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Tribal Tools & Legal Levers for Halting Fossil Fuel Transport & Exports Through the Pacific Northwest

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Abstract

As alarming scientific predictions crystallize into the realities of today's climate crisis, tribal communities in the Pacific Northwest find themselves on the front lines of a global assault launched by the fossil fuel industry. Encouraged by President Trump's declaration of intent to unleash \$50 trillion of America's domestic fossil fuels, corporations push for massive expansion of the nation's fossil fuel infrastructure—even as the world races towards irrevocable climate thresholds. The unprecedented onslaught hinges on the Pacific Northwest as a key link in a global market scheme. The coastal region sits as a proposed industrial gateway for huge export facilities transporting coal, oil, and natural gas from interior lands of the United States to Asian markets.

Carbon emissions projected from the proposed fossil fuel development would inflict irreparable damage on the planet's climate system. More imminently, transport of dirty and explosive fossil fuels poses a grave and present threat to both tribal and non-Indian local communities, as demonstrated by the sudden derailment and horrific explosion of a Union Pacific oil train carrying Bakken oil through Mosier, Oregon in June, 2016. Across the region, citizens rise in protest to defeat these proposals in local, state, and federal permit processes, forming a growing resistance called the "Thin Green Line." In significant ways, tribes have emerged as key players and powerful leaders in this resistance, staunchly defending the homelands they have inhabited since time immemorial and inspiring the grassroots coalitions to stand behind a "None Shall Pass" blockade of fossil fuels.

As the region's original sovereigns and present day co-trustees of essential natural resources, tribes hold several key legal levers that may arrest these fossil fuel infrastructure projects, both on and off their reservations. Tribal legal mechanisms on-reservation fall into two areas: 1) property rights that may provide the basis for tribes to refuse or restrict rights-of-way access across their reservations; and 2) the authority to regulate dangerous activities on their own lands. Off the reservation, tribes are positioned to assert the federal Indian trust responsibility and tribal treaty fishing rights in a complex matrix of federal, state, and local permitting schemes.

The existing case law and statutory landscape surrounding all of these legal mechanisms are complicated and interwoven. This article highlights strategic legal avenues available to tribes in both on- and off-reservation contexts. Building on case studies of successful tribal resistance, this article presents analysis for tribal advocates with an ultimate aim to support native nations in their unified efforts to stop fossil fuel trafficking across the Pacific Northwest.

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The ports of the Pacific Northwest were especially desirable. Fossil fuel companies and business interests were hesitant to support any zoning code that constrained their ability to expand, while environmental activists decried any zoning code that gave fossil fuel companies leeway to bring more natural gas, oil, or coal into the city. And beyond Portland, moving fossil fuels through the city and onto markets elsewhere would only hasten the climate crisis, creating consequences that would be felt both locally and around the world. In the end, environmentalists emerged from the negotiations with most — though not all — of their demands met.