

Tribal Employment Rights Office (TERO) Fees and Employment Preference on WYDOT Projects



Select Committee on
Tribal Relations

Fort Washakie, WY
October 14, 2019

WYDOT Work on the Wind River Indian Reservation



History

- WYDOT has a successful, collaborative work history with the Eastern Shoshone and Northern Arapaho Tribes
 - Road improvement projects – \$157,219,618 since July 1, 2009
 - Safety Summits – 3
 - Updated tribal traffic code
 - 0.05% Blood Alcohol Content (BAC) level
 - Primary Seatbelt Law
 - Increased law enforcement presence
 - Efforts towards cross jurisdiction for law enforcement
 - WRIR *Pedestrian and Walkway Long Range Transportation Plan*
 - Scenic Byway designation – Wind River Canyon
 - Construction industry work force training and development
 - Missing and Murdered Indigenous Persons Task Force
 - Amber Alert
 - Endangered Persons Alert

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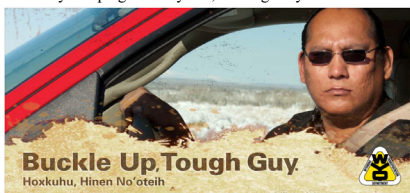
1

WYDOT Work on the Wind River Indian Reservation



History, continued

- Successful, collaborative work history continued:
 - Safe2Tell
 - Safety campaigns – 11 years, kicking off year 12




- Wyoming enjoys one of the most positive working relationships with Native American Tribes in the country—and your transportation system benefits

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2

WYDOT Work on the Wind River Indian Reservation 
Tribal Employment Rights Office (TERO)

- In 2003–developed employment preference contract provisions for WYDOT projects:
 - “within” the exterior boundaries of the WRIR
 - “near” the WRIR
- Agreement to employment preference and provisions were catalyst to building a relationship and moving much needed highway and bridge projects forward
 - Roadways and bridges in deteriorating condition
 - High critical (fatal and serious injury) crash rates
 - Pedestrian fatalities–lack of pathways, narrow shoulders

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History – Highway Projects “within” the WRIR Exterior Boundaries

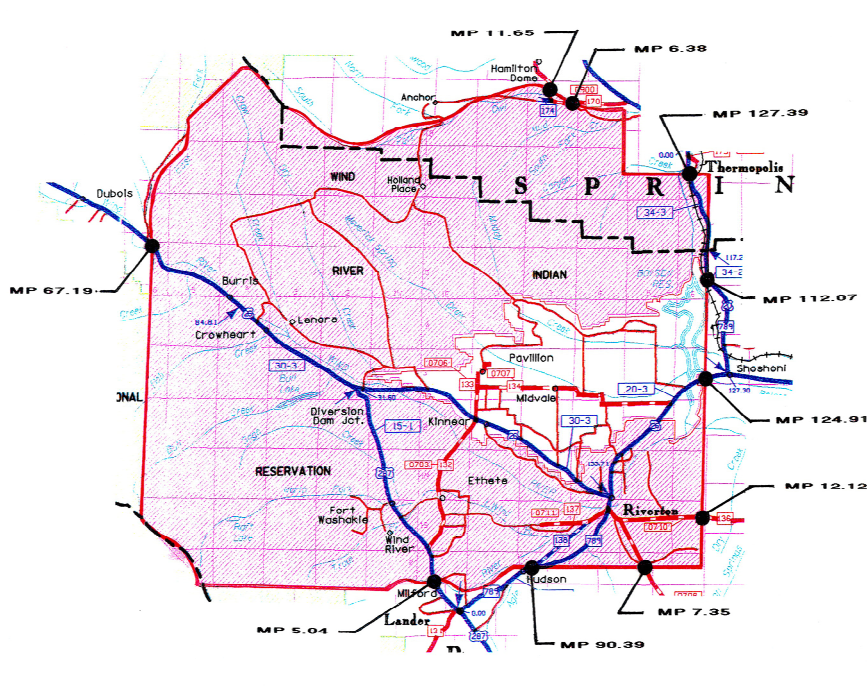
- **TITLE X – Tribal Employment Rights Code** applies
 - Purpose–“*The purpose of this code is to assist in and require the fair employment of Indians on the Wind River Indian Reservation and to prevent discrimination against Indians in the employment practices of reservation employers.*”
- Code references the “*exterior boundaries of the reservation*”
 - 1886 boundaries as reduced by the
 - 1874 Lander Purchase
 - 1897 Thermopolis Purchase
- Contract provisions adhered to the “*exterior boundaries*”

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Wind River Indian Reservation Exterior Boundaries



Exterior boundary used for Highway Projects from 2003-2018




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5


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History – Highway Projects “within” the WRIR Exterior Boundaries 

- **TITLE X – Tribal Employment Rights Code**
 - Employment Rights Fee = 2% of the contract value
 - Applies to portion of project that is within exterior boundaries
 - Paid to TERO by the contractor, WYDOT reimburses
 - Applies to prime contractors and sub-contractors
 - Compliance Plan of Operations required
 - Identify Core Crew members (supervisory/high technical skill)
 - 50% Native worker requirement
- **Employment Rights Fee used to:**
 - Recruiting qualified workers for projects
 - Providing career development training
 - Providing personal protective equipment
 - Maintaining the skills bank
 - Operating the TERO office and paying administrative costs

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WYDOT Work on the Wind River Indian Reservation

Highway Project Statistics on the WRIR 

- **WYDOT Projects (7/1/2009 – 6/30/2019)**
 - Total # of Projects: **66**
 - Project Total Costs: **\$ 157,219,618**
 - TERO fees: **\$ 2,417,048**
 - Federal Funds: \$ 1,900,937
 - State Funds: \$ 516,111
- **WY 132, Ethete South Project (current)**
 - Highway reconstruction and pedestrian/bike pathway
 - Project Cost: \$14.63 million (7 miles)
 - Contractor: High Country Construction
 - Tribal employees: 42
 - More than 50% of the work force is Tribal members
 - 18 of those Tribal employees are TERO applicants

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TERO Expenditures




July 1, 2009 - June 30, 2019

TERO Fees are 2% of the total contract amount for the portion of the project located on Tribal lands.

FY	# of Projects	TERO Amount	Total Bid	TERO Federal	TERO State
2009	1	\$13,240.00	\$662,162.00	\$13,240.00	\$0.00
2010	11	\$351,739.26	\$26,446,324.17	\$351,739.26	\$0.00
2011	8	\$206,956.57	\$11,959,577.81	\$154,470.00	\$52,486.57
2012	11	\$137,591.29	\$12,468,061.91	\$129,723.29	\$7,868.00
2013	7	\$160,928.98	\$14,322,298.23	\$53,000.00	\$107,928.98
2014	8	\$345,269.54	\$19,536,464.97	\$149,579.54	\$195,690.00
2015	3	\$254,422.13	\$14,485,326.13	\$231,422.13	\$23,000.00
2016	6	\$155,522.79	\$10,332,280.01	\$26,385.44	\$129,137.35
2017	3	\$280,795.00	\$16,620,640.30	\$280,795.00	\$0.00
2018	4	\$344,788.06	\$19,654,521.53	\$344,788.06	\$0.00
2019	4	\$165,794.68	\$10,731,960.56	\$165,794.68	\$0.00
Total	66	\$2,417,048.30	\$157,219,617.62	\$1,900,937.40	\$516,110.90

WYDOT Work on the Wind River Indian Reservation

Highway Projects “near” the WRIR



- 23 USC 140 (d) added in 1991 amendment – “States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.”
- FHWA 1993 Guidance – “eligible projects for Indian preference consideration are those projects which are on IRRs, (i.e., roads within or providing access to an Indian reservation or other Indian lands as defined under the term “Indian reservation roads” in Section 101 of Title 23, U.S.C., and regulations issued pursuant thereto), or are not on IRRs, but are near the boundaries of reservations and other Indian lands.”
- “near” is defined as: “within a reasonable commuting distance from the reservation.”
- WYDOT and TERO work together to determine when Employment Preference will be included in the contract:
 - has qualified workers
 - the project is within reasonable commuting distance


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9

WYDOT Work on the Wind River Indian Reservation

TERO Strategic Redirection



- Pay 2% Employment Right Fee “within” the 1939 boundaries when Congress directed the Secretary of the Interior to restore tribal ownership to any lands not sold north of the Big Wind River between 1905 and 1939
 - In place of using the exterior boundaries
- On-going work:
 - Correcting the reservation boundary map
 - Identifying the mileposts locations on each state highway within the “withdrawal” area

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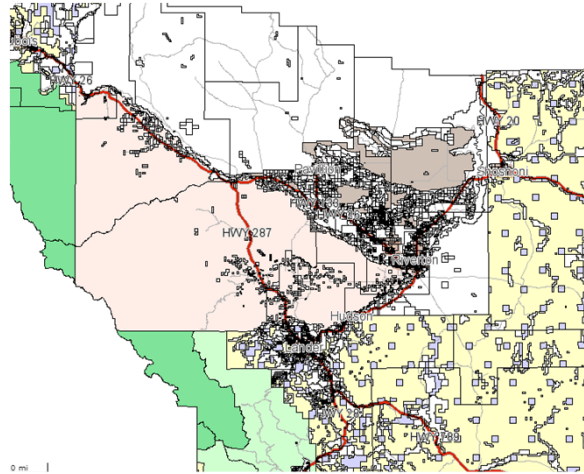
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10

1905 WRIR Boundaries



- These boundaries are used by the Wyoming Highway Patrol and affects state highways on tribal lands north of the Big Wind River – WY 20, Wind River Canyon, WY 170 & 174 in Hot Springs County



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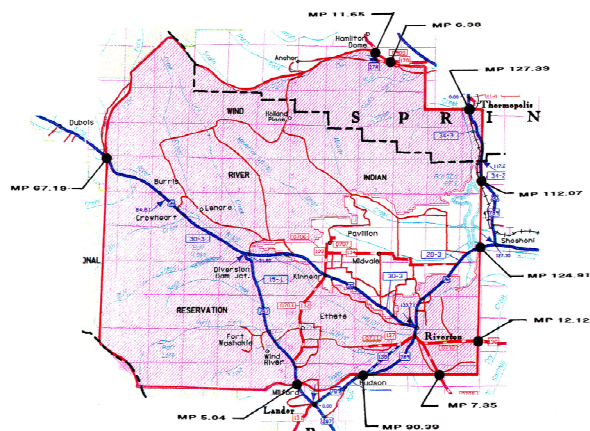
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11

Wind River Indian Reservation Exterior Boundaries Map



- “withdrawal” area
- Map correction on-going – TERO, WYDOT, AG Office
- Identifying highway mileposts/boundary locations



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12

WYDOT Work on the Wind River Indian Reservation

TERO Strategic Redirection

- o Considering use of an Employee Placement Fee “near” the WRIR for Native workers placed by TERO:
 - Compensation fee based on hours worked per employee
 - Utilize contractor certified payrolls
 - Fee to cover TERO costs to render services, such as:
 - Recruiting qualified construction workers
 - Providing career development training
 - Providing personal protective equipment
 - Maintaining the skills bank
 - Operating the office and so forth
 - Federal funds may be used to pay this fee
- o Similar to other federal programs such as the Federal Lands Access Program (FLAP), which funds projects that provide access to federal lands
- o Assist tribal-owned businesses to get certified as Disadvantaged Business Enterprise (DBE) companies

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13

WYDOT Work on the Wind River Indian Reservation

Benefits of Tribal Employment

- o Key to delivery of WYDOT’s mission to “*Provide a safe, high quality, and efficient transportation system.*”
- o Builds the construction industry workforce
 - Contractors currently struggling to hire qualified workers
- o Employs Tribal members–Wyoming resident workers
- o Develops a career skill for Tribal members
- o Provides good paying jobs–jobs that support families
- o Continues the strong partnership with the WRIR Tribes to benefit:
 - Wind River Indian Reservation
 - Fremont County
 - State of Wyoming
 - State Highways

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14

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Tribal Employment Rights Office (TERO)

Questions?

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15
