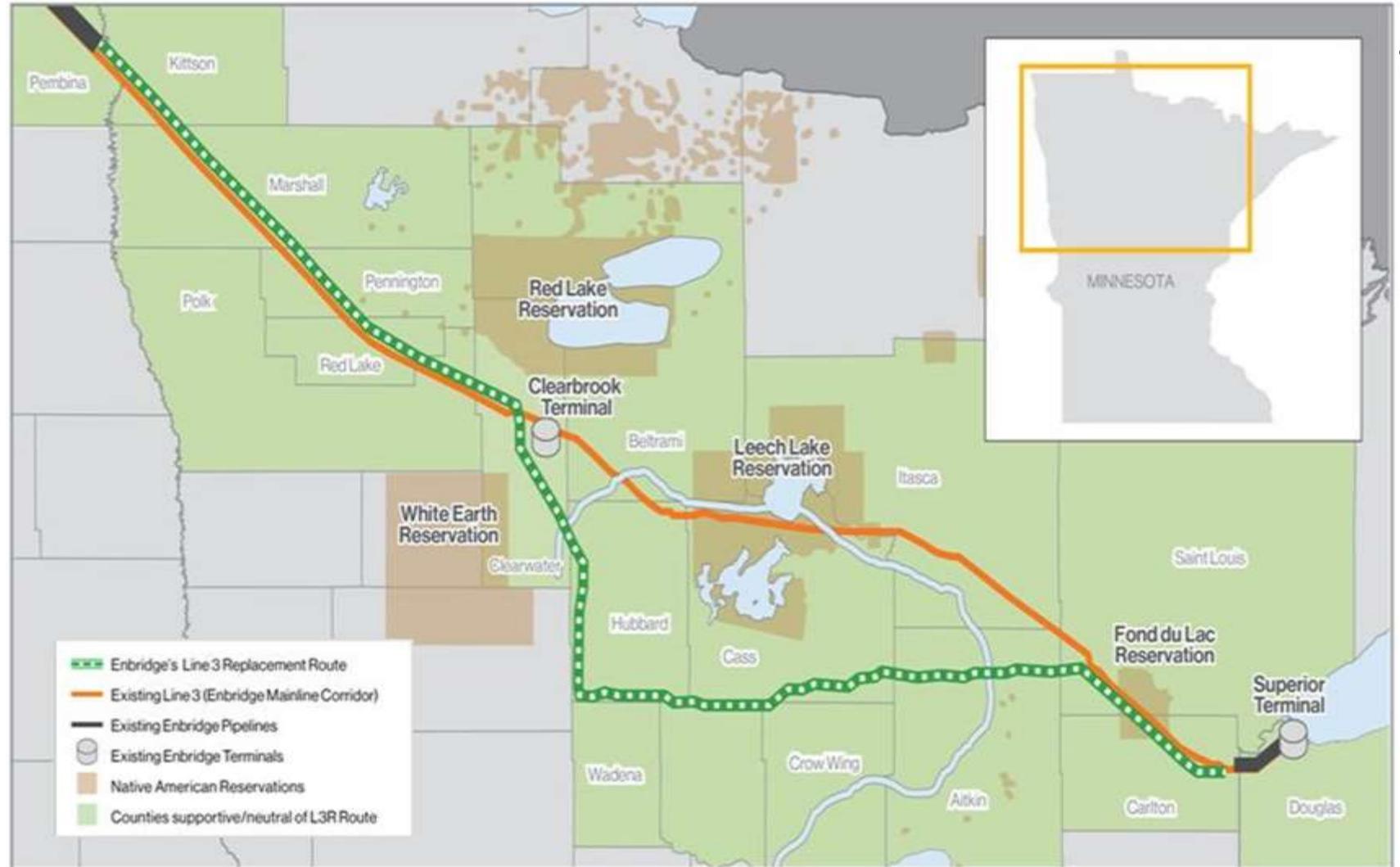


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