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INDIAN ENERGY DEVELOPMENT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 1, 2008

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INDIAN ENERGY DEVELOPMENT

THURSDAY, MAY 1, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 562, Dirksen Senate Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order. Good morning to all of you. This is a hearing of the Indian Affairs Committee of the United States Senate. The hearing is on the subject of energy development.

The Committee will conduct an oversight hearing today on Indian energy development. Today's hearing is in part the result of a hearing the Committee held a little more than five years ago. In March of 2003, we held a hearing on two bills that eventually became the Indian Tribal Energy Development and Self-Determination Act. This Act was passed by the Congress as Title V of the Energy Policy Act in the year 2005.

Today's hearing will examine the level to which that law has been implemented. This hearing will also examine the past and the present barriers that limit potential development of tribal energy resources. We will also evaluate the ability of tribes to fully participate in the energy industry and in energy markets.

The Committee has noticed an important shift in energy development on Indian reservations. Many Indian tribes are no longer satisfied with Federal leasing programs that promote passive involvement of tribes in developing their energy resources. Instead, tribal governments are interested in acquiring the tools needed to actively participate in the energy industry and in energy markets. This is important, because it is a shift taking hold at the Federal and tribal levels, and in some cases it's a route that the tribes have been on for many, many decades.

To get a sense of the energy potential on Indian lands, we have borrowed some maps from our friends at the Department of Interior and the Department of Energy. I am going to put up chart one. This is a map of oil, gas and coal energy potential on Indian lands. Reservations are highlighted in yellow on this map and have a high production potential. Reservations highlighted in orange have mod-

erate potential. As you can see, many of the tribes in the west have mineral resources with very high production potential.

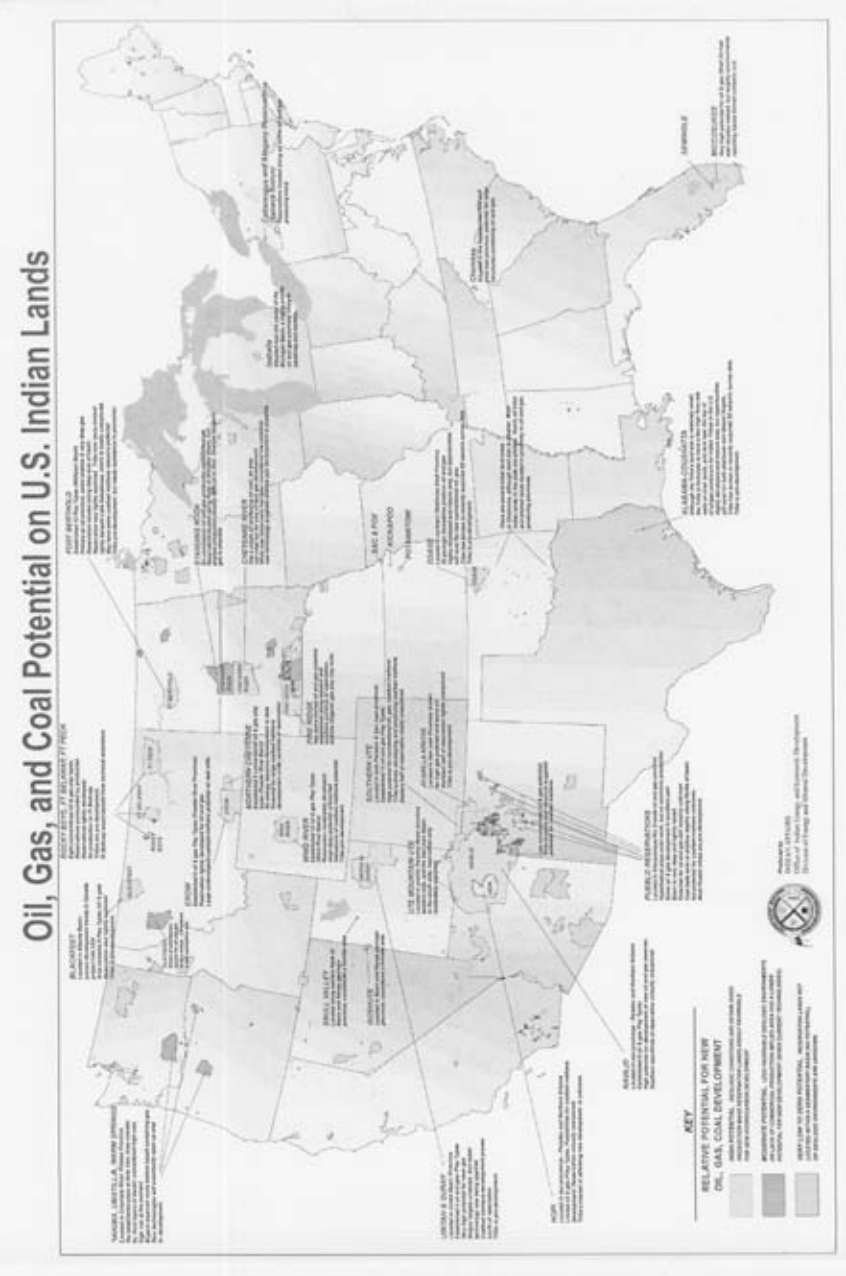
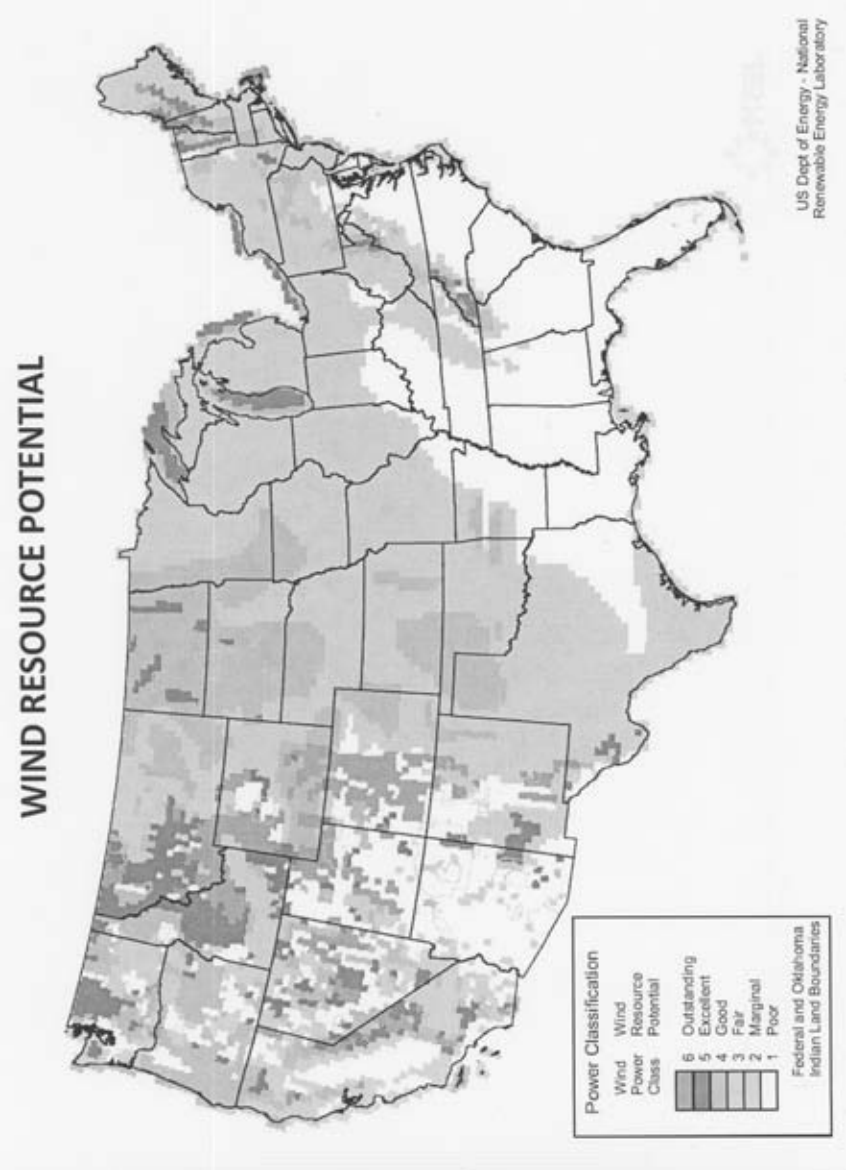


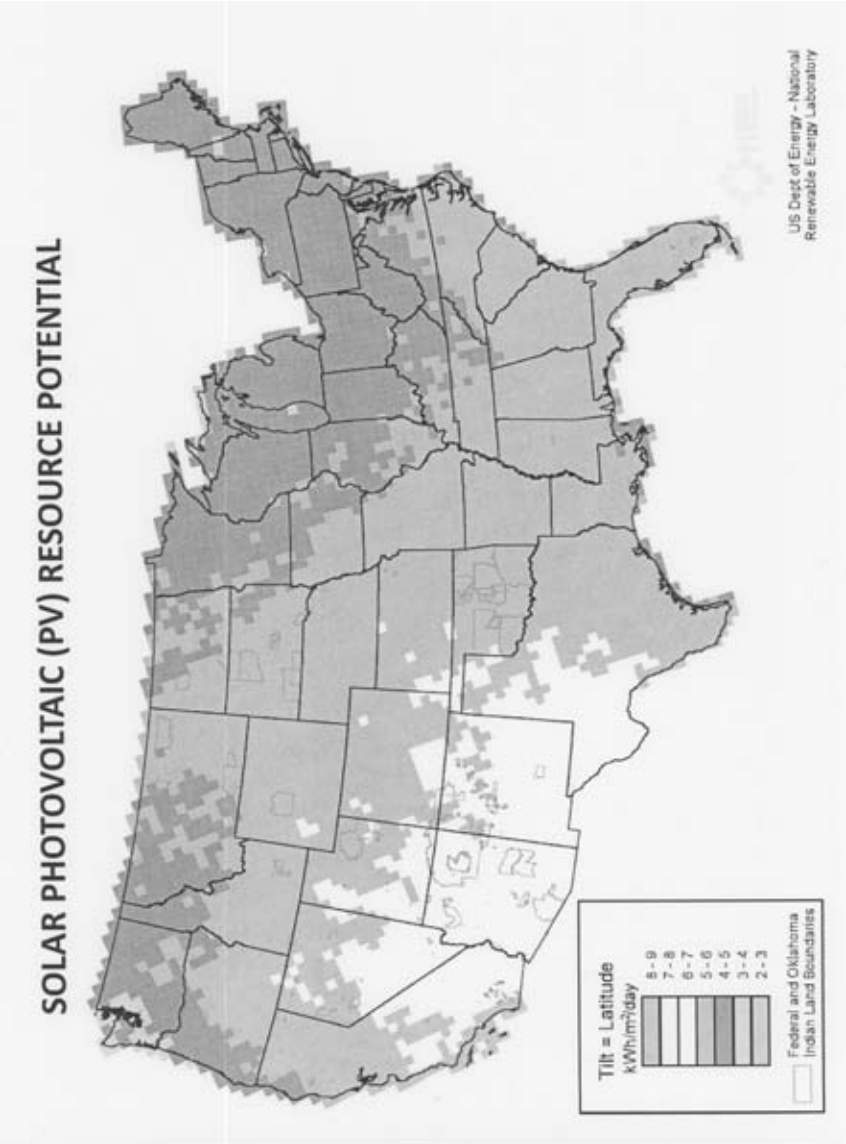
Chart two, second map, is a map of renewable and wind resource potential. On this map, all of the areas in pink and purple and red are good for wind generation. There is a massive renewable wind

potential on reservations in North and South Dakota. This map shows you what the Department of Energy says about my home State, North Dakota. It says it is the Saudi Arabia of wind. Those of us who have grown up there and learned to lean toward the northwest most of our life understand what that means.



The third chart is a map of renewable solar resource potential. On this map, the light green area covering the southwestern United States shows the greatest solar potential. You will see the light green down in the southwest. And the darker green area,

which includes many more reservations, is also considered suitable for solar power development. I recently toured down in Arizona a solar power production area. They are in the process of putting in place, I believe it was a 180, maybe 280 megawatt solar application. It is very exciting. Solar energy is something with great potential and our Country, regrettably, has fallen behind in those areas.



All of these maps show the untapped potential for energy and renewable development, especially on Indian reservations. The hard part is overcoming the history of energy development on Indian

reservations, I say, the neglectful history. For most of this past century, Indian energy development has meant mineral leasing, leases where tribal and individual Indian owners of the minerals were not provided full opportunities to negotiate in their best interest. Instead, the Federal Government managed these leases through a bureaucracy that often lacked the staff and resources to effectively manage their workload.

Recent laws, Title V of the Energy Act in particular, have begun to recognize the authority of tribal governments to negotiate their own leases. These laws also recognize that tribes may be interested in more than just mineral leasing and may enter into a variety of energy agreements or joint ventures. But again, a century of shifting Federal policies has injected so much uncertainty into reservation land and resource status it is difficult for tribes to get to the negotiating table to be full partners.

Other barriers also remain. Uncertainties in existing law discourage potential investors from financing, in some cases, reservation projects. Tribes are currently not able to raise bond revenue or receive tax benefits as a result of State and municipal government activities that do receive these benefits. Despite the fact that reservation residents look to tribal governments to provide their local services, tribal governments ought to have the same opportunity as municipal and local governments do with respect to bonding.

In addition, there are some disincentives to energy development on Indian lands, because certain activities are subject to dual taxation. In my view, we have only just begun. With the experience of the tribes and the tools of the departments, I hope we can break down the remaining barriers that now limit the potential of Indian energy development. Unlocking this potential, I believe, will help tribes provide for their communities and will serve our national interest in becoming more energy independent. The opportunities are so great and the benefits so needed that providing tribes the tools they need should be among our top priorities.

We are now joined in a grand entrance by my colleague from Montana, Senator Tester. Senator Tester, I just showed several maps that show the very substantial energy potential that exists on Indian reservations, particularly in the northern Great Plains, Montana, North Dakota and South Dakota, and some other parts of the Country as well. I have just described in an opening statement some of the barriers we are going to hear about today.

Let me call on you, and I appreciate your being here.

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. I appreciate your holding this hearing.

I also appreciate Chairman Carl Venne from the Crow coming down to give us his perspective. Carl is somebody I met a number of years back and somebody I have a tremendous amount of respect for and a tremendous amount of respect for his vision, quite honestly. So thanks for being here, Carl.

I guess the bottom line is, and just coming in, I will just tell you what is on the top of my head. The truth is, I think we need to empower Indian Country to be able to become self-sufficient. And

one of the ways they can become self-sufficient is through development of the resources. They have incredible opportunity, whether it is traditional resource development like oil and gas and coal or whether it is development of renewable resources and geothermal resources and those kinds of renewable resources that are out there that are available to many areas and many of the lands that Indian Country rests upon. I look forward to hearing from each and every one of you on the panel about your challenges, what you see are the major road blocks to be able to develop your natural resources in a way that makes sense for your people.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Tester, thank you very much.

We are joined by the Vice Chair, Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Good morning, Mr. Chairman, and to members of the panel, good morning. A special welcome, of course, to my constituent and friend, Julie Kitka, representing the Alaska Federation of Natives.

Mr. Chairman, I want to thank you for holding this very important hearing. We are certainly talking about energy all over the Hill today. That reflects the conversations all over the Country. People are talking about what is going on with energy and the current environment, the very, very high oil prices, bring real challenges, daunting challenges, both to our urban and rural communities. I think it truly highlights more than ever the importance of developing our domestic sources of supply. We certainly up north believe that we have enormous potential in ANWR and parts of my State. Great potential, great opportunity for our tribes both in Alaska and in the lower 48, opportunity to continue to contribute to domestic supply and for bringing economic development to the communities.

I am particularly interested in hearing whether Indian tribes and Native villages have the tools that they need to tap into this enormous potential and whether we here in the Federal Government are doing all that we can to assist in using the tools that we have provided in the past.

We all talk about what is happening back home and the impact to our communities. In Alaska I think it is particularly stark in terms of the realities that our villages are facing. A few communities are particularly noteworthy in terms of what they are facing with their costs, but more importantly how they are partnering to deal with the challenges. We have a few communities that have already taken a lead. The Alaska Village Electric Co-Op, which provides electricity to 53 rural communities, is a good example. They partner with the Department of Energy and they have installed wind turbines that are specifically designed for Arctic climates. They have installed these wind turbines in Intuksek Bay and Kasegaluk. And these turbines are supplying 25 percent of the electricity needs that we have for these communities.

This spring, AVEC won the 2007 wind cooperative of the year ward from the U.S. DOE's Wind Powering America program in recognition of its leadership and its success. There are also other ex-

amples of future projects in Alaska. Cook Inlet Native Corporation is proposing to install a 60 to 100 megawatt wind farm on the land that it owns just off of Anchorage there in Fire Island. St. Paul Island Village Corporation formed an electric power company that is seriously proposing to install a 300 megawatt hydroelectric development on Chakachownut Lake near Anchorage. We have a host of other tribes that have expressed interest in biomass and in geothermal besides the wind projects, the ocean energy projects. But we know that many of these projects could very seriously benefit from the seed money that Congress thought it was providing, the loan guarantees that we thought we had approved through the Energy Policy Act.

We recognize that we need to do more to help facilitate the development on our Indian lands. We would certainly like to know that under Title V, this new Title V, that we are progressing and advancing tribes in a way that will allow them to develop their energy potential. So I look forward to comments from the witnesses and panelists here this morning, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Murkowski, thank you very much.

I am pleased that the Honorable Marcus Wells., Jr., the Chairman of the Three Affiliated Tribes in North Dakota, has joined us. I should say to my two colleagues that the Three Affiliated Tribes is right smack in the middle of the most substantial oil play in the United States at the moment. The assessment by the U.S. Geological Survey (USGS) in the last two weeks that I announced with them shows that the Bakken Shale, which includes Montana and North Dakota and a portion of Canada, has the largest assessed recoverable pool of oil that the USGS has ever assessed in the lower 48 States. So Chairman Wells is the tribal chairman of a tribe that is very, very interested in, not for academic purposes, but very interested in this issue because they are in the middle of a very substantial amount of additional oil development.

Chairman Wells, thank you for coming to Washington to testify. And you may proceed. I would say to all four witnesses that your entire statements will be made a part of the permanent record and we would ask that you summarize.

STATEMENT OF HON. MARCUS D. WELLS, JR., CHAIRMAN, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD INDIAN RESERVATION

Mr. WELLS. Thank you, Chairman Dorgan. My name is Marcus Dominick Wells, Jr., Eh-Bah-Dah-Gish, Bald Eagle. I am the elected chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

I would like to thank the Chairman and the members of the Committee for the opportunity to provide testimony on behalf of the tribal business council of the Three Affiliated Tribes, the Mandan, Hidatsa and Arikara. The Three Affiliated Tribes have been poised at the brink of what could be the largest period of economic development in the history of the tribe. The surge in oil and gas exploration in the Bakken Formation has brought the promise of significant prosperity to the Fort Berthold Indian Reservation.

However, even as some of our tribal members are beginning to enjoy significant lease bonus payments, many of whom have lived

in poverty their entire lives, the Tribe and the Fort Berthold mineral owners have been negatively impacted by the current delivery of trust responsibility by the Fort Berthold Agency and the Aberdeen Area Office of the Bureau of Indian Affairs. Specifically in areas administering the exploration and development of oil and gas within the exterior boundaries of the Fort Berthold Indian Reservation.

The tribal business council negotiated three IMDAs, or modified oil and gas leases with Black Rock LLC, JT Energy LLC and Dakota 3 LLC, that were presented for approval to the Bureau of Indian Affairs in calendar years 2005, 2006 and 2007 respectively. Collectively, the IMDAs took over three years to receive formal secretarial approval, with the last IMDA receiving its final approval in February of this year.

The mineral owners of the Three Affiliated Tribes have also undergone the leasing process through either private negotiation or in two formal oil and gas bid sales held by the Fort Berthold Agency in December 2006 and November 2007. However, an unacceptable number of those leases still remain to be unapproved and/or processed for payment of lease bonuses and to be moved forward to complete the applications for permits to drill.

The delays in lease approval and other bureaucratic hurdles have not only caused untold harm on the tribe and the Fort Berthold mineral owners but have utterly frustrated the oil and gas industry as to the prospect of actual oil and gas exploration on the Fort Berthold Indian Reservation. Representatives of the oil and gas industry have visited and formally met with the tribal business council to express those frustrations and to request our help in moving the Fort Berthold and the entire BIA forward on completing their duties to the Three Affiliated Tribes and our respective membership.

The Three Affiliated Tribes have held our own oil and gas industry meetings and listening sessions during the months of April, July, September, November and December of 2007, January, February and March of 2008. The purpose of those meetings was to reassure the oil and gas companies that the Three Affiliated Tribes were doing everything within our power to support the formal approval of their respective oil and gas leases. This was done for the benefit of the entire enrolled membership of the Three Affiliated Tribes of the Fort Berthold Indian Reservation that happens to be situated on the Bakken Shale Formation of western North Dakota.

At the heart of this sudden oil boom is the Bakken Formation, an oil shale formation located within the Williston Basin. The Bakken Formation was the subject of an April 2008 USGS reported that stated, "Using a geology-based assessment methodology, the U.S. Geological Survey estimated mean undiscovered volumes of 3.65 billion barrels of oil, 1.85 trillion cubic feet of associated/dissolved natural gas, and 148 million barrels of natural gas liquids in the Bakken Formation of the Williston Basin Province, Montana and North Dakota."

The entire Fort Berthold Reservation lies within the Bakken Formation. While to the north, west and south of the Reservation has seen significant development, the BIA failures have left the Tribe,

the Fort Berthold mineral owners and our entire membership looking out and wondering if we will ever see that type of activity.

While the Three Affiliated Tribes may be unable to stir any successful response from the Fort Berthold Agency and the Great Plains Region, we have begun to do what we can to encourage and support oil and gas exploration within the exterior boundaries of the Reservation. The tribe and North Dakota Governor John Hoeven's office have been actively negotiating a tribal-State oil and gas tax agreement. While a tax agreement provides the oil and gas industry with some certainty as to taxes, the Tribe's share of any oil and gas taxes collected will provide a significant source of tax revenue to address Federal funding shortfalls related to our 638 contracts for health care and law enforcement on the reservation.

Also the surge in oil activity in and around the Reservation has created millions of dollars of damage to our already-insufficient road system. A system of BIA-constructed roads that were not meant to sustain such heavy traffic or weight loads that were already in disrepair before the influx of hundreds of oil and gas trucks and tankers. Therefore, I and the tribal business council have specifically dedicated a significant amount of the anticipated oil and gas tax revenues for the specific tribal needs of health care, law enforcement and roads. We are extremely hopeful that the negotiations with Governor Hoeven will conclude with an amicable and respectful agreement that can benefit the Three Affiliated Tribes and all of North Dakota.

The Three Affiliated Tribes is also expanding our reach into energy development through our proposed Clean Fuels Oil Refinery Project. The U.S. EPA Region 8, in close coordination with the Tribe and the BIA, have recently completed the draft Environmental Impact Statement, EIS, and we are in the process of placing it in the Federal Register. However, after two years of planning and work, additional administrative hurdles were presented to when the Department of Interior's Solicitor's office has now stated that it will begin its own formal review of the draft EIS. The entire EIS project was done under the co-lead of EPA and BIA. We are confident that this draft EIS will withstand all legal challenges. That is why we are hopeful that our Clean Fuels Refinery Project will not suffer the administrative and bureaucratic delays that have thus far stymied oil and gas development on the Fort Berthold Reservation.

The Three Affiliated Tribes is also exploring other activities to develop our energy resources more effectively. The Tribe is reviewing the possibilities of a Tribal Energy Development Agreement, or TERA, to take over the duties of approving tribal leases and right-of-ways; the future development of large scale renewable energy projects such as wind farms; and the development of tribal-owned and managed energy infrastructure to support oil and gas development, both on and off the reservation.

In closing, what is most apparent from the recent developments on the Fort Berthold Indian Reservation is that our success or failure in the development of our minerals resources lies almost entirely in the hands of the Bureau of Indian Affairs. The utter failure of the BIA to meet a basic duty of its trust responsibility and adequately administer the processing of oil and gas leases, includ-

ing payments to mineral owners, and to complete its administrative responsibilities in the approving of drilling permits leaves the Three Affiliated Tribes, the Fort Berthold mineral owners and our entire enrolled membership asking why is this happening to us and why is it being allowed to continue.

Due to the significant mistakes, errors in judgment and lack of trained staff by the BIA, the Fort Berthold Reservation may very well miss out on the economic boom that the rest of North Dakota appears to be enjoying. I am hopeful that with my testimony today and with significant assistance from this Committee, the Three Affiliated Tribes may be finally given the opportunity to fully develop our oil and gas resources for the benefit of the Tribe, our enrolled members and all of North Dakota.

Modzigidaz. Thank you.

[The prepared statement of Mr. Wells follows:]

PREPARED STATEMENT OF MARCUS D. WELLS, JR., CHAIRMAN, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

My Name is Marcus Dominick Wells, Jr., Eh-Bah-Dah-Gish, (Bald Eagle) I am the elected Tribal Chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I would like to thank Chairman Dorgan and the Members of this Committee for the opportunity to provide testimony on behalf of the Tribal Business Council of the Three Affiliated Tribes; the Mandan, Hidatsa and the Arikara.

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The CHAIRMAN. Chairman Wells, thank you very much.

I must observe that this Committee has been involved in pushing the BIA. We have had discussions with Carl Artman on those issues and he has indicated to us he is pushing very hard. Now we read in the newspapers and hear that the Assistant Secretary for

Indian Affairs, Mr. Artman, has resigned, which is terrible news, in my judgment. The position was vacant for two years, now it has been filled for one year, now it is going to be vacant again. The BIA is not a well-run organization in any event. I had high hopes that Mr. Artman would come in and be very helpful. He has been helpful for us to work with. This is a huge disappointment.

I understand the point you are making, Chairman Wells. We have to get this right. And I will ask some questions about it. First, let's go to the other witnesses. Chairman Venne, thank you for being with us and thank you for being a gracious host to me when I visited your reservation with Senator Tester last year. You may proceed.

STATEMENT OF HON. CARL VENNE, CHAIRMAN, CROW NATION

Mr. VENNE. Good morning. On behalf of the Crow Nation, I want to thank you, Chairman Dorgan, and the Committee members of the Senate Committee on Indian Affairs, for holding an oversight hearing on energy development.

My name is Carl Venne. I am Chairman of the Crow Tribe and also Chairman of the largest land-based tribe here in America.

I usually don't like to read, so I am just going to tell you from my heart what I think. My Tribe has an unemployment rate of 47 percent. If you look at the last census, we are the fourth poorest county in this whole Nation. Our population is about 12,000 Crow Indians, about 8,000 live on the reservation. But we do have vast resources, especially in coal, we estimate anywhere from 10 billion to 19 billion tons of coal.

We realize what this great Nation faces as energy is becoming scarce. But this Committee should know that 20 percent of all energy in the United States is owned by Indians. But we as Indians are willing to help and work with the United States, to be a partner with the United States. I no longer just want to do a lease under the 1938 Minerals and Mining Act. I want to own the companies. How do I do that?

I want to have a coal mine. I want to have a coal-to-liquids project which can produce 250,000 barrels a day for the next 120 years. That is how much coal I have. How do I get to that?

We talk about sequestration. We have, and I have been working with the University of Montana to address that problem. But if you are talking about oil recovery, especially in the northeastern part of Montana and North Dakota, the carbon dioxide that we produce could be piped up there to enhance development of the oil recoveries, also. We are also looking into that. It is very important that you realize that as this Nation goes along, and I have been looking at what is happening with the U.S. Air Force, they are trying to put coal-to-liquid to fly their bombers and stuff. We have looked into that.

But I need assistance. With the coal and the projections we are doing today, I could provide a third of the Air Force's energy or fuel every year. That would be a tremendous help to our military in securing our Nation. That is very important to me and I hope it is important to everybody in this room.

That is what we are looking at. How do I, as one of the poorest counties in this whole Nation, become self-sufficient? By energy de-

velopment. I want to own the companies. I don't want a simple lease.

If you look at Interior's Energy Department and Economic Development Department, they have been a tremendous help. Before I didn't know the quality and quantity of all our resources on the reservation. Now I know. Now I can plan to move forward. But without the Government helping me, or even the State of Montana, I would be unable to do this.

The figures I have been getting, and our annual income is only $6,000 to $7,000 a year. But getting into these developments, I have a budget of about $22 million, from $22 million to $2.7 billion a year, that would secure my Tribe. I wouldn't need Federal assistance. I wouldn't need State assistance. You need to give me this opportunity. It is very important to my Tribe.

This would carry generations to generations to generations by good investment with your monies, not paying per capitas, by creating good jobs, high-paying jobs. When a college person graduates, if we get into this development, they will be starting at $50,000, $60,000, $70,000 a year jobs, which is good for all of us. I like to brag about how many college students we have. We have over 400 college students this year. But it is hard to fund them. How do we fund them? I will tell you how I fund them. Using tax money from the State of Montana, the tobacco tax and the gas tax, putting $2 million into education to help our young people.

But it is very hard. I need your support to work with me. How do I talk to the Department of Defense, or to the Energy Committee within the Senate? We are willing to do that as Indian tribes. If you look at the war today, 70 percent of all our young men and women enlist and go to war for this Nation. Look at what we gave up as tribes, the land base. I used to own all of Powder River Basin, you are talking billions of dollars that have gone by. But it is time we get together. It is time, there are problems in leasing. I will give you an example. We gave some oil leases out in 2005, I finally get approval in 2007 from Interior. That kind of stuff, it takes too long to make a business decision in Indian Country.

Also, BLM is charging $4,000 to punch one hole on an Indian reservation. When you go off the reservation, it costs $100 and it is approved within three days. That is the kind of help I need. It is very important for tribes to progress and get into the fast lane. We want to deal directly with industry and Government ourselves. I don't need somebody looking over my shoulder and saying, well, you have to do this, this and this. Give us a chance to make our own mistakes in what we decide as tribes. We have young, educated people within the tribes that we would be utilizing. We do have people with masters, doctorates. It is time to take a look at yourself as the Bureau of Indian Affairs, look at your staff. I will compare my staff to the agency staff any day on being educated on what we want.

We know where we want to go. Why can't I provide a third of the energy to the U.S. Air Force today?

Thank you.

[The prepared statement of Mr. Venne follows:]

PREPARED STATEMENT OF HON. CARL VENNE, CHAIRMAN, CROW NATION

I. Introduction

Good morning. On behalf of the Crow Nation, I want to thank Chairman Dorgan and the members of the Senate Committee on Indian Affairs for holding this Oversight Hearing on Indian Energy Development. My name is Carl Venne and I am the Chairman of the Crow Nation. I appreciate this invitation to provide testimony from the Crow Nation's perspective on energy development, an area central to my administration and a topic that has unlimited potential to improve the ongoing substandard socioeconomic conditions of the Crow people and the surrounding communities in southeastern Montana.

During my administration over the past six years, with the help of many partners and allies, we have taken several meaningful steps toward the successful development of our energy resources and look forward to completing, in the next few years, projects that will transform my community. My purpose today is to provide a brief history of these efforts and to share some of our understanding of what further work is necessary for tribal energy development.

II. Brief Overview of Crow Reservation and Resources

A. Brief History of Land and Population

The Crow Nation is a sovereign government located in southeastern Montana. The Crow Nation has three formal treaties with the federal government, concluding with the Fort Laramie Treaty of May 7, 1868. The Crow Reservation originally encompassed most of Wyoming (including the Powder River Basin) and southeastern Montana. Through a series of treaties, agreements and unilateral federal laws over a 70 year span, Crow territory was reduced by 92 percent to its current 2.2 million acre area.

In addition to substantial land loss, the remaining tribal land base within the exterior boundary of the Crow Reservation was carved up by the 1920 Crow Allotment Act. In 1919, prior to the Allotment Act, there were already 2,453 allotments, consisting of 482,584 acres. By 1935, there were 5,507 allotments, consisting of 2,054,055 acres (218,136 acres were alienated by 1935). The Big Horn and Pryor Mountains were not allotted and still remain reserved for the Crow Nation and its citizens.

A unique provision of the 1920 Act, Section 2, remains a serious problem. According to this provision, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation who already owned at least 640 acres of agricultural or 1,280 acres of grazing land within the Crow Reservation. Further, the Secretary of the Interior was not to approve a conveyance of land to a person, company or corporation that, with the conveyance, would own more than 1,280 acres of agricultural or 1,920 acres of grazing land. A conveyance of Crow land exceeding these restrictions was considered void and the grantee was guilty of a misdemeanor, punishable by a $5,000 fine and/or 6 months in jail. Federal enforcement of this statute has been non-existent, and today, approximately one third of the acreage of the Reservation is owned in violation of the 1920 Allotment Act.

At the same time as the Crow land base was being unilaterally reduced, the number of Crow citizens also dwindled dramatically. In fact, according to the Annual Reports of the Commission of Indian Affairs, the Crow population decreased by 50 percent in 30 years. In 1880, the U.S. Census estimated the Crow population to be approximately 3,400 and in 1910, that number was about 1,700. A number of factors caused the rapid population decline: tuberculosis; poor sanitation; crowded living conditions; severe weather; and epidemics of other infectious diseases. At that time, others arguing for more complete "opening" of the Crow Reservation argued that the statistics showed that within a few years the Tribe would be eradicated and would have no more need for its lands. Perhaps you can imagine the effects of such rhetoric on people struggling to survive.

B. Present Land and Population

As recognized by the U.S. Supreme Court in *Montana v. U.S.,* 450 U.S. 544, 548 (1981), the statistical land ownership resulting from the above described legal history was: 52 percent Crow allotments; 17 percent Crow Nation trust land; 28 percent non-Indian fee land; 2 percent State of Montana fee land; and 1 percent federal government land. According to more recent Bureau of Land Management Reports, the land statistics have shifted: 45 percent Crow allotments; 20 percent Crow Nation trust land; and 35 percent non-Indian fee land. In sum, the pattern of surface ownership generally is "checkerboard" with interspersed Crow Nation trust and fee lands, Crow allotments and non-Indian fee lands. The statistics show limited suc-

cess of the Crow Nation in reacquiring lost lands, but the reality is a much larger pattern of continued loss.

Today, there are about 12,000 enrolled citizens of the Crow Nation, with approximately 8,000 of those residing within the exterior boundaries of the Reservation. Our goal is to invite more of our citizens to return home to live and resume tribal relations, but we must be able to offer them homes, jobs, and a place to find their dreams. Our current unemployment rate is 47 percent. The Crow Nation has always emphasized higher education and we currently have more than 400 annual applications for higher education assistance. Because of federal funding limitations and internal budget constraints, however, we can only fund 90 students each year.

In addition to providing financial support for education, we have a separately chartered tribal college (Little Bighorn College, "LBHC") that started operations in 1981. LBHC has had over 300 graduates. LBHC graduates are employed on and around the Crow Reservation in a variety of positions including teachers' aids, computer technicians, office managers and administrative assistants. At least sixty have completed bachelor's degrees and are pursuing professions in education, social work, human services, science, nursing, technology, accounting and business. As we move forward in developing our energy resources, our own college can help to provide our citizens with training in new fields for new job opportunities.

C. Minerals, Past and Present

The Crow Nation has an opportunity to develop tribal resources because a minority of important legislation allowed for the protection of significant amounts of mineral rights by the Tribe. The 1920 Crow Allotment Act reserved all minerals, oil and gas on any allotted lands for the benefit of the entire tribe. However, after 50 years, unless otherwise ordered by Congress, the minerals would automatically become the property of the Crow allottee (or heir). In addition, the Allotment Act also stated that any mining leases could not exceed 10 years; but the lessee had a first right of renewal.

In 1968, Congress extended the time period in perpetuity for the minerals to be held and reserved for the Crow Nation. Today, the Crow Reservation contains 2,034,746 acres in subsurface mineral rights. Ownership of the subsurface mineral acres is not entirely clear but it is estimated to be owned primarily by the Crow Nation, with some allotted and non-Indian fee ownership. The significant natural resources within the reservation boundaries are recognized but remain largely untapped.

The Crow Nation has developed a limited amount of its resources, typically with royalty (and some tax) revenue received as the lessor. Even though we had some oil and gas development between the 1920s and 1950s, most of our governmental revenue is derived from our 35-year relationship with Westmoreland Resources, Inc. Over that period, the Apsaalooke mine has produced about 150 millions tons of coal and is the largest private employer within the Crow Reservation.

The Crow Nation has very substantial undeveloped mineral resources. It is estimated that we own 3 percent of the world's coal resource, exceeding 10 billion tons. We have been exploring our oil and gas reserves, and preliminary estimates believe them to be significant. In addition, we have large deposits of industrial minerals, such as limestone and bentonite. Finally, preliminary data suggests that we have class 5/6 wind energy as well as other renewable resources.

III. My Administration's Vision on Energy Development

Given our vast mineral resources, the Crow Nation can, and should, be self-sufficient. My goal is clear. My administration desires to develop our mineral resources in an economically sound, environmentally responsible manner that is consistent with Crow culture and beliefs. The Crow people are tired of saying that we are resource rich and cash poor.

My larger vision is to become America's energy partner and help reduce America's dependence on foreign oil. Over the next 40 years, the World Energy Council predicts that the world will need to double today's level of energy supply to meet increased demand. Primary energy sources, such as coal, oil and gas, have a finite life and the future must have renewable energy, new technology to make existing producers more efficient and environmentally sound, and an overall reduction in people's per capita use of energy.

My administration stands ready to meet the global energy challenge and take the risks necessary to meet short-term demand. With a substantial Crow coal resource, perhaps the Crow government can build the first coal-to-liquids plant in North America with capture and storage of carbon. If so, then I can contract with the U.S. Air Force to supply clean diesel fuel that will meaningfully reduce carbon emissions throughout the world, reduce America's dependence on foreign oil, and provide a

safe and secure supply to our national defense—but only if Montana and the federal government take that risk with me.

Below, in section VI, my administration has put forth its best effort and ideas to reduce or even eliminate the barriers that still exist to accomplishing my vision, with benefits to the Crow Nation, Montana and America. More than anything, I desire to improve the Crow people's quality of life, create a future with good-paying jobs and employment benefits within the Crow Reservation, and provide hope and prosperity for the next seven generations of Crow citizens. Our mutual desires are within reach.

IV. Our Experience in Ascertaining Quality and Quantity of Resources

Since the beginning of my administration as Chairman of the Crow Nation Executive Branch, I have sought to ascertain, identify and evaluate the resources in order to effectuate my vision. I appointed an oil and gas committee ("OGC") to begin this work. For the past 6 years, OGC has worked diligently to enhance the Crow Nation's reputation as a serious energy partner.

OGC has also been evaluating options, meeting with numerous energy partners, and engaging federal agencies for their regulatory review and approval as well as seeking assistance, financial and technical, from federal agencies to ascertain the quantity and quality of our resources. As noted earlier, OGC has been solely responsible for attracting and retaining companies that have successfully located oil and gas reserves within the Reservation. In addition, OGC cultivated a serious coal partner relationship that very nearly resulted in a transaction for the largest greenfield coal mine to be opened in the western United States in the past 40 years.

During my administration, we have worked with numerous federal agencies in the Department of Interior and would like to acknowledge and thank each agency for its efforts in assisting us. In particular, we have received help from the Office of Indian Energy and Economic Development (OIEED), under the auspices of Mr. Robert Middleton. Especially noteworthy is the consistent assistance we receive from a division under Mr. Middleton—the Division of Energy and Mineral Development (DEMD), located in Denver, Colorado. DEMD is led by Mr. Stephen Manydeeds.

DEMD is a group of geotechnical experts that has provided us with professional appraisals of our mineral assets, including coal, oil, natural gas, wind energy, and limestone. DEMD is staffed by experienced industry-based professionals who provide sound advice and counsel on energy and resource development as well as strategic business-decision making. DEMD's advice has included business development, strategic planning, resource marketing, identification of potential industry partners, detailed economic analyses, and assistance with negotiation of complex development agreements.

In addition, the Crow Nation has engaged a variety of private energy consultants in the past 18 months to accelerate processes with regard to specific resources, such as coal and wind. The consultants were specifically asked to examine identified resources based on their development potential and market opportunities, create a preliminary strategic development plan around the leading resource possibilities, and identify project opportunities to create jobs and provide long-term sustainable revenues.

With the tribal, federal and private teams, we have had some success (and some state assistance as well under Montana Governor Brian Schweitzer and his staff). Because development takes time and our budget is limited, we must rely primarily on our tribal and federal teams and efficiently utilize outside counsel and private consultants where necessary. I strongly believe a mix of experience and perspectives on energy development will be crucial to making my vision a reality.

V. Past and Present Challenges

A. The Past

Even though circumstances change, it is important to remember the past and causes that have prevented the Crow Nation from realizing its potential. The past is revealing. A close examination of federal Indian law, and Crow history in particular, demonstrates a pattern of invariable changes to the legal and political status of tribal governments and their citizens in order for non-Indians and American governments to unjustly capture wealth, especially when it comes to the subject of energy resources.

I think the following quote from a Commission of Indian Affairs Report from 1876 is particularly demonstrative of America's treatment of Indian resources in general and Crow minerals in particular: "Whenever an Indian reservation has on it good land, or timber, or minerals the cupidity of the white man is excited, and a constant struggle is inaugurated to dispossess the Indian, in which the avarice and determination of the white men usually prevails."

1. Railroad Rights-of-Way

For example, in 1864 (prior to the negotiation of the 1868 Treaty) Congress passed an act granting the Northern Pacific Railroad a right of way from Lake Superior all the way to Puget Sound. In the act, Congress "provided that the United States should extinguish as rapidly as may be consistent with public policy and the welfare of the Indians the Indian titles to all lands falling under the operation of this act." Even though this right of way cut a large swath out of Crow Country, this act is not mentioned in the 1868 Treaty. According to a 1940 claims case, the U.S. knew that the land the Crow Nation reserved would be affected by this land grant.

The three railroad acts of 1887, 1888 and 1889 are virtually identical; each unilateral federal act took Crow land for a different railroad. The railroads were the Rocky Fork and Cooke City Railway Company, Billings Clark's Fork and Cooke City Railroad Company, and the Big Horn Southern Railroad Company. The unilateral agreements promulgated by the U.S. Congress ignore the 1868 Treaty provision requiring approval by a majority of tribal members for any cession of Crow land. The requirement of tribal consent was at the discretion of the President.

The Secretary of the Interior was to "fix the amount of compensation to be paid the Indians for such right of way." According to a 1935 claims case, the following compensation was paid for the respective takings: the 1887 taking of 700 acres was for $875.64; the 1888 taking of 1,377 acres was for $4,133; and the 1889 taking is not mentioned. Each taking weakened the Tribe's ability to develop its own resources and compensation was only marginally provided, if at all.

2. Yellowtail Dam and Hydropower

One of the primary opportunities for the Tribe to develop its energy resources was taken from it when the United States chose to develop the resource for itself. The Bureau of Reclamation's Yellowtail Dam on the Big Horn River within the Crow Reservation was authorized as part of the Pick-Sloan Missouri Basin Project by the Flood Control Act of 1944. The value of this site was no secret; in fact, the 1920 Crow Allotment Act, Section 10, had guaranteed that unallotted lands within the Crow Reservation that were chiefly valuable for the development of water power would be reserved from allotment or other disposition under that act, for the benefit of the Crow Tribe of Indians.

This guarantee, for which Tribal members and their supporters worked tremendously hard, was ignored. On October 19, 1949, an Opinion by the Assistant Solicitor of the Department of the Interior even held that there was no authorization for forced acquisition of the land needed for the construction of Yellowtail Dam. However, a Solicitor's Opinion of February 3, 1954, found that existing reclamation laws did grant that authority.

In 1958, the United States condemned Crow Reservation land for building Yellowtail Dam and then argued that no compensation to the Tribe for the land's water power value was necessary. In contrast, the Flathead Indians and Warm Springs Indians received full power-site value for tribal lands used to build Kerr Dam and Pelton Dam under the Federal Power Act. In *U.S. v. 5,677.95 Acres of Land, More or Less, of Crow Reservation, State of Mont.,* 162 F. Supp. 108 (D. Mont. 1958), the court found that Congress intended for Yellowtail Dam land to be condemned but the Tribe was entitled to compensation based on the land's water power value.

Yellowtail Dam became operational in 1966. The dam generates over a half billion kilowatt hours of power per year, even during drought conditions. To date, the power generation revenues have exceeded $600 million dollars. Although the Crow Nation did receive a couple of million dollars for the land takings to create Yellowtail Dam, the Crow Nation did not receive, nor has it ever received, a payment for the ongoing revenue from power generation.

3. Land

Most of the land loss within Crow territory is the result of non-Indian ownership of large tracts of land in violation of the Crow Allotment Act, Section 2, which aimed to protect the Crow land base by placing limitations on the sizes of parcels that could be owned by individuals and corporations. These violations have led to clouded title for most landowners within the Reservation. More than 800,000 acres of land within the Reservation (over a third of the total acreage) was already in fee status by the year 2000; approximately 600,000 acres of fee land continue to be owned in violation of Section 2.

In addition, the Crow Indian Reservation land base has been decimated by fractionated ownership of various allotments. The Department of the Interior estimates that over 10 percent of all fractionated lands within Indian country are actually within the Crow Reservation. By meaningfully addressing the fractionation

issue at Crow, we would be making a significant impact on the national problem The Crow have numerous parcels of allotted lands that have more than 10 owners and sometimes more than 100 owners.

Some federal laws address consent provisions, but this issue (and clouded title, discussed above) is very problematic for energy development. The consent provisions that exist are difficult to adhere to, and numerous misstatements of the law can be found in any set of transactions. Owners of fractionated interests, minority owners in particular, have great difficulty in having their voices heard or in being fairly compensated for their interests. In general, business partners are reluctant to submit to land tenure systems they cannot understand.

B. Present

1. Practical Issues

Despite the fact that the Crow Nation has substantial resources, numerous practical problems arise from the previously described history. The OGC and our energy partners, actual and potential, have experienced, and continue to experience, systematic problems in trying to create energy development. As demonstrated by the *Cobell* litigation, the Bureau of Indian Affairs (BIA) has a variety of issues that consistently create barriers and delays to resource development.

For example, the OGC created and the Crow legislature approved an oil and gas lease in January of 2005, but development did not begin until September 2007 because of an extremely slow BIA approval process. Within the approval process of that lease, an inventory of net mineral acres for the Crow Reservation was reported as 94,000 acres. However, after OGC and the energy partner reexamined the statistics with land information, an additional 50,000 net mineral acres was discovered for the Crow Nation (the 50,000 net mineral acres is worth $250,000). An error of this magnitude would be simply unacceptable in many contexts, but in our experience it is not surprising and is far from unique.

BIA records for surface and mineral ownership are erroneous, missing and out of date. These problems cause significant delay with preparation of environmental documents and overall land records necessary for business transactions. It is extremely difficult to compete with off-reservation development because of these problems. Many companies view this, in addition to all other problems, as another prohibitive cost of doing business within the Crow Reservation.

In a similar example, recently with a separate lease, OGC and an energy partner discovered another error in records. The Bureau of Land Management had turned over abandoned gas wells to the surface owner. However, upon review, it was discovered that the minerals actually belonged not to the surface owners but to the Crow Nation. It is hard to imagine this type of scenario occurring regularly with other governments and their energy partners without serious efforts to change the status quo in government regulation.

Finally, the Department of the Interior, and in specific the BIA, lacks necessary resources for even routine governmental regulatory functions. For example, the BIA area office in Billings, Montana, has one primary individual to work on environmental issues for eight (8) different Indian nations. If multiple tribes are exploring their resources and/or seeking approval of resource transactions (joint ventures, leases, etc.), it simply takes additional time to obtain approval—even with the best efforts of particular employees within the BIA.

2. Jurisdiction and Tax Issues

In an important civil jurisdiction case, *Montana v. U.S.,* 450 U.S. 544 (1981), the U.S. Supreme Court held that title to the bed of Big Horn River passed to Montana upon its admission to the Union, and did not vest in the Crow Nation. In addition, and very important to energy resource development, the Court held that the Crow Nation did not have presumptive civil jurisdiction over non-Indians on non-Indian fee land unless they met one of two specified exceptions. Both exceptions have proven elusive, if not impossible, to satisfy in the years since the decision.

Further, in *Strate v. A–1 Contractors,* 520 U.S. 438 (1997), the U.S. Supreme Court held that a public right-of-way across Indian land was equivalent to non-Indian fee land and thus not subject to tribal jurisdiction. Although it is true that an Indian nation can contract around *Montana* and *Strate,* the Crow Nation still encounters substantial difficulties when it tries to address pockets of fee land within its boundaries for exploration activities, surface access and right-of-way agreements. Moreover, companies with rights-of-way across Indian country protested or simply stopped paying taxes to Indian nations, correspondingly reducing tribal governmental revenues and services.

Moreover, this overall jurisdictional framework adds increased government regulatory authority over any given energy resource transaction (e.g., state, county and

city)—another disincentive to doing business in Indian country. Therefore, at Crow and elsewhere in Indian country, energy partners must pay many additional costs and tribal governments must promise to protect the project by freezing future legislation and must agree to apply tribal taxes over the term of the project so that it does not exceed state taxes immediately off of the reservation to alleviate obstacles and level the development playing field.

In addition to *Montana* and *Strate,* the U.S. Supreme Court has further weakened the power of Indian nations to work toward economic self-sufficiency through a series of Indian tax decisions in the past 30 years—almost invariably increasing state tax authority to the detriment of tribal tax authority. In Indian country today, with relatively small geographic areas comprising some of the most impoverished communities in the United States, energy resources are potentially subject to five concurrent government taxes (federal, tribal, state, county and city). Energy partners and investors simply do not want to do business where there is substantial uncertainty and risk of triple or quadruple taxation.

3. Recent Legislation

With our partners and allies, we have spent valuable time protecting our rights to develop our energy resources. In 2006, we participated in numerous discussions related to Section 1813 of the 2005 Energy Policy Act, Energy Rights-of-Way Study. Like several other Indian nations, we argued that we should be able to negotiate our own energy rights-of-way agreements with our business partners, rather than have another federal law dictate those terms. Given our long history of battles over energy resources, I hope that legal and political decision-makers will appreciate our past and realize that we fight, forever, for our right to make decisions and develop our own resources, rather than see outsiders benefit from our energy wealth.

More recently, we have been seeking support to protest the unfair standards with drilling permit fees (Application for Permit to Drill, "APD") by the BLM for energy development requests in Indian country required by the Fiscal Year 2008 Consolidated Appropriations Act. Montana Governor Brian Schweitzer (and Senator Max Baucus) wrote letters to inquire why Secretary of the Interior Kempthorne was applying a prohibitive $4,000 filing fee for APDs involving Indian mineral resources.

Mr. Stephen Allard, an Assistant Secretary for Land and Minerals Management, recently responded in a letter dated April 14, 2008, that the fee was not discretionary and it was necessary to offset a lack of federal appropriation to process the applications. In contrast, a company must pay $100 to the Montana Board of Oil and Gas for a drilling permit immediately off of the Crow Reservation and have the permit within three days. This discrepancy chills Indian mineral development and is the latest example of another unnecessary bureaucratic hurdle that slows, if not precludes, new investment in energy development in Indian country.

VI. Recommendations

A. DEMD

In sum, DEMD has been invaluable (as well as Crow OCG) and we would not be in a favorable position to engage in large scale industrial development without DEMD's assistance. I once again want to express our sincere thanks to Mr. Middleton and Mr. Manydeeds. However, we would suggest that DEMD continue to receive your support, financial and otherwise, in order to assist the Crow Nation and other Indian nations to develop their energy resources (or if they have the financial capacity, assistance with participation in the overall energy market) and become self-sufficient.

B. Federal Water Legislation

My administration also views our federal legislation ratifying Crow (and non-Indian) water rights as central to any and all energy development within the Reservation. Within the short term, the Crow Nation will submit federal legislation to ratify its Water Compact with the State of Montana and to finalize a federal settlement of its water claims. The Compact was approved by the Montana Legislature in 1999. For any large scale energy development, our energy partners need certainty and predictability to be able to use water for development without fear of litigation or uncertainties.

As important, upon ratification of the Compact by the United States and by the Crow people, the Crow Nation will assume the administration of its water right on the Reservation. The federal financial contribution to the settlement will provide funds for the development of sorely needed water systems on the Reservation (primarily safe, clean drinking water throughout the Reservation) as well as the repair of the Crow Federal Irrigation Project. The Tribe's largest single protected right under the Compact is 500,000 acre-feet per year from the Bighorn River, subject to

numerous limitations to protect existing users, both Tribal and state, as of 1999, and to protecting the in-stream flow of the famous and sacred Big Horn River.

C. Crow Land Restoration Act

Another extremely vital piece of legislation to support in the development of our energy resources concerns the strengthening of the tribal land base, previously weakened by allotment, fractionation, and other historic processes. Today, our approach is to respect reliance interests and reduce fractionation by repurchasing land from willing buyers. Senate Bill Number 1080, the Crow Tribe Land Restoration Act, was introduced by Senator Max Baucus on April 10, 2007. It would authorize the Secretary of the Interior to develop a program to help the Crow Nation acquire and manage land and interests in land on the Crow Reservation, with purchases funded through a loan to the Nation of up to $380,000,000.

D. Tax

We also ask for continued interest and efforts on Indian tax legislation, including long-term renewals of the following: (i) tax credit on Indian coal from the 2005 Energy Policy Act; (ii) accelerated depreciation in Indian country, excluding gaming, provisions of the Internal Revenue Code (IRC); (iii) an enlarged scope of Indian employment tax credit for private employers on Indian reservations; and (iv) treating tribes as states in all aspects under the essential governmental function test in existing sections of the IRC.

Similarly, it is necessary for a federal legislative clarification that the tax base in Indian country, existing and future, is subject to the sole tax authority of Indian nations on the local level (pre-empting state and local tax authority) for funding to provide tribal governmental services. Multiple governmental taxes in some of the poorest counties in America are unjust and are a core problem for energy development in Indian country. It is my opinion that treating tribes as states for all tax purposes will begin to ease the tax and regulatory burdens on energy partners seeking to assist Indian nations to become the primary governing entity, and an energy partner with the states and federal government, in Indian country.

Conclusion

We definitely could use your assistance in setting the foundation to make our vision a reality.

We have been very busy in working to develop our energy resources and to remove obstacles to successful development. We hope to be a worthwhile model for other tribes, and to live in the near future in a time when our own resources, in our own hands, provide everything necessary for the health, hopes and future of our people.

It is critical that Congress act to protect Indian nations' natural resources and secure Indian nations as the primary governing entity over their own homelands. Not only will this work be important in its own right, but it will have numerous benefits for the local communities and federal government as well. The Crow Nation has been an ally of the United States all through its history.

Today, the Crow Nation desires to develop its vast natural resources not only for itself, but to once again help the United States with a new goal—achieving energy independence, securing a domestic supply of valuable energy, and separating itself from its dependence on foreign oil. The Crow Nation, as many Indian nations, are veterans of the United States Armed Forces and we have a special understanding and respect for what it could mean to our sons and daughters in coming years if all of our energy needs were met here at home.

It is time for the Crow Nation to become an energy partner. However, my vision can only become a reality with your (and local government) assistance. I strongly feel that the vision starts today, with your help and assistance. Mr. Chairman and Committee members, thank you again for the opportunity to testify on Indian Energy before you today. I would be happy to answer any questions.

The CHAIRMAN. Chairman Venne, thank you very much. We appreciate your being with us today.

Next we will hear from Steven Began. He is the General Manager of the Diné Power Authority at the Navajo Nation, Window Rock, Arizona. Mr. Begay, thank you for being with us. We appreciate your being here. You may proceed.

STATEMENT OF STEVEN C. BEGAY, GENERAL MANAGER, DINÉ POWER AUTHORITY, NAVAJO NATION

Mr. BEGAY. Thank you, Mr. Chairman. I am the General Manager of the Diné Power Authority, a Navajo Nation entity responsible for utility-scale power generation and transmission and development on Navajo lands. Thank you for this opportunity to provide testimony on the energy development efforts of the Navajo Nation and the lessons that we have learned.

DPA has three major projects under development. Under the private partners, we are close to commencing construction on nearly $4 billion worth of energy projects. DPA's first major project is the Navajo Transmission Project, the NTP, a 469-mile high voltage transmission line connecting the generation-rich Four Corners region of the desert southwest with the growing load demand in States such as Arizona, Nevada and California. This permitted project is the only high-voltage transmission system of its size and length that is ready for construction in the United States today.

DPA's second major project is the Desert Rock Energy Project, a $4.3 billion mine-mouth, coal-fired power plant. Desert Rock would have the lowest regulated emissions of any pulverized coal plant in the United States. Desert Rock is absolutely critical to the economic future of the Navajo Nation, one of the most impoverished areas of the United States, and will create many jobs and generate approximately $1.5 billion to the Navajo treasury in the first 30 years of operation.

Regrettably, Desert Rock's air permit is being delayed by the U.S. Environmental Protection Agency. Until the EPA issues that air permit, it will not be possible to complete negotiations to finance the project.

DPA's third project is the Diné Wind Project, one of the largest wind generation systems under development in the U.S. today. The Diné Wind Project will provide up to 500 megawatts of wind power. The wind project will balance the Nation's baseload energy portfolio and can utilize the Navajo Transmission Project.

In developing these large projects, we have learned several valuable lessons. Large-scale energy projects are extremely complicated and expensive and take a long time to develop, even under optimal conditions. Second, building tribal capability and capacity is critically important but takes time and money. These projects are capital-intensive. Although the Navajo Nation put approximately $20 million into the projects described above, Federal funding and incentives remain critically important to their advancement.

When it comes to financing, our largest challenges, our biggest challenges have not been the traditional barriers of dealing with a lack of collateral or dispute resolution, but rather, the lengthy delays in the Federal permitting process, putting us at a cost disadvantage and time to non-Indian developers. Concern regarding global warming has affected our coal plant plans. Fortunately, Desert Rock's ultra-supercritical boiler design will reduce carbon emission over typical coal plants by approximately 20 percent. Moreover, the Desert Rock site is unusually well suited for testing large-scale carbon capture and sequestration technologies as it sits atop a geological structure deemed perfect for carbon storage.

Congress should aggressively finance carbon capture and sequestration demonstration projects. Should Congress do so, Desert Rock is uniquely positioned to be a first mover in this area. Consistent with the Federal trust responsibility, Federal agencies can do more to help. For example, DPA has been frustrated with the delay at the EPA in issuing an air permit for Desert Rock. We consider the delay to be unacceptable on the merits and in violation of the trust responsibility.

Congress can support tribal efforts with more aggressive economic and tax-related legislation, including long-term renewal of Excel-rated depreciation credit for businesses locating on Indian reservations and the Indian worker tax credit. Congress should also pass legislation to make it easy for tribes to transfer any tax benefits they may receive for energy production to their private partners. Congress needs to provide priority transmission access to tribal energy projects. Congress should create and expand preference contracts for purchase of tribal energy. A tribal renewable portfolio standard would give tribal energy projects greater access to long-term purchase power contracts.

Thank you again for this opportunity to testify. A more detailed testimony has been submitted to the Committee. My colleagues and I are available to answer any questions the Committee may have.

Thank you.

[The prepared statement of Mr. Begay follows:]

PREPARED STATEMENT OF STEVEN C. BEGAY, GENERAL MANAGER, DINÉ POWER AUTHORITY, NAVAJO NATION

Chairman Dorgan, Vice Chairman Murkowski and members of the Senate Committee on Indian Affairs, thank you for this opportunity to provide testimony on the energy development efforts of the Navajo Nation and on lessons that we have learned.

I am the general manager of the Diné Power Authority, also known as DPA. DPA is the Navajo Nation entity responsible for utility-scale power generation and transmission development on Navajo lands. Our mission is a reflection of the Navajo Nation's sovereignty over its land and resources. DPA is the oldest tribal energy enterprise in the U.S. today dedicated to wholesale energy development, including fossil fuel and renewable energy. The purpose of DPA's energy projects are to benefit the Navajo people, and promote economic development on the Navajo Nation. I would like to describe a few key points about three major projects that DPA is developing, share our experiences and thoughts on problems facing tribal energy, and offer some solutions to those problems.

DPA's first major project is the Navajo Transmission Project (NTP), a 469-mile high voltage transmission line connecting the generation-rich Four Corners region of the desert southwest with the growing load demand in states such as Arizona, Nevada and California. This permitted project is the only high-voltage system of its size and length that is ready for construction in the United States today. Once built, the Navajo Transmission Project will eliminate a major gap in the Southwestern high-voltage transmission grid, a long-term goal of the Federal Energy Regulatory Commission, regional utilities and consumers. The NTP serves a variety of purposes, including increased stability and reliability in the event of outages and impacts to power plants and transmission lines; relieving constraint on existing, aging transmission systems in the region, and facilitating new generation from both renewable and fossil-fuel-based sources. Navajo coal is an essential component to providing reliable baseload power that will assure that resources become available to make transmission affordable and available to regional renewable projects that on their own cannot finance significant transmission line development. This brings me to DPA's next major project.

DPA's second major project is the Desert Rock Energy Project, a $3.4 billion minemouth, coal-fired power plant that would generate up to 1,500 MW located on the Navajo Nation in the Four Corners Area of New Mexico. Desert Rock would have the lowest regulated emissions of any pulverized coal-fired plant in the United

States. This project, which would create thousands of jobs during its four-year construction phase, 200 permanent, family-wage jobs in the power plant and another 200 well paying jobs in the adjacent Navajo Mine during its lifespan, is absolutely critical to the economic future of the Navajo Nation, one of the most impoverished areas of the United States, with 50 percent unemployment. The project would generate approximately $50 million per year in the first year of operation and increase each year after that, resulting in $1.5 billion to the Navajo treasury in its first 30 years of operation.

The major permitting processes, including the federal Environmental Impact Statement (EIS) process and the federal Clean Air Act construction permit (PSD) process are nearing completion for the Desert Rock Project. The Final EIS is expected within the next few months, but the air permit is being delayed by the U.S. Environmental Protection Agency (EPA). The EPA deemed Desert Rock's air permit application complete four years ago in 2004, and pursuant to the Clean Air Act, the agency was required to issue a decision on the permit within 18 months. Despite significant additional studies to ensure compliance with Clean Air Act requirements, a lengthy and twice-extended public review and comment process, EPA has still not issued its decision on the air permit.

Until the PSD permit has been issued, it will not be possible to complete negotiations on power purchase agreements or make progress on obtaining financing for the project. Further delay costs the Navajo Nation approximately $5 million of desperately needed dollars every month.

DPA's third major project is the Diné Wind Project, one of the largest wind generation systems under development in the U.S. today. After a nationwide search and two years of discussions with different developers, reviewing a variety of technologies and with guidance and assistance from the U.S. Department of Energy and Sandia National Laboratories, DPA entered into detailed discussions with a short list of qualified wind developers. In 2006 DPA began a joint venture with Citizens Energy Corporation and Citizens Wind because of Citizens' strong commitment to working with Native communities, a proven track record to return significant profits from their operations back to low income citizens of Native communities, a willingness to provide a carried interest to the tribal energy enterprise for their development efforts, and a significant equity ownership opportunity (50 percent) offered to the tribe in the project.

After conducting significant due diligence, DPA negotiated and entered into an agreement with Citizens in July, 2006 that began a joint venture of the tribal enterprise and the non-profit energy corporation to conduct feasibility studies, negotiate project development agreements and pursue preliminary discussions with local Chapters. From 2006 through 2007, Citizens and DPA collected wind data, evaluated transmission capacity, held meetings and conducted discussions with Navajo officials and local residents. On March 12, 2008, President Joe Shirley, Jr., Vice President Ben Shelley, members of the Navajo Hopi Land Commission, DPA General Manager Steven Begay and other Navajo and DPA representatives meet at the Navajo Nation Washington Office to execute an Agreement in Principle to move forward with development.

The Diné Wind Project will provide 500 MW of wind power at full buildout, with approximately 200 MW in phase one located in the Grey Mountain area of the Navajo Nation. Phase one alone could produce revenue of over $3–5 million per year for Navajo, with additional revenues to DPA & Nation through Project Equity Ownership. It would also create 100–200 jobs during construction and 10–20 permanent jobs, while building a Navajo skill and knowledge base through job training. A percentage of the profits would be provided for local economic development and assistance.

DPA is in active discussions with energy companies, developers and others for a variety of other projects, including solar, coal gasification, distributed generation and other technologies and applications. DPA's projects have introduced the Navajo Nation, and tribes across the country, to new ways of doing business with the non-tribal world, and these projects have generated significant interest in improving the quality of life across the Navajo Nation. But getting this far has not been easy. Tribal energy development faces a number of significant hurdles; some that are shared with non-tribal entities, and some that are more acutely felt by native communities. Some of the valuable lessons we have learned over the last decade include the following:

- *Expectations need to be set correctly.* Large scale energy projects are extremely complicated, expensive and take a long time to develop even under optimal conditions.

- *Building tribal capability takes time and money.* DPA has built up its capability to be full-fledged partners with private industry over many years.
- *These projects are capital-intensive.* Although the Navajo Nation put about $12 million in tribal funds into the projects described above, Federal funding, tax incentives and prioritization for tribal energy projects remain critically important to their advancement and will continue to be important for such projects on tribal lands in the future.
- *It takes time to find a private industry partner willing to build on Indian lands.* This is especially difficult when tribes require, as DPA did, that the private partner be willing to push the environmental standards to a new high, and in DPA's case, be willing to add technologies that would reduce water use. DPA was fortunate to find such a partner in Sithe Global Power LLC for Desert Rock and Citizens Energy Corporation for our wind projects.

Without a doubt, the benefits from tribal energy development far outweigh the burdens of achieving a successful project, but there are ways to level the playing field so the hurdle is no higher on one side of the reservation boundary. The following are a few attainable solutions that Congress and the federal government can consider to address these issues:

Addressing Carbon Emissions While Providing Reliable Baseload Power. Because approximately 50 percent of electricity generated in the U.S. today comes from coal, coal-fired generation must confront the challenge of reducing carbon emissions and their impact on global warming. New coal plants are meeting this challenge through high-efficiency combustion, smart emission reduction technology and forward-thinking design which allows for carbon capture and sequestration (CCS). Desert Rock's ultra supercritical boiler design and resulting combustion efficiencies will reduce carbon emission over typical coal plants by approximately 20 percent. In addition, proven, existing emission control technologies are combined to maximize reduction of pollutants, including a plant design with dedicated space for future emission control expansion and addition of CCS technologies. Notably, the Desert Rock site is unusually well suited for testing large-scale carbon capture and sequestration technologies:

- Approximately one mile below Desert Rock are two thick saline aquifers, which can hold carbon as carbonic acid, capped by a 1,000' shale layer, and separated by a limestone layer.
- Two studies confirm the feasibility of this formation as a primary target for CO2 capture.
- There are several suitable depleted oil and gas domes for CO2 storage available within 7–51 miles from Desert Rock.
- There are also several CO2 pipelines that pass within relatively close proximity to the plant site, allowing for sale of CO2 for enhanced oil and gas recovery.

However, for any major CCS project to go forward at Desert Rock, or anywhere in the country, there are several significant challenges that must be addressed related to cost, equipment guarantees, liability and permitting. Only the Federal government is in a position to address these issues. DPA has consulted academic institutions, government agencies, government funded laboratories, private engineering firms, financial analysts, lenders, investors and technology vendors to discuss what efforts are needed to make CCS viable on large-scale power plants. A strong consensus among these and other key players that federal incentives such as transferable tax credits and CSS pilot projects on new, high-efficiency coal plants present some of the best opportunities in the U.S. to address carbon issues and still provide high quality, reliable, and affordable baseload energy from coal-fired power plants to consumers in the short term. Desert Rock is uniquely positioned to be a "First Mover" on such a major CCS demonstration project. The addition of CCS to the new generation of clean coal plants that is represented by Desert Rock stands to bring the highest return on this "environmental investment" as opposed to retrofitting older, less efficient coal plants.

Overcoming Financing and Investment Obstacles. Historically, significant obstacles to obtaining financing and attracting investment in tribal energy projects have included the sufficiency of collateral (especially since most tribal lands in the 48 contiguous states are in trust status and only the mortgage interest on a lease of trust lands is usable as collateral), the problem of dual taxation (overlapping state and tribal taxes), attracting investors with tax credit appetite, delay and cost in obtaining federal permits and approvals, and the constant challenge of remaining competitive with non-tribal projects in securing long-term power purchase agreements in the face of more complicated and lengthy transaction and development periods.

While DPA has negotiated innovative and low-risk business models in its current project agreements that will help facilitate investment, project finance and maximize tribal equity positions, the time and cost involved in reaching these agreements has been significant. For tribal projects to succeed, the time needed to obtain permits and the development costs must be comparable to non-tribal projects.

In addition to the two suggestions above, I urge this Committee and Congress to also consider the following:

- *Consistent with the Federal trust responsibility, Federal agencies can do more to help.* DPA has been frustrated with the delay at the EPA in issuing an air permit for Desert Rock. We consider the delay to be unacceptable on the merits and in violation of the trust responsibility between the federal government and Indian nations. All Federal agencies should acknowledge their trust responsibility to tribes and should dedicate the necessary resources to ensure that delays in the Federal portion of the development process do not retard overall project development.
- *The Congress can support tribal efforts with more aggressive economic and tax-related legislation.* For instance, Congress should renew, on a long-term basis, the accelerated depreciation credit for businesses locating on Indian reservations, as well as the Indian worker tax credit. These provisions were part of the package of incentives DPA used to attract large scale capital investment to the Navajo Nation, but are set to retire at the end of this year. Congress should also pass legislation to make it easy for tribe's to transfer any tax benefits they may receive for energy production, but cannot use because of their tax status, to their private partners (e.g., H.R. 1954).
- *Congress needs to more aggressively finance carbon capture and sequestration demonstration projects.* These projects are essential to demonstrate that it is possible to capture carbon emissions from coal-fired power plants, thereby assuring the viability of America's cheapest and most abundant source of energy. Desert Rock is perfectly situated to be one of these projects and is something that the project developers would be very interested in pursuing.
- *Congress needs to provide priority transmission access to tribal energy projects.* Consistent with the outcome of the federal right-of-way studies undertaken pursuant to the 2005 Energy Policy Act, Congress should take the next step and provide incentives for tribes to gain priority access to high-voltage transmission systems for tribal energy projects, and in certain cases, support the development of new transmission projects on tribal trust lands. A number of mechanisms could be employed to achieve this objective, with the result of increasing the domestic energy supply, improving tribal economies and strengthening our national transmission system.
- *Congress should create and expand preference contracts for purchase of tribal energy.* Federal agencies, in particular defense agencies and others with large energy demands, need a steady supply of low cost, high-quality reliable power. Tribal energy projects can meet that demand. A "tribal renewable portfolio standard" for these agencies, and for other recipients of significant federal assistance, would help build domestic energy capacity and give tribal energy projects greater access to long-term power purchase contracts. We ask Congress to begin a national discussion with federally recognized tribes to explore how tribes can meet the energy needs of the Federal Government.

Conclusion. After a total investment of nearly $30 million, DPA and its private partners are close to commencing construction on nearly $4 billion worth of energy development projects. However, Federal support and involvement remains vitally important and has only been partially forthcoming. I hope these comments are useful to the Committee in understanding the real-life issues tribes must face in developing significant energy projects. Thank you, again, for this opportunity to testify.

The CHAIRMAN. Mr. Begay, thank you very much for being with us.

Finally, we will hear our witness from Alaska, Ms. Julie Kitka, who is the President of the Alaska Federation of Natives, in Anchorage, Alaska. Ms. Kitka, you may proceed and we appreciate very much your being with us today.

STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Ms. Kitka. Thank you, Mr. Chairman, Madam Vice Chairman, members of the Committee, ladies and gentlemen.

Before I begin my testimony, I would like to ask our eighth grade class from Nome, Alaska, that is observing the hearing, if they could stand up and the Committee could welcome them. That is a long way from home.

This was not planned, I came in the room and here they were.

[Laughter.]

The CHAIRMAN. We certainly welcome the eighth grade class from Nome, Alaska. How many miles are we from Nome, Alaska, sitting here in Washington, D.C.? Does anybody know? Four thousand five hundred miles. Perhaps Senator Murkowski wishes to welcome her constituents as well.

Senator MURKOWSKI. It is a long way to go to school, isn't it, kids?

[Laughter.]

Senator MURKOWSKI. We welcome you and I am delighted you got an opportunity to be here as part of this hearing, focusing on an issue to those of us back home that is exceptionally important. I hope it is a productive day and a good visit here. Welcome to the Committee.

The CHAIRMAN. Thank you very much for being here.

Ms. Kitka. Thank you.

Again, my name is Julie Kitka, the President of the Alaska Federation of Natives. We are honored to be presenting testimony today. We would ask that the hearing record be kept open to allow our tribes and corporations to provide additional detailed information.

Alaska, which is our homeland, is an incredibly large land mass. It is two and a half times the size of Texas and has vast energy resources which are largely untapped and undeveloped. Alaska Natives, as the largest private landowners in the State, are committed to working with the State and the Federal Government and other private sector partners to help meet the energy needs of this Country.

Just for example, our land holdings are a little bit over half of all the Native lands in the Country. We know that our Country needs to become more energy self-sufficient and less dependent on potentially unstable foreign sources. We are also aware that global competition for energy resources, especially from China and India, and many other rapidly developing countries, impacts our lives today and our future. Even news of oil finds in Brazil travels north to Alaska, as we learn that they may have discovered as many as 33 billion barrels of oil, which would make it the largest field every found. We know if further explorations confirmed this, we again will be all affected and U.S. national policy will change dramatically because of that.

So we feel it is very timely to get very serious about what this Committee is looking at to both help our Indian communities and our Country. We are strong supporters of the development of alternative energy sources as an important avenue to add to our Country's energy sources. We offer our tribal communities in Alaska, in

all their vastness, to be considered part of national demonstration projects on alternative energy technologies and as a proving ground to show how Alaska Native people and their institutions have the experience, the capital and the community relationships that will be necessary to effectively implement workable solutions to the developing energy crisis.

Our Alaska Native corporations in particular have shown their ability to pull together both large and small projects and deliver results on time. Our recommendations are broad and expansive, including national State-wide and local considerations. We urge your consideration.

I wanted to respond to Tribal Chairman Venne's comments about their desire to have greater self-sufficiency and greater involvement in owning companies that do their business and how they can do that. I want to suggest the Committee's consideration of the mentorship protege program that the SBA, Small Business Administration, has a way to partner up different Native tribes with other companies that have experience. We know in Alaska, one of the hats I wear is as Director of Chugach Alaska Corporation. We had a lot of lessons that we learned in trying to develop our coal resources and major mistakes that we made in doing it and how to do it right. I think maybe that mentorship protege program, if it is applied also to energy, might be a way to partner up tribes and their desires to be more in charge of their resources with other tribes and Native organizations that can assist.

Again, Alaska is so diverse, I would like to focus our testimony primarily on the potential to make our local communities more self-sufficient in energy and capable to deal with rapid climate change and all its uncertainties. We are not going to get any closer to some of the rapid climate changes that are happening in the United States than the Arctic and what we see and what we are being told by scientists and others. So alternative energy resources, abilities to build our communities' capacity to deal with rapid change and uncertainty is very important.

Because there is no one size that fits all in alternative energy resources for our communities, and because in Alaska, there is virtually unlimited potential of what can be done, we would like to invite and encourage the Committee to hold hearings in Alaska this summer that can focus on the potential for development of energy resources on Native-owned lands as well as what can be done to reduce the high cost of energy in our rural communities.

On behalf of our membership and our tribes and our corporations, we sincerely hope that the Committee can find time to do that. We have a lot of people that are working and spending time on these important issues and a lot of people who couldn't travel back here that would like to testify. We really think that would be productive to your consideration of these important issues.

Again, the undeveloped energy resources most often discussed for rural Alaska are small hydropower, using rivers to provide power to small communities and serving as America's experimental back yard for rural America: solar energy, sea wave action, biomass usage, coal, methane, geothermal energy. Each brings both its problems and barriers. Many alternative energy ideas look fascinating on paper but actually getting them up and operating in

the lives of real people can be very complex and frustrating. We are committed to trying to make these alternative energy models work and offer our assistance and our membership's assistance in demonstrating and getting some of these things off the ground.

For example, wind. Alaska has world-class wind energy resources, especially along the coastal and western regions of our State. There are 31 rural Alaska communities that already have good opportunities for wind generation and 17 more that are potentially attractive. I mention Cook Inlet Region Inc. (an ANCSA Corporation) and their Fire Island project as a prime example of a wind farm that could step up a lot faster if there were regulations that were published to the recent Energy Bills that were enacted by Congress but have not yet been implemented. In fact, we urge the Committee to ask the Administration to expedite those regulations and get that on track and fully implemented.

Also hydro, solar, ocean wave action, Alaska has over 34,000 miles of coastline, making it one of the best ocean energy resources in the world. I could go on, but I want to——

The CHAIRMAN. I'll have to ask you to summarize. We have six witnesses. So if you would just summarize for us, I would appreciate that.

Ms. Kitka. The last thing I wanted to bring to your attention, obviously we have a number of concrete recommendations we would urge your consideration. But I would be also remiss if I failed to alert this Committee and the Congress to the fact that right now, there is a full-blown economic crisis of energy costs in rural Alaska's villages. These high energy costs are stripping finances, money, cash, out of our families and our communities and threatening to roll back the tremendous progress that has been made over the last 30 years in reducing poverty in our villages.

It is an energy cost crisis. It is not a lack of fuel, it is the high cost. Again, the seriousness of it is, we (federal, state governments, and Native people) have for the last 30 years been able to reduce poverty from 60 some percent down to 20 percent. Without immediate help we are going to be seeing those poverty rates increase. We ask for some immediate help on bringing down the costs of energy and focusing on our very remote communities and their impacts.

To give you an example, it is not just having hard times heating our homes in this extreme cold weather climate, but it is also putting food on the table, since so many of our people depending on hunting and fishing over the summer and winter time to put food on the table. The high cost of energy is going to reduce the ability of people to have access to fish and game and reduce our ability to put food on their tables. We are very, very concerned about that.

We urge the Committee to ask our State government to do everything in their power to mitigate the problems that are on the ground right now. We are hearing calls asking for Federal declarations of disaster due to the potential concerns that people have on how they are going to put food on the table for this coming year because of those high costs.

Again, in our testimony we have greater details. But it is a very, very serious problem and we urge the Committee's attention and ask for their assistance.

[The prepared statement of Ms. Kitka follows:]

PREPARED STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

For the record, my name is Julie Kitka; and I serve as President of the Alaska Federation of Natives. AFN is a statewide Native organization whose membership includes over 200 villages and tribes, 13 regional Native corporations and 12 regional non-profit tribal consortia that contract and run federal and state programs.

Thank you for inviting AFN to provide testimony today. I ask that the hearing record be kept open for a period of time to allow our tribes and corporations, and interested individuals to provide additional written comments.

Alaska, which is our homeland, is an incredibly large land mass: it is two and half times the size of Texas, and has vast energy resources that are largely untapped and undeveloped. Alaska Natives, as the largest private landowners in the state are committed to working together with the state and federal governments, and other private sector partners, to help meet the energy needs of this country. We know that our country needs to become more energy self-sufficient, and less dependent on potentially unstable foreign sources. We are also aware that global competition for energy resources, especially from China and India, and many other rapidly developing countries impact our lives today and our future. Even news of oil finds near the Tupi field in Brazil travels north to Alaska, as we learn they may have discovered as much as 33 billion barrels, which would make it the third largest field ever found. We know if further explorations confirms this–we all will be affected in many ways. So it's time to get very serious about what we can do to help both our own communities and our country.

We are strong supporters of the development of alternative energy sources as an important avenue to add to our country's energy resources. We offer our tribal communities, in their vastness, to be considered part of national demonstration projects on alternative energy technologies and as a proving ground to show how Alaska Native people, and their institutions have the experience, the capital, and the community relationships that will be necessary to effectively implement workable solutions to the developing energy crisis. Our Alaska Native corporations in particular have shown their ability to pull together both large and small projects, and deliver results on time. Our recommendations following this testimony will include national, statewide and local considerations.

Let me now focus on energy development which has the potential to make our local communities more self-sufficient in energy and capable to deal with rapid climate change and all its uncertainties.

Alaska is so large and diverse that one village's alternative resources may not be available elsewhere. Some areas have strong wind for electrical generation; but in other locations, there is no such thing. Thus, there is no "one-size-fits-all" solution for rural Alaska, making local solutions more specific and expensive. Because of the vastness of our State and it's virtually unlimited potential, we would like to encourage the Committee to hold hearings in Alaska focused on the potential for development of energy resources on Native owned lands, as well as on what can be done to reduce the high cost of energy in our rural communities.

The undeveloped energy resources most often discussed for rural Alaska are small hydro power (using rivers to provide power to small communities and serving as America's "experimental backyard" for rural America), solar energy, sea wave action, biomass usage, coal, methane and geothermal energy; and each brings its own problems and barriers. Many alternative energy ideas look fascinating on paper, but actually getting them up and operating in the lives of real people can be very complex and frustrating.

WIND: Alaska has world-class wind energy resources, especially along the coastal and western regions of our State. There are 31 rural Alaskan communities that already have good opportunities for wind generation—and 17 more that are "potentially attractive." There are at least seven projects currently operational with another eight in the planning stages. The potential is obvious in locations like Kotzebue, Upper Cook Inlet, the Lake and Peninsula area. Barriers to harnessing wind power include high development costs, the need for trained maintenance, problems of land ownership and licensing, and the absence of public incentives to wind developers.

HYDRO: Existing hydro generation produces nearly 25 percent of the state's electricity. But Alaska also has almost 45 billion watts of large and small hydro *potential,* more than any other state. Hydro also brings its problems, especially regarding environmental damage; but eight billion watts of the state's potential is in small

projects that produce less than one million watts—and which don't require dam construction.

SOLAR: Summer in Alaska produces a huge amount of sunlight; but winter darkness is the time of greatest energy demand. Large-scale solar projects do not presently have a great potential; but in some places, small projects are possible. This also requires the homeowner or community to make up-front capital investments, largely without public incentives from the state or federal governments.

OCEAN WAVE ACTION: Alaska has over 34,000 miles of coastline, making it one of the best ocean energy resources in the world. The total wave potential, just on Alaska's southern coast, could produce almost 300 times the electricity used in the entire state each year. But the significant barrier to wave development is often the distance between the resource and the demand, requiring costly transmission infrastructure.

GEOTHERMAL: A recent study points out four potential geothermal areas in Alaska: interior hot springs, southeast hot springs, the Wrangell Mountains, and a combination of the Alaska Peninsula and the Aleutian Chain. The value of geothermal power is magnified by the fact that it can produce both heat and electricity. But problems include accessibility to volcanic areas, transmission distances and possible environmental damage.

BIOMASS: Alaska has a great amount of wood, wood waste and sawdust for potential use in space heating and electrical generation; and a few villages have begun to talk of making wood pellets from plentiful willow brush. Alaska's fish processing plants produce about eight million gallons of fish oil each year. With some chemical changes, this oil can be mixed (50–50) with diesel for generation. Community waste disposal produces 650,000 tons of garbage in Alaska each year; but again, design and capital costs are expensive and need public incentives.

COAL: Coal is abundant in Alaska, but has higher CO_2 emissions than other energy sources. However, coal can be used to produce synthetic "natural" gas with and without carbon capture. The problem is that these gasification technologies are expensive and still under development. Finally, coal-bed methane has been identified in the Susitna Basin, but its economic potential has not been established. Coal-bed methane may also exist in specific locations close to some remote communities.

Many of our villages in rural Alaska are actively working to develop a wide array of alternative energy projects. They see not only the potential for reducing the cost of energy, but also the tremendous manufacturing and sales and service components–wind and solar will need tailored products and service; alternative building materials, plans and supplies for hybrid homes and facilities that are now being developed and manufactured abroad, could be done in Alaska.

It is critical for the continued viability of Alaska Native villages that dependence on petroleum be reduced, that local power generation and space heat shift to alternative energy sources, and that conservation methods be widely adopted. When provided with innovative energy solutions, our tribal communities are embracing them.

But I would be remiss, Mr. Chairman, if I failed to alert Congress to the fact that right now there is a full-blown economic crisis of energy costs in rural Alaska's 230+ Native villages. Unbelievable energy costs threaten the very survival of remote communities. While all Americans suffer from rising costs of gasoline, home heat and electricity, rural Alaska is in a category all by itself. The increase in energy costs that communities are struggling with threatens to erase the past several decades of progress in reducing poverty. Whatever cash income many families have, just disappears into home heat and electricity. The ability for some of our people to even put food on the table will be affected by both the shortage and high cost of fuel. And we all know that these energy costs are expected to remain elevated.

Native families in villages put together a combination of household cash income and subsistence foods each year; and the largest drain on the household's meager cash is the cost of residential space heat in an extremely cold winter climate. Most homes—especially those without access to firewood—are heated by oil-burning furnaces and stoves. The original cost of such oil, plus the transportation surcharge to get it into villages, create the highest heating costs in the U.S.

Typically, oil is barged from Seattle to villages that have bulk fuel storage facilities, but some families have to haul oil from larger communities by boat. Nearly every winter, the normal water-based transportation system will break down for particular villages, due to weather or difficulty arranging bulk fuel purchases, and the village may be forced to fly in winter fuel supplies at even more exorbitant costs.

A January, 2008 survey of fuel oil prices in 195 villages and regional centers found prices as high as $9.00 per gallon. More recently, the cost of oil in the village of Nikolski reached above $11 per gallon. In December, January and February, the average village house can easily use four or more 55-gallon drums of oil for heating. In Arctic village, this means $1,980 or more for a single household per month; in

Hughes, it requires $1,650; and in Illiamna, it takes $1,375. [We also include a snapshot of 22 villages, taken this week, to update these data.] I must add that space heat is critical to village businesses and public facilities as well. Some school districts are now having to cut into their instructional budgets in order heat and light their village buildings.

Electricity in villages, which is mainly produced by community diesel generators, receives a state-sponsored subsidy that covers about 30 percent of the homeowner's costs; but monthly household kilowatt/hour charges in the bush are between three and seven times what the Anchorage homeowner pays per kilowatt/hour.

The third use of energy in Native villages is for transportation, usually gasoline for snow machines, outboard motors and all-terrain vehicles. Machinery is necessary for subsistence food-gathering, which has to be capitalized with cash for store-bought equipment and energy. With gasoline prices between $5.00 and $7.50 per gallon in most villages, some Native families will either be unable to go to fish camp to get next winter's food supply or will be able to do this only sporadically.

What does this mean for the future of Native villages? The combination of cold and hunger will inevitably force many Native families out of their traditional communities and into poor, crowded housing in Alaska's urban areas and/or regional centers. The social and economic problems that such a dislocation creates in people are enormous; and this adds to the burdens on the urban public sector. The rural-to-urban migration pattern in Alaska is already well along–and will become more obvious in the 2010 Census.

So what can we do to deal with the immediate energy crisis in rural Alaska, and how can the Federal Government play a key role in addressing the problem? We believe a multi-faceted approach much be taken—one that provides greater economic opportunities for Native tribes and corporations to develop energy resources and one that drives down local costs of energy. *Here are some practical ideas, as a starting place:*

Congress should urge the Department of Interior to publish regulations on an expedited basis to implement the programs authorized by the Indian Tribal Energy Development and Self-Determination Act, Title V of the Energy Policy Act of 2005, and Congress should fully fund their implementation. The Indian Tribal Energy Development and Self-Determination Act authorizes a variety of financial, technical, environmental and other programs that are intended to empower tribes and Alaska Native Corporations to develop energy resources. It authorizes the Department of Interior's Office of Indian Energy Policy and Programs to reduce energy costs, enhance tribal energy infrastructure and improve delivery of electricity to tribal communities. It also authorizes a multi-billion loan guarantee program, as well as other assistance to encourage development of renewable and non-renewable resources by tribes and tribal organizations. *We have projects that are being held up because of the delay in the publication of regulations implementing this legislation.* An important consideration for Alaska in the regulations is the inclusion of the Native corporations, who are crucial stakeholders. The Native corporations hold our land and resources, and must be included in any program affecting our land base.

The congressionally created Denali Commission has requested Letters of Interest on developing small-scale alternative/renewable energy and energy efficiency projects in Alaska, with a budget of only $5 million. The Commission has received far more proposals that it has funds to support. Congress should increase funding to the Denali Commission for developing alternative/renewable energy projects. (Attached for the record is a matrix of the types of ideas and projects being proposed. This is included to give you a sense of the strong interest and the range of ideas.)

State and federal strategies should be developed to provide *economic incentives to conserve energy* (including tax credits, low interest loans, rebates and grants to weatherize homes, and grants to purchase more efficient heating systems, wind generators, solar panels, and other technologies.

Congress should increase the supply of energy by encouraging exploration and development of private, state and federal uplands, both onshore and off- shore. This can be done by providing incentives, such as *OCS revenue sharing for Alaska's coastal communities, as has been done for Florida, Louisiana and Texas.* If our communities could count on sharing some of the revenue from off-shore leasing for their own critical infrastructure and other needs, there would be greater local support for exploration and development in off-shore areas. *AFN strongly supports the right of self-determination for our Native communities and urges that leases which have generated a lack of widespread community support be revisited and discussions opened up with affected communities to address their concerns.*

Congress should work closely with the State to ensure that in *development of a Natural Gas Pipeline in Alaska,* our communities have access to the natural gas that will pass through that pipeline through spur connections and pipe; and that

ownership, partnership, and contracting opportunities for Alaska Native tribes and corporations be part of the development. Serious training funds should be appropriated for workforce development to ensure broad Native participation in the projects. If the Committee is interested, we could submit much more detailed information and recommendations on the natural gas project.

Congress should provide additional funding for the Low-Income Home Energy Assistance Program (LIHEAP) in Alaska–and should urge the State to add its own appropriations for this excellent program. This country should be concerned when its poorest citizens are left to rely on the generosity of companies like Citco to meet their basic energy needs.

Congress should urge, and provide incentives for, states to develop their own comprehensive energy plans, with effective processes for local input. Despite all the data-gathering on the severity of today's crisis, the State of Alaska has been singularly reluctant to plan long-term for the energy needs of all Alaskans. This is perhaps the most critical step of all, since it can open the door to more specific solutions at the regional and community levels.

Congress should create real opportunities for alternative energy projects, at least one major demonstration project within each Native region in Alaska. And further projects should be structured to encourage Native to Native partnerships, both within Alaska and with Native American tribal partners. There is much sharing of information and experience which can take place, and greater inter-tribal collaborations are to be encouraged.

Congress should fully fund and implement the Energy Independence and Security Act of 2007, which was authorized last year. That bill includes a host of provisions to further renewable energy development, including a Renewable Energy Deployment Grant Program that would provide federal grants for up to 50 percent of the cost of building a wide variety of renewable electricity projects, including wind, geothermal, ocean, biomass, solar, landfill gas and hydroelectric projects in Alaska. It provides for a federal grant program specifically to help with construction of geothermal energy projects in areas of high electricity costs like rural Alaska.

Congress and the State should *provide homeowners with incentives to shift to supplemental alternative energy,* including a weatherization programs, rebates for installation of energy saving changes.

Congress should enact and fund S. 2232, the Native American Challenge Demonstration Project Act, creating a total of five pilot projects in remote, predominately Native American areas modeled after lessons learned from the US experience in providing foreign aid to the developing world. The project would use a compacting model to channel significant development funds to implement locally designed economic development strategies, *including energy strategies.* The objectives would be to enhance the long-term job creation and revenue generation potential of Native economies by creating investment-favorable climates and increasing Native productivity.

In order to supplement this brief outline of major energy opportunities in Alaska, I will provide the Committee with a number of professional studies on rural energy potentials.

Finally, Mr. Chairman, I am hoping that the Committee will be able to hold energy hearings in Alaska this summer; and I recommend that they be held in regional centers (like Kodiak, Dillingham, Bethel, Nome, Kotzebue, Barrow and in southeast), rather than confining them to Anchorage or Fairbanks.

Energy Work Group Discussion
Matrix

Alaska Federation of Natives
Energy Work Group Discussion

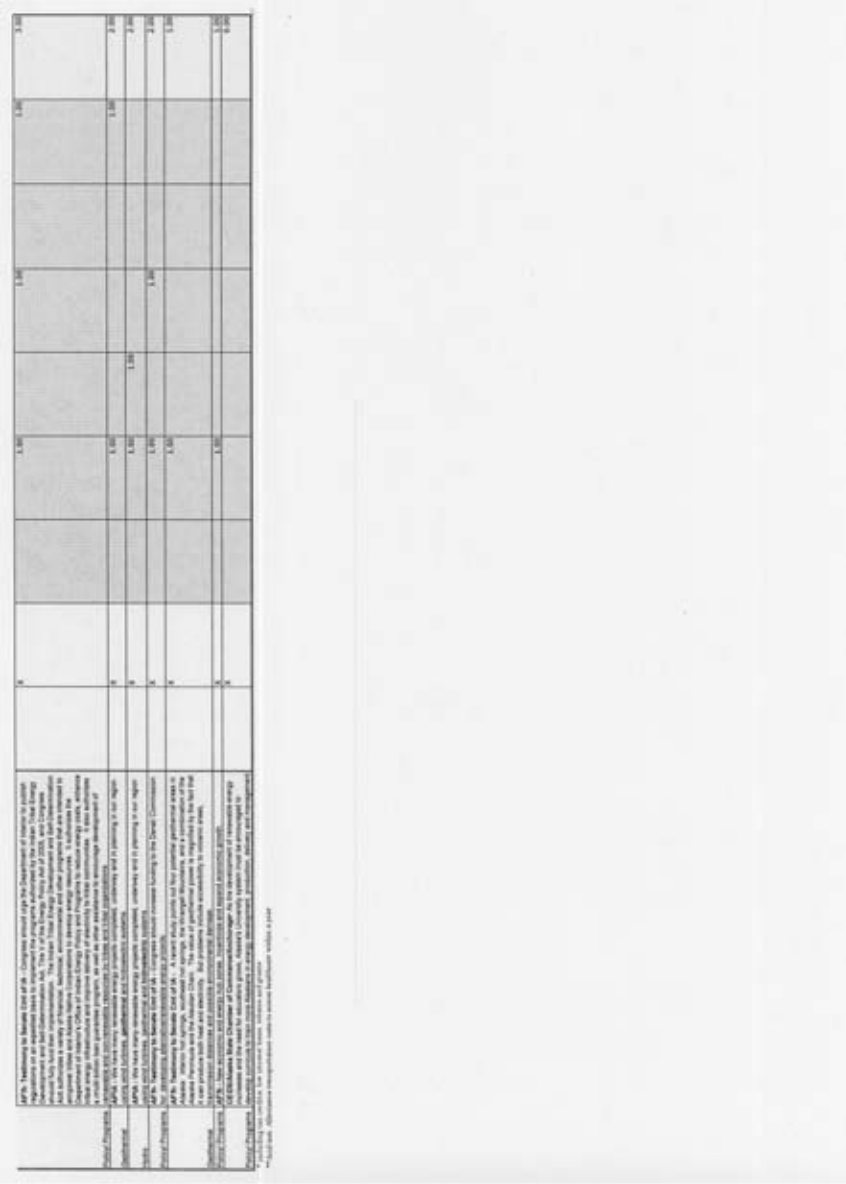
First Draft, June 2, 2008

This matrix attempts to capture all the Energy Work Group Members' suggestions about how to address the energy crisis in rural Alaska.

How to use this matrix: To easily scroll through the criteria while still viewing the suggestion click on C14 then click on Window in your top navigation bar then Split; repeat same steps to undo Split frame.
To sort the suggestions according to criteria– highlight the entire grid from A10 to K60, then click on Data/Sort; take note that you've highlighted the header row and choose criteria on which to sort.

		Implementation		Rank Criteria in Order Equal Weight						
Category	**Proposed by - Suggestion**	**Short-term**	**Long-term** (High Capital Outlay on infrastructure)	**Fast, Affordable & Reliable*** (Consumer/Family-focused)**	**Investment toward self-sufficiency (Community-or-Producer-focused)**	**Accessible Energy & Low Transmission Cost**	**Uses Natural Resources in Renewable Way**	**Uses Revenue Sharing or Economic Incentives***	**Considers Environmental Quality**	**TOTAL**
Conservation/Efficiencies	**Aleutian Pribilof Islands Association (APIA)** – changing incandescent lights for compact fluorescent lights	0		1.00		1.00		1.00	1.00	4.00
Conservation/Efficiencies	**CEDS** – Energy conservation efforts in heat recovery, lighting upgrades, etc.	0		1.00		1.00		1.00	1.00	4.00
Conservation/Efficiencies	**CEDS** - Where possible, utilities should work towards coupling renewable energy into their existing hydrocarbon based systems to provide a higher level of efficiency.	0	0	1.00	1.00	1.00		1.00		4.00
Policy/ Programs	**APA** - Cut the pipeline of unmet need of the Denali commission bulk fuel storage program ($160m) and power generation and upgrade ($217m): cost savings as well as reduce environmental risk from 40 to 50 year old leaking tanks	0		1.00		1.00		1.00	1.00	4.00
Policy/ Programs Conservation	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could invest more money into the Village End-Use Efficiency Program, which is managed by AEA and contracted out to organizations that submit the best proposals. This program brings down the immediate electrical demand by about 30-50% for community buildings by changing light fixtures and addressing major mechanical issues.	0		1.00		2.00	1.00		1.00	4.00
Policy/ Programs Conservation	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could invest more resources in the Rural Power System Upgrade (RPSU) program implemented by the Alaska Energy Authority. This program installs more energy efficient generators in the villages, and provides a dual-generation system with switchgear so when the community's electrical load decreases they can switch to a smaller, more fuel-efficient generator.	0		1.00		1.00	1.00		1.00	4.00
Co-Ops/Bulk Fuel Purchasing Conservation	**AVEC** stated to proposal that fuel stock purchased prospectively to electric utilities be price capped at some number and we suggest $10.00 per million BTU. This would translate to a price of about $1.30-$1.40 a gallon for various fuels, depending upon their BTU content. The fuel supplier would be the entity that would deliver the fuel, charge the utility the State mandated price and bill the State for the balance.	0		1.00		1.00		1.00		3.00
Co-Ops/Bulk Fuel Purchasing	**APA and Grete Ishuting REAC (TB)** - Develop bulk fuel rural cooperatives - cooperative buying can provide some savings and it would definitely be worth some financial experts persuading it out to find out for sure - there may be other ways of using this purchasing power too, such as timing of purchases and delivery and storage of the fuel (CFO) fuel purchasing and management personnel	0		1.00				1.00		2.00
Co-Ops/Bulk Fuel Purchasing	**CEDS** – Organizing communities where possible to invest in Bulk fuel purchases to lower fuel costs where possible - Co-ops should also be encouraged and set up where possible	0		1.00				1.00		2.00
Policy/ Programs	**APA**- Testimony to **Senate** End of VA, Low Income Home Energy Assistance Program	0		1.00				1.00		2.00
Policy/ Programs	**APA** - Add additional resources to the power cost equalization endowment and expand eligibility for qualifications	0		1.00				1.00		2.00
Policy/ Programs	**APA** - Buy down of existing utility debt to lower costs	0		1.00				1.00		2.00
Policy/ Programs	**APA** - Establish long term, 40 year term zero or "percent interest energy loan programs	0		1.00				1.00		2.00
Research & Development (R&D)	**Aleutian Pribilof Islands Association (APIA)** - a bulk fuel and alternative energy survey to secure bulk fuel price reductions and better delivery services to rural Alaska	0		1.00				1.00		2.00
Exploration	**CEDS/AACEDS** – Statewide exploration for coal bed methane should be encouraged to see if any economically viable gas or other sources to use that could be used to displace high cost diesel	0		1.00		1.00				2.00
Policy/ Programs Conservation	**CEDS/AACEDS** – Conservation and Education programs should be developed and implemented the benefits of energy conservation and the ability to lower the consumers' energy bills need to be developed	0		1.00					1.00	2.00
Policy/ Programs	**CEDS/Alaska State Chamber of Commerce/Anchorage** Power Cost Equalization should be fully funded until it is no longer needed	0		1.00						1.00
Conservation/Efficiencies	**Aleutian Pribilof Islands Association (APIA)** - retrofitting or replacing old inefficient heating systems with more efficient systems		0	1.00		1.00		1.00	1.00	4.00
Exploration	**APA- Testimony to Senate** End of VA - providing incentives, such as 2/3 revenue sharing for Alaska's coastal communities, leases which have generated a lack of widespread community support are revisited and discussions started up with affected communities to address their concerns		0	1.00	1.00	1.00		1.00		4.00
Conservation/Efficiencies	**CEDS/AACEDS** – Where realistically feasible and beneficial, communities should look into lying grid systems together			1.00		1.00		1.00		3.00
Policy/ Programs	**CEDS/Alaska State Chamber of Commerce** – Alaska needs to create and adequately capitalize a renewable energy fund so that Alaska can remain economically competitive through the development of the fast growing energy resources	0			1.00		1.00	1.00	1.00	4.00
Policy/ Programs Conservation	**Rasmuk, Inc.** - The Creation of a Renewable Energy Fund and Revolving Loan Program will respectively finance new utility scale renewable energy projects in Alaska and allow individuals and businesses to purchase solar panels, configuration kits, wind mills, etc. The Fund shall be funded by general appropriations. The fund shall be distinct from funds administered by Alaska Energy Authority. The Fund will conduct a program of energy research, development, demonstration & application	0	0		1.00		1.00	1.00	1.00	4.00
Policy/ Programs	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could pressure/ encourage utility companies like AFET to invest in renewable energy exploration and development in their communities. More cooperation from the electricity providers would help projects get moving ahead.	0				1.00		1.00		2.00

Policy/ Programs Conservation	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could invest in Energy Education in Alaskan Schools that involves young people in finding energy solutions. Examples include energy-related course offered for high school students, a statewide energy gathering for high school students to attend, local school projects, and statewide science fairs that are aimed at finding solutions for community energy needs. The result are increased energy savings in homes and schools, and a generation of state leaders that are proactive and informed on energy issues.	X							1.00	1.00
Policy/ Programs Conservation	**CEDB, Alaska Regional Development Organizations** – Develop regulatory guidance for rate-makers that will encourage energy conservation and increased efficiencies.	X							1.00	1.00
Policy/ Programs Conservation	**Kyoceria, Inc.** - Create a national level position to coordinate efforts and centralize state and federal resources to solve the long term energy crisis.	X								0.00
Research & Development (R&D)	**CEDB/Alaska State Chamber of Commerce/Anchorage** The propriety of a statewide propane distribution system must be evaluated such as the demonstration project suggested by Alaska Natural Gas Development Authority (ANGDA)	X								0.00
Research & Development (R&D)	**CEDB** – More educational resources need to be developed to go hand in hand with ADA's Renewable Energy Atlas of Alaska, a guide to biomass, geothermal, hydroelectric, ocean, solar, and wind energy	X								0.00
Research & Development (R&D)	**CEDB**- A study to investigate the feasibility of establishing regional energy centers at all of the university rural campuses • A study to investigate the feasibility of establishing regional energy centers at all of the university rural campuses (AGC05)	X								0.00
Hydro	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could invest in the application of In-Stream Turbines in the Yukon River (and other rivers). The Yukon River Inter-Tribal Watershed Council is seeking funding to purchase a piece of equipment that will determine whether or not the in-stream turbines will work in different communities on the river. The state could develop a funding program to help organizations buy these devices. The community can then apply for funding to purchase the in-stream turbine once they have established its feasibility.		X		1.00	1.00	1.00	1.00		4.00
Conservation/Efficiency	**CEDB** – to spend the $ proposed in energy rebates on retrofitting all the rural utility systems for alternative energy		X		1.00	1.00		1.00	1.00	4.00
Conservation/Efficiency	**CEDB**- Fund highly efficient power plant generators, exchanger, and heat recovery systems (AGC05)		X		1.00	1.00	1.00	1.00		4.00
Policy/ Programs	**AFN- Testimony to Senate Cmt of IA** - Renewable Energy Deployment Grant Program to provide federal grants for up to 50% of the cost of building a wide variety of renewable electricity projects, including wind, geothermal, ocean, biomass, solar, landfill gas and hydroelectric projects in Alaska.		X		1.00		1.00	1.00	1.00	4.00
Policy/ Programs	**CEDB/SHAAC Resolution 07-05** - Renewable Energy Fund (HB 152) - creates financial incentives available to both for- and non-profit entities for renewable and alternative energy project development.		X		1.00		1.00	1.00	1.00	4.00
Biomass	**AFN- Testimony to Senate Cmt of IA** - Alaska has a great amount of wood, wood waste and sawdust for potential use in space heating and electrical generation, and a few villages have begun to talk of making wood pellets from plentiful willow brush. Alaska's fish processing plants produce about eight million gallons of fish oil each year. With some chemical changes, this oil can be mixed (50-50) with diesel for generation. Community waste disposal produces 850,000 tons of garbage in Alaska each year, but again, design and capital costs are expensive and need public incentives.		X		1.00	1.00	1.00		1.00	4.00
Biomass	**Energy & Infrastructure Business Liaison, Interior Regional Housing Authority** - The state could invest in Yukon Flats Biomass project in Fort Yukon (Council of Athabascan Tribal Governments and Alaska Village Initiatives). This project is the first large-scale business development project in Interior Alaska. If successful, most of the community's heating needs would be addressed through biomass burners.		X		1.00	1.00	1.00		1.00	4.00
Solar	**AFN- Testimony to Senate Cmt of IA** - Summer in Alaska produces a huge amount of sunlight, but winter darkness is the time of greatest energy demand. Large-scale solar projects do not presently have a great potential, but in some places, small projects are possible. This also requires the homeowner or community to make up-front capital investments, largely without public incentives from the state or federal governments.		X		1.00	1.00	1.00		1.00	4.00
Wind	**AFN- Testimony to Senate Cmt of IA** – Alaska has world-class wind energy resources, especially along the coastal and western regions of our State. There are 31 rural Alaskan communities that already have good opportunities for wind generation - and 17 more that are "potentially attractive." There are at least seven projects currently operational with another eight in the planning stages. The potential is obvious in locations like Kotzebue, Upper Cook Inlet, the Lake and Peninsula area. Barriers to harnessing wind power include high development costs, the need for trained maintenance, problems of land ownership and licensing, and the absence of public incentives to wind developers.		X		1.00	1.00	1.00		1.00	4.00
Wind	**Aleutian Pribilof Islands Association (APIA)**: home-based wind turbine house heating system proposal of units that could be installed by community members on their homes to reduce their overall energy costs. This idea needs to be tested in the field and we are looking for appropriate funding opportunities to move forward.		X		1.00	1.00	1.00		1.00	4.00
Coal	**AFN- Testimony to Senate Cmt of IA** – Coal is abundant in Alaska, but has higher CO2 emissions than other energy sources. However, coal can be used to produce synthetic "natural" gas with and without carbon capture. The problem is that these gasification technologies are expensive and still under development. Finally, coal-bed methane has been identified in the Susitna Basin, but its economic potential has not been established. Coal-bed methane may also exist in specific locations closer to some remote communities.		X		1.00	1.00		1.00		3.00
Conservation/Efficiency	**AFN- Testimony to Senate Cmt of IA** - Congress should work closely with the State to ensure that in development of a Natural Gas Pipeline in Alaska, our communities have access to the natural gas that will pass through that pipeline through spur connections and taps and that ownership, partnership, and contracting opportunities for Alaska Native tribes and corporations be part of the development.		X		1.00	1.00		1.00		3.00
Hydro	**AFN- Testimony to Senate Cmt of IA** - Existing hydro generation produces nearly 20% of the state's electricity. But Alaska also has almost 45 billion watts of large and small hydro potential, more than any other state. Hydro also brings its problems, especially regarding environmental damage, but eight billion watts of the state's potential is in small projects that produce less than one million watts - and which don't require dam construction.		X		1.00	1.00	1.00			3.00
Ocean Wave Action	**AFN- Testimony to Senate Cmt of IA** - Alaska has over 34,000 miles of coastline, making it one of the best ocean energy resources in the world. The total wave potential, just on Alaska's southern coast, could produce almost 300 times the electricity used in the entire state each year. But the significant barrier to wave development is often the distance between the resource and the demand, requiring costly transmission infrastructure.		X		1.00		1.00		1.00	3.00



The CHAIRMAN. Thank you very much for your testimony, Ms. Kitka.

Mr. Wells, let me ask, I have just received some information, there are 745 leases approved for the Three Affiliated Tribes and 70 pending approval. Does that sound right to you?

Mr. WELLS. What we had in the initial bid advertisement for November 2007 is 938 bids, 145,000 allotted acres and 54 million on bonus payments. The report we had from Assistant Secretary

Artman was 541 of the leases were approved and that 13 million in bonuses were distributed.

The CHAIRMAN. The reason I am asking the question about numbers is, your testimony suggests that the BIA has been essentially delinquent or has interminably delayed the approval of leases.

Mr. WELLS. Yes.

The CHAIRMAN. What is the number of leases that have been delayed?

Mr. WELLS. For the information we have in front of us that was responded to by Secretary Artman, we are probably only a quarter of the way through.

The CHAIRMAN. The Secretary sent some additional resources out, did he not?

Mr. WELLS. He has some details in from different area offices. But we still have some major problems with the timeliness of these. Adam Twenty Mandan called on me yesterday, knowing full well I was going to be here today, Chairman Dorgan. He is a former veteran of the U.S. Army, former council member and now 70 years of age, who wanted to express that he is still waiting, after three years of signing his lease, that it is too long.

The CHAIRMAN. Yes. We are working with the BIA, this should not be—I assume, is part of the delay the fractionalization of this land?

Mr. WELLS. I believe in 1997 that might have been remedied by having the requirement that was very strict to lease a piece of mineral acreage on Fort Berthold that used to be 100 percent signature criteria of the Indian owners of the minerals. Today it is 51 percent. That has made a lot of the problems of delay and not getting a lease approved possible. But the issues now is a bid sale was held in December 2006 and in November of 2007, those same high bidders of the oil and gas industry are getting the rug pulled out from underneath them from other oil and gas companies, offering a dollar more bonus, for instance.

The CHAIRMAN. And if the same is completed, let me ask, are companies that are getting the leases, are being awarded the leases, are they moving quickly to develop the minerals?

Mr. WELLS. The second problem they are running into is the approval of the drilling permit?

The CHAIRMAN. By EPA?

Mr. WELLS. The BLM and the BIA.

The CHAIRMAN. Okay.

Mr. WELLS. This Black Rock Resources Agreement was passed by the full business council in January of 2005. They have finally been able to split a well in April of 2008. That took three years and two months.

The CHAIRMAN. I understand your frustration about this. You have minerals, you have potential new wealth for a tribe that desperately needs it and then you have these interminable delays by Federal agencies. We are going to try to follow this through with the BIA, the BLM, the EPA. There are some EPA issues as well. These areas are in such desperate need of economic development.

Mr. WELLS. Yes.

The CHAIRMAN. Here we have an opportunity for economic development that is very substantial. And instead of being helpful, the

Federal agencies are going into their typical shell game, and that is, things get subsumed in interminable delays. That is just not fair and it is not right and it is going to retard economic development.

Chairman Venne and Mr. Begay also talked about the need this year to extend the tax incentives that exist on reservations for certain Indian economic activities. And we have legislation by Senator Baucus and Senator Grassley to do that. I also think it is important that we extend them for more than one year. To extend these things short-term doesn't give developers an opportunity to look at three and five-year plans for developing economic plans on reservations. So all of these are areas that we need to be attentive to. Again, I say to all four of you, I share your frustrations here. Because the purpose of this hearing is to try to understand more clearly what are the difficulties, what are the barriers that are being put up and how do we try to address through these Federal agencies those barriers.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. You point out not only does this provide for a level of much-needed economic development in an area that so desperately needs it, it is just patently clear that in this Country we have to figure out how we do more for ourself rather than relying on foreign countries for our energy sources. So if we can produce it through the oil there, through the Three Affiliated Tribes, if we can do it through the coal that is available through the alternatives that we know are available throughout all of Indian Country and up in Alaska, we know we can do more for ourselves.

So yes, it is an incredible boon for economic development. But it is also providing for this Nation's energy needs in a way that is substantial.

Ms. Kitka, I want to follow on your comments about the dire situation up north. In reading through this morning's press clips from back home, there is an article from the Fairbanks Daily News Miner, Fairbanks is our second largest city in the State, and the mayor of the borough there is requesting for a state of emergency from the State because of the high cost of energy within the city. Not that we count on our newspapers to always get the facts correct, but it provides in this morning's article that the average income for Fairbanks residents is about $27,000 a year. The average household is spending about $6,000 a year on fuel alone.

That is on the road system, that is in our second largest community. And in our villages, I was talking with somebody just a couple of days ago, Al Akakit, he is paying over $7 a gallon for their fuel. So when you have to put fuel in the snow machine or the four-wheeler to go out hunting or put it in the boat to go out hunting or fishing, it makes it extremely difficult, not to mention what it costs to power communities that receive their power through diesel generation.

So it is very real and it is very, very scary for a lot of Alaskans, many, many around our State.

I wanted to ask Chairman Wells, you have mentioned that you have these overlapping layers in dealing with the bureaucracy. There was a House bill that was introduced several years ago that would have authorized the appointment of a Federal coordinator to

kind of take all these decision-makers at the Federal, State and the tribal levels to facilitate an approval process. Do you think that something like this would help in your specific situation there at the Fort Berthold Reservation?

Mr. WELLS. Vice Chairman Murkowski, what I believe needed to have happen would be to prepare this current stuff. The last boon we had was in the late 1980s and early 1990s. It sort of died out toward thereabout in Fort Berthold, oil and gas exploration. Since then, a lot of the personnel have retired.

I have to commend Mike Black, he is the acting area director for Bureau of Indian Affairs, in helping Fort Berthold. He has met with us time and time again. Outgoing Assistant Secretary Artman also has met with us twice on this issue. He is looking at getting a line item budget for nine staff to come to Fort Berthold. But it hasn't been approved yet.

I support that proposal 110 percent. But if it doesn't get approved, then we are still doing temporary details in this major time of frustration for our tribal members. On Fort Berthold, when things don't go right, the tribal business council and the chairman get the brunt of the blame, criticism. Even though it is the Bureau of Indian Affairs, they are left scot-free. We are the ones who are catching the criticism. That is why we are here.

Senator MURKOWSKI. We clearly hear the frustration. Mr. Begay, I want to commend the Navajo Nation for pursuing the Diné Wind project and the transmission project. In your testimony, you've detailed several areas where you think that we can make some changes that would be helpful. You mentioned priority transmission access, somehow or other that Congress could employ some incentives to tribes to gain the priority access.

Can you elaborate a little bit more on how we might be able to facilitate that?

Mr. BEGAY. Regarding transmission access, the Navajo Transmission Project is a 500 kV, it is a high-voltage line that will carry power from Four Corners west and it will be used also as an economic opportunity to open up for Desert Rock. I think the key incentives there are the accelerated depreciation and with the renewable, whether it is wind or solar, I think there are production tax credits, the worker tax credits, I think those are the three that I mentioned.

Senator MURKOWSKI. The tax incentives.

Mr. BEGAY. Yes, to continue so we can take advantage of them.

Senator MURKOWSKI. Julie, you mentioned several of the bigger projects that are out there, the wind farm there on Fire Island. We know that we have some enormous potential. But we also know that there are some smaller-scale renewable energy projects that hold great promise. There are several sites on the Yukon River, on the Kuskokwim River, on the Koyakuk, where employing some pilots to gain energy from the river currents there, we are looking at how we might be able to trap the methane gases that are out on the tundra. We have wonderful geothermal potential we are looking at out in the Naknik area up in Nome, outside of Pilgrim Hot Springs there.

But we all know that these are projects that are going to be years in delivering renewable and hopefully more affordable

sources. You have asked us for assistance in the short term. Outside of conservation, which of course is something that we need to better in this Country, but outside of conservation, what is your suggestion for the first thing that we could do to make an impact for the local, remote communities where we could see a difference in prices?

Ms. Kitka. I think what you are talking about is a shortage of cash and families that don't have much cash. I think the first thing you ought to do is you ought to increase the money that goes to Small and Needy Tribes program, and the Tribal Priority Allocation program in the Department of Interior and get additional flexible resources out to the tribes that are the smallest and have the highest rates of poverty and need. Getting that additional cash flowing in those communities by the tribes that they can help fill the gap, they know their community members, they know who is having the hardest time, they know which families are supporting larger groups of people on that. Get some immediate additional resources into them so that there is more cash flowing in the communities.

Again, I think the biggest thing the Congress can do is change the whole investment climate for energy resources. Unless the investment climate is incentivized for people to invest in these alternative energies at the smallest community levels, people are going to look for other economic opportunities where they can get greater returns, and so additional tax credits, grant programs, the whole thing, that is crucially important.

But we also need more cash into the communities immediately before the hunting and fishing seasons are over, so that people can get out there and get their food for the winter.

Senator MURKOWSKI. Thank you. I appreciate it, Mr. Chairman.

The CHAIRMAN. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I have a couple of questions.

This is for Chairman Wells to start out. From where I sit, the delays in leasing approval would be easy to put on manpower deficiencies, is that what you see it as, or is it something more than that?

Mr. WELLS. I believe so. Being a former realty specialist with the Bureau of Indian Affairs, in the 1980s, the retirement process within the system and then the new oil and gas exploration was brand new. Those royalty specialists didn't experience that out at Fort Berthold for 20 years. And just the processes, the problem I had though, was it doesn't matter. That is not an excuse. Same CFR, same job description, same full-time employee, they should have been prepared to cover the onslaught of business that came in the door.

Senator TESTER. No doubt about that.

Chairman Venne, could you tell me what the BLM does to get $4,000? You said it costs $4,000 to punch a hole in Indian Country and $100 off the reservation. What does the BLM do for the $4,000?

Mr. VENNE. The $4,000 is to cover their administrative costs for the process of the paperwork. That is all it is. The law says BLM should collect that amount of money on public lands. I don't think

tribes are public lands, and that is where we differ. But I think the law should be changed.

Senator TESTER. We have a piece of legislation called the Crow Indian Restoration Act, I believe that is it, the Crow Tribe Restoration Act. How important is that? How important is the passage of that piece of legislation to your energy development?

Mr. VENNE. Well, if you look at the problems in Interior, the three major problems, in order to get my tribe to become self-sufficient, first is to pass our water rights settlement with the Federal Government. The other is to take care of the fractionated interests with the Crow Land Restoration Act. Otherwise you have hundreds and sometimes thousands of people sign off on a simple lease. Plus the fact that the Bureau is going to be paying more and more and more, if the fractionated interest in Indian Country is not taken care of.

So to take care of that, what do they do? They turn around and not fund the ALCOV [phonetically] for next year? If Cobell was passed that would make a big difference. But I didn't want to wait around, that is why I submitted this bill to be passed.

Another thing is, put forward legislation to teach, to treat tribes as States for tax purposes and clarify Indian nations as the taxing authority in Indian Country. That is very important to us. We talked about extending tax credits for one year. If you are going into a coal mine or a power plant, it takes five to eight years to really get your foot on the ground. That is not enough time. You might want to do a ten year, but that is still only two years you have the credit. I would prefer somewhere, 15, at least 20 years, for tax credits. And that is very important also.

But in order for my tribe to become self-sufficient, I need Crow Land Restoration Act passed, and I also need my water compact ratified by the Congress.

Senator TESTER. Thank you.

Mr. Begay, you talked about Indian Energy RPS which is an interesting thought. Most of what you talked about that you are doing, it hasn't happened yet, right ? The power line is still int eh planning, correct?

Mr. BEGAY. Yes. We have the EIS and we have revised a RCRA decision coming from BLM. So it is ready for construction.

Senator TESTER. What has the interest been in buying the power that you are proposing at this point in time, or had you got to that point?

Mr. BEGAY. The power to——

Senator TESTER. The electrical energy.

Mr. BEGAY. The electrical energy to put on the line? There is tremendous demand for that power.

Senator TESTER. All right. In Montana we have some problems with transmission. President Kitka, where are you in Alaska? When it comes to renewable energy in particular, we have some problems with transmission, getting remote areas to a place where you can distribute the juice. Do you guys, how are you guys set up for transmission when it comes to development of any kind of energy, but particularly wind energy?

Ms. Kitka. I would like to give a written response back, because it varies depending on different parts of the State. As I described,

the land mass is so big that we have different circumstances. We do have one Federal-State partnership called the Denali Commission and we do some work on inter-ties. So we will be glad to provide some written comments.

Senator TESTER. Sure.

I am interested more globally where you guys are, because I know some of the States we have our best wind opportunity, transmission is a real problem. I know that is the case where we are.

With that, I just want to thank everybody for testifying today. Chairman Venne?

Mr. VENNE. One suggestion I do have, we have Federal interstate highways throughout our State. We always have a problem getting right of ways, energy corridors. Right in the middle of the interstate could be turned into the right of way for your oil and gas or anything else. You might want to think about that.

Senator TESTER. That is a good point, distribution is a challenge. Thank you.

Thank you all for being here.

The CHAIRMAN. Senator Tester, thank you very much. I think what I am going to do is suggest to the Vice Chairman, we will talk about it, but what I would like to do is have a couple of our Committee staff make a couple of trips and sit down in some roundtable discussions in a couple of tribal areas to try to understand with the BIA, with the BLM and others and tribal members what is happening here, what can we do to streamline the process, where are the road blocks, what kinds of things can we do to see if we can move this along. I am talking now specifically about energy development, where permits are needed and where the BIA is critical in terms of timing.

Chairman Wells?

Mr. WELLS. Chairman Dorgan and Committee, I just have to say this. If you came to Fort Berthold and drove from the south, from the west, from the north into my reservation, you are going to see a glow like you are driving into Williston, Minot, Dickinson, Bismarck. The glow is off the reservation of drilling rights, north of Parshall, west of New Town, south of Mandaree. Only one well today is on my reservation when we should be enjoying the same type of expedited oil and gas development that the State of North Dakota is providing to the fee property.

But when you come into the trust property, this is all I have, after three long years of approving, with the tribe and the mineral owners leases, the Bureau's approval is what is holding up production, Senator.

The CHAIRMAN. I appreciate that. I will work with Senator Murkowski and Senator Tester. We will see if we can put together, I want our staff to go out and sit down, do some roundtable discussions, try to figure out, where are the roadblocks here and how do we eliminate these roadblocks. Because it is unfair, if we have special roadblocks that exist on Indian reservations because the BIA is not moving or some other agency is not moving and you are required to get those permits and get the approvals before you can proceed.

We appreciate very much the testimony of the four of you today. We have obviously heard from other tribes as well, but this will be

a catalyst to try to have this Committee be more aggressive in working with these Federal agencies. We appreciate all four of you being here.

I will next call the other panel to the witness table. The second panel that will be with us today is Dr. Robert Middleton, Director of the Office of Indian Energy and Economic Development, the Office of the Assistant Secretary at the Department of the Interior. Mr. Steven Morello, Deputy Assistant Secretary, Intergovernmental and External Affairs, the Director of the Office of Indian Energy Policy and Programs, in the U.S. Department of Energy.

Dr. Middleton and Mr. Morello, thank you both for being with us. You heard some of the testimony that has been given this morning. We hope that in your testimony you might be able to respond to some of that as well as provide the testimony that you have arrived with.

Let me start with you, Dr. Middleton. You are the Director of the Office of Indian Energy and Economic Development in the Office of the Assistant Secretary. Why don't you proceed? Your entire statement will be made a part of the record, I say that to both of you, and you may summarize. You may proceed.

STATEMENT OF DR. ROBERT W. MIDDLETON, DIRECTOR, OFFICE OF INDIAN ENERGY AND ECONOMIC DEVELOPMENT, OFFICE OF THE ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Middleton. Thank you, Mr. Chairman. Good morning, Mr. Chairman, Vice Chairman Murkowski and Senator Tester. My name is Bob Middleton, Director of the Office of Indian Energy and Economic Development.

Thank you for the opportunity to present testimony today concerning potential economic development opportunities available for American Indian and Alaska Native communities through energy resource development. The Department believes that responsible development of tribal energy resources is critical to the economic viability of many American Indian tribes and to the sustainability of many Alaska Native villages. Energy development represents a near-term solution for many tribes to promote social and economic development, small business and job creation, and to the advantage of their tribal members.

The U.S. Department of Interior assists tribes and Indian individuals in managing approximately 56 million acres of land throughout Indian Country. In consultation with tribes, the Department has assisted in the exploration and development of 2.1 million acres of these lands, and with the potential of developing another 15 million acres for potential energy and mineral resources.

Also, the Department was given responsibility for promulgating and implementing the regulations for Tribal Energy Resource Agreements, as authorized under Title V of the Energy Policy Act of 2005. These regulations were published in final form on March 10, 2008 and became effective on April 9, 2008. Use of these TERAs could provide significant flexibility for tribes that choose to develop their energy resources for economic purposes.

Since the passage of the Energy Policy Act of 2005, my office, the Office of Indian Energy and Economic Development, has been working diligently to promulgate the regulations and implement its provisions. We work closely with tribes and tribal representatives to ensure all the provisions could be developed into a process that would be workable and effective for all parties. While it is too early to see what the total effect of the regulations will have on Indian Country, we believe that a TERA will be a significant tool for tribes that would like to have more control over energy development decisions on tribal trust lands.

Several tribes have expressed interest in pursuing a TERA and just this week, on Tuesday, we held a national meeting in Denver to discuss the regulations that have been put into place, our expectations for a Tribal Energy Resource Agreement to be presented by the tribes and the process with which we will then process these applications to the Secretary to take on a decision-making responsibility for energy development on tribal trust lands.

A TERA really provides an alternative to those tribes that seek to use their energy resources to build tribal economies. At the same time, it enhances their self-governing capability to control the pace and extent of development. While tribes have successfully used the provisions of the Indian Mineral Leasing Act as well as the Indian Mineral Development Act, these mechanisms and processes are not fully consistent with self-determination and self-governance, because the Secretary is still required to evaluate and approve each energy development project negotiated between a tribe and a third party. A TERA would authorize tribes to take on this decision-making responsibility.

There are also two other provisions of Title V that my office is implementing. First, we are soliciting proposals for capacity-building grants that will allow tribes to build their internal skills needed to regulate, evaluate and monitor their energy development activities. I wish I could say that my office was efficient enough to have planned this, but in fact, that announcement is being published in the Federal Register today. We are making available $1 million to tribes to be able to train their tribal members to be able to start taking on the responsibilities of these management decisions.

This is only the second year for this type of funding. Last year we were able to issue $400,000 in grants to several tribes. Over time, these technical assistance grants will allow many interested tribes to develop the capacity to maximize the benefits of entering into a TERA with the Secretary.

Second, we are developing a web-based clearinghouse of environmental information. This will be available to all tribes whether they enter into a TERA agreement or not. The intent of this clearinghouse would be to allow easy access to environmental reviews, environmental impact statements and other documents pertinent to energy resource development. We will also be developing individual environmental analysis modules specific to energy projects such as wind, geothermal, oil, gas, coal.

The web portal will also provide tribes access to experts on environmental analysis, energy development and natural resource protection. As the program matures, it will be an invaluable oppor-

tunity for tribes to grow their own energy, environmental and management experts and to self-manage energy development under tribal trust lands. This will allow tribes to capture significantly more of the value chain that results from energy development on reservations.

As you pointed out, Mr. Chairman, energy development provides some significant economic opportunities on Indian land. In 2007, energy and mineral resources generated $475 million in royalty revenue paid to Indian individuals and tribes. Since 2002, the annual income from energy and mineral production increased by more than 113 percent. This trend is expected to continue for the foreseeable future.

However, economic potential of future energy and mineral resources in Indian land has enormous possibilities. We estimate the lands contain over 5 billion barrels of oil, 37 trillion cubic feet of natural gas and 53 billion tons of coal that are technically recoverable with current technologies.

In addition, the potential for renewable energy resource development is high. Many tribal lands are well situated to take advantage of a range of renewable energy resources. However, just because an area has a significant solar, wind, biomass or geothermal resource does not always mean that the resource development is economically viable.

As Julie Kitka also mentioned, Alaska has a unique energy situation. While rising energy costs certainly present problems for those of us who live in the lower 48, the consequences of Alaska Native communities, which are mostly rural, are alarming. Energy crisis impacts rural Alaska on both the individual and community level. When communities spend more on fuel, they spend less on key services. Many residents of rural Alaska often have to make decisions regarding heating their homes, putting fuel in their vehicles and feeding their families. Presented with these options and in the face of the current upward trend of energy prices, it has been reported that many rural residents are abandoning traditional lifestyles for more urban settings, thus devastating these longstanding, vibrant rural communities.

In closing, I would like to say that energy development on tribal lands is not a new industry. Certainly, some tribes have a long history of working cooperatively with industry to use natural resource development as a stimulus for the economies. However, with the current high demand for both traditional and renewable energy sources and technologies, Native American communities are well-situated to use their natural resources to enhance local economies and help meet the U.S. need for energy.

In addition, Native American communities and Alaska stand to benefit greatly from development of alternative energy sources as a hedge against ever-rising crude oil and natural gas prices. The Department believes that development of energy and mineral resources on Indian lands can help foster strong Indian communities with sustainable economic development by promoting and supporting the creation of jobs, capital investment, Indian-owned business and a trained workforce.

Thank you for the opportunity to present before the Committee and I will be prepared to take questions.

[The prepared statement of Mr. Middleton follows:]

PREPARED STATEMENT OF DR. ROBERT W. MIDDLETON, DIRECTOR, OFFICE OF INDIAN ENERGY AND ECONOMIC DEVELOPMENT, OFFICE OF THE ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and Members of the Committee. My name is Bob Middleton, and I am Director of the Office of Indian Energy and Economic Development (IEED) at the Department of the Interior. Thank you for the opportunity to present testimony today concerning the potential economic development opportunities available for American Indian and Alaska Native communities through energy resource development.

The Department believes that responsible development of tribal energy resources is critical to the economic viability of many American Indian tribes, and to the sustainability of many Alaska Native villages. Energy and mineral development represents a near-term solution for many tribes to promote economic development, small business, and job creation for their tribal members.

Overview

The U.S. Department of the Interior holds in trust, and assists tribes and Indian individuals in managing, approximately 56 million acres of land throughout Indian Country. In consultation with tribes, the Department has assisted tribes and allottees in the exploration and development of 2.1 million acres of active and 15 million acres of potential energy and mineral resources. This activity includes collection of exploratory data and identification of energy resources, funding of and assisting in feasibility studies, market analyses and other resource development initiatives, as well as overseeing leases and agreements for oil, natural gas, coal and industrial mineral deposits located on Indian lands.

The Department is responsible for developing, implementing and reviewing bureau-wide policies, plans, processes, environmental impact studies, industry leasing and development activities, and other functions related to development and production of energy and mineral resources on Indian lands. We provide advice and data concerning geotechnical, economic, and land-use issues to Tribes and Indian landowners who are seeking to manage and develop their energy and mineral resources. We also provide assistance in negotiating beneficial working agreements with developers, and guidance through the often complex and time-consuming regulatory approval process.

Also, the Department was given the responsibility for promulgating and implementing the regulations for Tribal Energy Resource Agreements (TERA), as authorized under Title V of the Energy Policy Act of 2005. These regulations were published in final form on March 10, 2008 and became effective on April 9, 2008. Use of these TERAs could provide significant flexibility for tribes that choose to develop their energy resources for economic purposes.

Implementation of Title V

Since the passage of the Energy Policy Act of 2005, and the included Title V, titled the Indian Tribal Energy Development and Self-Determination Act of 2005, IEED has been working diligently to promulgate regulations to implement its provisions. We worked closely with tribes and tribal representatives to assure all of the provisions could be developed into a process that would be workable and effective for all parties. As I mentioned these regulations became final less than 1 month ago on April 9, 2008.

While it is too early to see what total effect these regulations will have in Indian country, we believe that a TERA will be a significant tool for tribes that would like to have more control over energy development decisions on tribal trust land. Several tribes have expressed interest in pursuing a TERA with the Department and on April 29, 2008, we held a national meeting in Denver with tribes that were interested in learning more about the final regulations and TERA development procedures. We provided tribes and the public with an overview of the TERA regulations that explained the processes and requirements for applying for and obtaining approval for a TERA and subsequent requirements for future monitoring and review of a tribe's activities under a TERA.

There are several tribes that are already major players in domestic energy markets, and we assume would take advantage of the additional flexibility of a TERA. In addition, there are many tribes that have less expertise in the energy development area but have significant energy resources and have indicated a desire to manage energy development projects on their tribal trust lands.

A TERA provides an alternative to those tribes that seek to use their energy resources to build their tribal economies and at the same time enhance their self-governing capability to control the pace and extent of development.

A TERA is an agreement between an Indian tribe and the Secretary of the Interior. Some of the concepts important to tribes included in Title V are:

- It is a transfer of authority, giving a tribe discretion to evaluate and manage energy-related business agreements or leases, or grant rights-of-way for pipelines, electric transmission and distribution lines without the Secretary's further review and approval.
- It only governs leases, business agreements, and rights-of-way related to energy resource development on tribal trust land.
- It provides enhanced self-determination and economic development opportunities for tribes by promoting tribal oversight and management of energy resource development on tribal land and providing Indian tribes an alternative to the Indian Mineral Development Act and the Indian Mineral Leasing Act.
- A TERA may include renewable and non-renewable energy resources.
- It may include all or part of a tribe's land that is restricted from alienation and some or all of the potential energy resources.
- Tribes may also assume related administrative and regulatory activities.
- A TERA can be amended to assume additional activities or to reduce the scope of the TERA.
- It may also include *existing* leases, business agreements, and rights-of-way that fall within the scope of the TERA.

While tribes have successfully used the provisions of the Indian Mineral Development Act and the Indian Mineral Leasing Act and the Department has implemented their regulatory responsibilities with a nod toward providing the maximum flexibility possible to tribes, these mechanisms and processes are not fully consistent with the self-determination and self-governance philosophy because, regardless of the level of technical, administrative or regulatory expertise of the tribe or its business partners, the Secretary is still required to evaluate and approve each energy development project negotiated between a tribe and a third party. A TERA would authorize tribes to take on this decision-making responsibility.

There are also two other provisions of Title V that IEED is implementing. First, we are soliciting proposals for capacity building grants that will allow tribes to build their internal skills needed to regulate, evaluate, and monitor their energy development activities. A Federal Register notice will be published this month announcing the availability of approximately $1 million in grants that will be available to tribes for this effort. This is only the second year of this type of funding. Last year we were able to issue $400,000 in grants to several tribes. Over time, these technical assistance grants will allow many interested tribes to develop the capacity to maximize the benefits of entering into a TERA with the Secretary.

Second, we are developing a third-party web-based clearinghouse of environmental information that will be available to all tribes whether they have a TERA or not. The intent of this clearinghouse would be to allow easy access to environmental reviews, Environmental Impact Statements, Environmental Assessments, and other documents pertinent to energy resource development. We will also be developing individual environmental analysis modules specific to various energy project developments such as wind, oil and natural gas, coal, transmission, and electrical generation. The web portal will also provide tribes access to experts on environmental analysis, energy development, and natural resource protection who will be available to provide technical assistance to individual tribes.

As this program matures, it will be an invaluable opportunity for tribes to grow their own energy, environmental, and management experts to self-manage energy development on their tribal trust land. This will also allow tribes to capture significantly more of the value chain that results from energy development on reservations.

Energy Production and Income

Oil and natural gas production in Indian Country has been significant and has even greater future potential.

To date, more than 2 million acres of Indian lands have already been leased for oil and natural gas development. These lands account for about 10 percent of the oil and natural gas production from federally regulated onshore acreage. Based upon the latest data available from the Minerals Management Service, production of energy mineral resources generated $475 million in royalty revenue paid to Indian in-

dividuals and tribes in 2007. Since 2002, annual income from energy mineral production increased by more than 113 percent and this trend is expected to continue for the foreseeable future.

However, the economic potential of future energy and mineral resources in Indian land has enormous possibilities. We estimate that an additional 15 million acres of undeveloped energy and mineral resources may exist on individual Indian and tribal lands, which if fully developed could result in billions of dollars in revenue for those tribes and individual Indian landowners over the period of production. Drawing from the results of various studies done over the years, we estimate that these lands contain over 5 billion barrels of oil, 37 trillion cubic feet of natural gas, and 53 billion tons of coal that are technically recoverable with current technologies.

As tribes and development companies create more sophisticated energy and mineral development agreements under the Indian Mineral Development Act, comprehensive energy and mineral information is required to understand, evaluate and negotiate these agreements. By having a more thorough understanding of the geotechnical data and economic information, tribes can confidently enter into complex agreements knowing they have a sound economic and business arrangement. In addition, if a tribe wants to take advantage of the opportunity to develop Tribal Energy Resource Agreements with the Department, we must ensure that the tribe has identified resources and land title information, and the technical and administrative capability to develop those resources.

Although historically energy production on Indian lands meant production from oil, natural gas, and coal, there is also significant potential for renewable resource development.

Renewable Resource Development

The potential for renewable energy resource development in Indian Country is high. However, although many of these renewable energy resources are becoming more desirable to tribes, the amount of production from renewable resources has been limited by some external factors.

Many Tribal lands located contiguous with the lower 48 States are well situated to take advantage of a range of renewable energy resources. However, just because an area has a significant solar, wind, biomass, or geothermal resource does not always mean that resource development—even with tax incentives or renewable energy portfolios—is economically viable. Other factors such as location of existing transmission lines and power generation stations, and distance to population centers affect the development prospects of these resources.

Many Indian lands evidence some form of biomass energy potential, from woody biomass from forestlands, and bio-diesel and ethanol production from agricultural and silviculture waste, to the growing and use of energy crops. We have identified 118 reservations with a high potential for biomass production. In addition, tribes in Nevada, California, Oregon, North Dakota, and South Dakota, and Pueblos in New Mexico also have potential to tap geothermal energy resources and most of the Indian lands in the Southwest and Western United States present opportunities for solar energy development. We are working with several tribes to identify available renewable energy resources.

I would like to use one of the most talked about and visible renewable energy resources–wind–as an example of how the Department is taking a proactive approach to assisting Tribes regarding these types of projects.

Indian Country encompasses some of the premier wind regimes in the U.S. Based upon recent site-specific calculations by IEED, for every 1 percent of acreage of tribal land within these wind regimes that are ultimately developed, an estimated 5.35 billion kWh per year, on average, may be generated using current technology. (Total U.S. electric generation from all sources in 2004 was 3,853 billion kWh).

We analyzed all the trust lands according to measurable factors affecting the economics that would determine a tribe's ability to build a utility scale wind farm. This screening process criteria included, but was not limited to, a wind resource of class three or higher, a land base with the potential for at least 50 MW (assuming 50 acres/MW or 2,500 acres), distance to transmission lines, road access, and whether the Reservation/Trust Land is in a state with a Renewable Portfolio Standard that has not yet been met. There are currently 77 Reservations that meet these criteria.

Of the 77 Reservations, there are about 23 million acres with class three or higher wind potential. Although not all of this acreage will be developed, it does represent significant renewable energy potential in Indian Country.

Based on this analysis we intend to develop an Indian Land Wind Atlas. The purpose of the Wind Atlas is to attract potential investors and developers for commercial-scale wind development projects on Indian lands. IEED will create a map for each Reservation that features publicly available wind data, transmission lines, and

a digital elevation model, along with some general information about the tribe(s) as well as contact information. The Wind Atlas will serve as a marketing tool that can be displayed at conferences. Each of the 77 Reservations will be offered the opportunity to be included in the Indian Land Wind Atlas.

In addition, IEED has already provided direct assistance to 25 tribes through funding or staff time with their wind projects. Currently seven Tribes are in the final stages of pursuing wind farm development, and a few others have been collecting data from anemometer towers and are close to approaching wind developers. The Blackfeet Reservation in Montana is currently in negotiations with a developer to pursue a wind farm. In South Dakota, we supported the efforts of Rosebud Sioux Reservation to construct a single 750 kilowatt turbine which is currently in operation. We are also providing economic analyses and technical assistance as they pursue a 30 MW wind farm.

However, not all wind development is large-scale or intended for offsite use. IEED is providing support for construction of a 65 KW wind turbine at Pine Ridge Reservation to help provide power to the KILI radio station. I believe that more of these local, distributed generating opportunities need to be identified and supported. These are opportunities to decrease existing high-cost energy requirements while supporting the use of renewable energy.

Energy and Mineral Development Program

In the last 25 years, Congress, through the Department of the Interior, has funded about $83 million in projects to assess and help develop energy and mineral resources information on Indian Trust lands. IEED is now at the stage of working with tribes and providing them the technical assistance they need to move to the development and job-creation phase. We are further defining these resources by the use of detailed exploration, market studies, business plans, economic analysis, and lease negotiation that reflect the tribes economic, environmental and social needs. This is more proactive and useful to tribes to help them proceed with development and realization of economic benefits from their energy and mineral resources.

Today, our major objective is sustainable resource development focusing on Indian employment and income to the Indian Mineral Owner. This goes further than resource assessment which is the identification of the quantity and quality of mineral resources. Our focus on resource development (vs. resource assessment) is far more proactive and useful to tribes as they can proceed to an informed decision-making process for their resources that provides a springboard to the development and realization of the potential economic benefits.

We are providing tribes with access to state-of-the-art knowledge and geo-scientific based modern analysis of their energy and mineral resources to allow them to perform the following critical functions:

a) strategic planning,
b) formulation of economic and energy policies,
c) evaluation of lands in the purview of the Federal Government,
d) development of sound environmental policies, and
e) negotiation of sound Indian Mineral Development Act (IMDA) agreements with energy and mineral industry developers.

IEED also has accumulated a significant repository of industry-confidential exploration data (e.g., seismic data, well data). We have been actively providing technical assistance to various tribes by purchasing, reprocessing and interpreting thousands of miles of 2D seismic data as well as hundreds of square miles of 3D data. These studies have identified numerous prospects, some of which are essentially ready to drill. Some of the prospects still require additional data collection and evaluation to more accurately identify exploratory and development targets. These evaluations yield prospects that enhance the marketability of Indian lands and results in better economic terms of an agreement.

During the boom era of the late seventies and early eighties, there was a considerable amount of acquisition of 2D seismic data acquisition on certain reservations, such as Wind River, Fort Berthold and Jicarilla. As needed, we purchase seismic data on tribal land using program funds. However because of changes in the petroleum industry over the last two decades, ownership rights to seismic data have passed to "seismic data brokers" who license data for use only. Therefore although the data is from Trust land, in most cases neither we nor the tribe have ownership of the data under this arrangement.

Based on the limited amount of seismic exploration on Indian lands discussed previously, most reservations in the western U.S. are lightly explored, especially with the newer technology 3D seismic data. However, many reservations are situated in sedimentary basins with proven oil and natural gas potential. Reservations are also

currently surrounded by considerable industry activity, and therefore the probability is high that the oil and natural gas reserves that private industry is discovering just over the reservation boundary on Federal, State, or private, land will also be present on Indian lands.

Alaska Energy Situation

Alaska Native villages have a unique energy situation. While rising energy costs certainly present problems for those of us who live in the lower 48, the consequences for Alaska Native communities, which are mostly rural, are alarming. The energy crisis impacts rural Alaska on both the individual and community level: when communities spend more on fuel, they spend less on key services. Many residents of rural Alaska often have to make difficult decisions regarding heating their homes, putting fuel in their vehicles, and feeding their families. Presented with these options, and in the face of the current upward trend of energy prices, it has been reported that many rural residents are abandoning traditional lifestyles for more urban settings thus devastating these longstanding vibrant rural communities.

Diesel fuel driven generators provide a majority of electricity in rural Alaska, especially on the Aleutian Islands where power transmission lines are non-existent. Because nearly all rural native villages generate their electricity locally using diesel generators, it is a balancing act each year for these communities. Diesel in Alaska is expensive at any time, with reported prices of around $9 per gallon. Estimating how many gallons of diesel need to be stockpiled when it can be transported less expensively during the warmer months is an important decision. Order too much and a village has spent money it may need for other goods and services. But, order too little, and it quickly becomes very expensive to have diesel transported to the bush during the winter months, again spending money that may be needed for other things.

The Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage issued a report which estimates that rural households face utility costs that are 50 percent higher than in 2000. Specifically, according to ISER, for a gallon of diesel fuel, prices have gone up 83 percent in rural communities from 2000 to 2006.

IEED has been approached by numerous communities for support on geothermal projects. The State of Alaska has completed preliminary surface geology mapping at many of these communities and documented the geothermal resources that are present. We have supported the communities of Unalaska and Adak on the Aleutian Islands. Both communities are currently generating their electricity using diesel fuel.

Geothermal prospecting basically involves finding an underground fracture system or swarm that can provide sufficient quantities of heat, steam and water. These three components are necessary for a successful project. To find a fracture system, and to significantly increase the success of the project, shallow seismic refraction studies are often done to locate the well and identify a drilling depth.

Unalaska has nearby thermal vents spewing steam and would be an ideal candidate for potential steam generation. This summer, the community is barging a drilling rig into the area to drill a municipal water supply well. This rig could be also be utilized to drill geothermal wells in the region. The mobilization costs for bringing in equipment are extremely high so it would be prudent to drill multiple holes while the rig is available. Unalaska currently is the home to an active fishing fleet and cannery.

Our second project area is on Adak Island, which formerly housed a large Department of Defense facility. The island's electrical generation facilities are powered by inefficient diesel powered generators to supply the electric needs of the 70 residents. There is a part-time cannery operation on the island supported by a small fishing fleet. In addition, the military left a 2.8 million gallon fuel supply tank that could potentially be used to fuel ships in the area and provide some job potential. The addition of geothermal generation would greatly reduce energy costs in the area. Numerous steam vents line the coast in the harbor near Adak. In addition, they have an extensive power line grid.

At both of these communities, IEED proposes acquiring and processing seismic data in an effort to locate the ideal site for a rig to drill an exploration borehole to help identify the optimal site for a future power generation facility.

We are also assessing potential wind projects that would enhance energy reliability for some villages. We are currently doing an assessment on the Pribilof Islands to determine the feasibility of developing a hybrid wind energy system.

Summary

In closing, energy development on tribal lands is not a new industry. Certainly some tribes have a long history working cooperatively with industry to use natural resource development as a stimulus for their economies. However, with the current high demand for both traditional and renewable energy sources and technologies Native American communities contiguous with the lower 48 States are well situated to use their natural resources to enhance their local economies and meet the U.S. needs for energy. In addition, Native American communities in Alaska stand to benefit greatly from the development of alternative energy sources as a hedge against ever-rising crude oil and natural gas prices.

The Department believes that development of Indian energy and mineral resources can help foster strong Indian communities with sustainable economic development by promoting and supporting the creation of jobs, capital investment, Indian-owned businesses, and a trained workforce.

Attachment

Accomplishments – Fiscal Year 2007

Office of Indian Energy and Economic Development
Assistant Secretary – Indian Affairs
Department of the Interior

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The Office of Indian Energy and Economic Development

Mission – Strengthen Indian communities by stimulating their economies

Vision – That all Indian communities will possess the same economic choices and opportunities to prosper as the rest of America

The Federal government has a government-to-government relationship with 562 federally recognized tribes. In FY 2007, Office of Indian Energy and Economic Development approved $87 million in loan guarantees to Indian-owned businesses, facilitated the transfer of $86 million to tribes and tribal entities for economic development project, workforce development, and educational initiatives. We provided almost $2 million in grants to tribes for feasibility and assessment studies and to develop the in-house expertise needed to conduct energy and mineral development activities. In addition IEED evaluated and approved 18 Indian Mineral Development Act (IMDA) agreements with a potential economic impact of more than $3 billion in direct and indirect economic benefits.

This report outlines, in detail, the specific programs and activities, and achievements in FY 2007 that result from the collaborative relationship between IEED and American Indian tribes and Alaska Native communities.

In the Department of the Interior (DOI) the Office of Indian Energy and Economic Development (IEED) was created to achieve results for the Secretary's Strategic Plan to advance quality communities for American Indians and Alaska Natives through economic growth. IEED works under the auspices of the Department of the Interior's Assistant Secretary – Indian Affairs.

IEED focuses on increasing the economic vitality of American Indians and Alaska Natives, and develops annual targets under five subordinate long-term goals, which IEED has formally incorporated into its internal Government Performance and Results Act review.

- **Long-term Goals**
  1. **Promote Indian Economic Development** - Assist tribes to secure government procurement opportunities; prepare long-term, strategic development plans; examine development project feasibility; increase job and entrepreneurial training and improve economic infrastructure on reservations.
  2. **Increase Tribal Business Knowledge** - Foster strong, diverse, and sustainable economic development through the promotion and support of Indian-owned businesses.
  3. **Increase Jobs and Businesses** - Promote tribal self-governance and self-sufficiency of tribal members through an educated and trained work force.
  4. **Increase Capital Investment** - Increase financing opportunities for tribes and Indian-owned businesses to achieve parity with non-Indian enterprises.

5. **Provide Assistance for Developing Energy and Mineral Resources** – Work with tribes to optimize development of their resources and to create business environments that enhance economic development.

To achieve these goals IEED provides technical assistance and facilitation services to tribes, and establishes information sharing networks that connect tribes and Indian-owned businesses with DOI-Indian Affairs staff and programs, other Federal, State, and municipal agencies, non-governmental organizations, and private industry.

Promote Indian Economic Development

Develop economic infrastructure on reservations

- **Identify Strategies to Overcome Barriers to Change**: IEED organized and funded the National Native American Economic Policy Summit, which it conducted in partnership with the National Congress of American Indians May 15-17, 2007. The Summit attracted over 500 tribal leaders and members from throughout the U.S. and policy and decision makers from numerous Federal agencies to identify Federal policies and practices that have stimulated tribal economies as well as persistent barriers that can be addressed through regulatory or legislative reform. The Summit examined Native American economic development issues in three areas: (1) Access to capital and finance; (2) Improving physical and legal infrastructure; and (3) Fostering domestic and international business enterprises. It had been over a decade since reservation economic policies have been systematically evaluated in this manner. One of the major results of the Summit was a database of over 300 economic development impediments identified. IEED is working with NCAI to finalize a written report, for release in November 2007 that will contain more than 100 recommended policy, regulatory, and legislative solutions. We will use this report as a baseline for the development of program initiatives to implement as many of those recommendations as practical.

- **Establish Computer Achievement Centers**: To address the "digital divide" that prevents remote reservations from enjoying access to the Internet and the global high-technology economy, IEED established a collaborative partnership with the Native American Chamber of Commerce, SeniorNet (the world's leading technology educator of older adults), and IBM in August 2006 to place IBM-donated computer equipment and software at various reservation locations (called "Achievement Centers"). IEED is using these centers to establish a high-tech infrastructure on reservations by arranging for each Achievement Center to be equipped with 10 new computers, printers and a wide variety of software donated by IBM. Tribes are using the Achievement Centers for employment training, job searches, genealogical research, internet commerce and home-based businesses, among other purposes. Our objective for each center is to become self-sustaining, with the tribe funding computer replacement, maintenance, acquisition of new software, and upgrades and tribal members training their colleagues to use the equipment and software.

The first Achievement Center was dedicated at Blackfeet Tribe of the Blackfeet Indian Reservation of Montana in September 2006. The second Achievement Center opened in June 2007 for the Leech Lake Band of Ojibwe Indians at Cass Lake, Minnesota. IEED coordinated the launch of a third center in August 2007 for the of Ysleta del Sur Pueblo of Texas and is working with its private sector and non-profit partners to open a fourth Achievement Center for the Houlton Band of Maliseet Indians in Houlton, Maine, scheduled for opening in the spring of 2008.

- **Develop Strategic Plans**: IEED provided technical assistance to the Ysleta del Sur Pueblo to formulate a long-term strategic plan to accelerate employment opportunities on the Pueblo. After helping to outline the parameters of the strategic planning effort, IEED provided funds for economic planning professionals to work with tribal leaders to identify tribal job creation and enterprise needs, and to revise tribal laws to establish an economic development entity. The Ysleta del Sur Pueblo used the funding to retain economic planners from the Winnebago Tribe of Nebraska and the Harvard Project on American Indian Economic Development.

- **Enhance Ability for Tribal Commerce**: In FY 2007, IEED assisted in the development of a curriculum to train tribal commercial law officials and administrators on how to implement the model Uniform Commercial Code. IEED also led an effort to explore how to establish and develop legal infrastructure components that support economic development in Indian Country at a 21st Century Reservation Comprehensive Planning Conference on October 4 and 5, 2007. These efforts recognize that commerce is not possible without the rule of law embodied in strong commercial codes that secure collateral and allow the free flow of credit between persons inside and outside the reservation. IEED's initiatives build on the product of the National Conference of Commissioners on Uniform State Laws and a working group of tribal officials that drafted a "model tribal secured transaction code" for use by tribal governments. The model provides a set of rules that specify how security interests may be created, perfected, and enforced, and who has first rights when two or more competing creditors have legally enforceable interests in the collateral.

- **Interagency Agreements to Foster Economic Development**: Developed and facilitated Memorandums of Understanding (MOU) between IEED and the Department of Housing and Urban Development (HUD) and the Native American Contractors Association (NACA). The purpose is to formalize collaboration between federal agencies and tribal organizations to achieve mutual goals of developing a comprehensive economic development strategy, providing essential elements to stimulate Native economies by creating new business, employment opportunities and access to capital, capital investment, workforce development, training, economic diversification and government contracting opportunities. We continue to work on developing similar agreements with United Indian Association (UIDA), National Congress of American Indians (NCAI), United South & Eastern Tribes (USET), Environment Protection Agency (EPA), Treasury (CDFI) and Office of Comptroller of Currency (OCC).

Increase Tribal Business Knowledge

Direct Support for Business Development

- **Business Development Training**: IEED initiated an effort to provide advanced training for existing Indian-owned businesses and contracted with the Tuck School of Business, at Dartmouth College, to provide business training sessions for senior management teams of Native American business enterprises. Dr. Leonard Greenhalgh presented intensive, 5–day, 3–day, and 1–day workshops to assist tribal and individual Indian business owners in developing and improving business management skills; establishing and running a business; maintaining accounting records; assessing performance; creating a high-performing business enterprise; and expanding existing operations. Participants learned about implementing company strategy, aligning operations to create customer value, operations strategy, analyzing and refining key business processes, prioritizing process improvements, and effective management techniques. IEED hopes to make this a multi-year arrangement.

  These workshops were held for Southwestern Indian business executives at the BIA National Indian Programs Training Center in Albuquerque, New Mexico in April 2007; West Coast Indian business leaders at the Pechanga tribal facilities in Temecula, California, in June 2007, and Great Plains Indian businesses executives at the Standing Rock Sioux Reservation in North Dakota, in September 2007. IEED also co-sponsored a training session with the U.S. Department of Commerce for Indian business leaders in Tulsa, Oklahoma, in April 2007. A total of approximately 175 Indian business leaders attended the sessions.

- **Build a Business Case**: In FY 2006, IEED conceived the Native American Business Development Institute (NABDI) and then developed partnerships with Business Schools at the University of Michigan, University of Washington, University of Texas at El Paso, and Dartmouth College to assist tribal businesses to assess their financial opportunities, and draft proposals for financing and loan guarantees from private lenders, foundations, and government entities. In FY 2007, IEED added the University of Denver to the program. Participating schools assign a high-performing MBA candidate or team of candidates, as part of their academic curriculum, to work directly with a tribe to prepare a business plan. In FY 2007, NABDI helped the Jamestown S'Klallam Tribe analyze the potential of a business park, a security business, and a medical supply business; helped the Ft. Peck and Crow Tribes review the potential for new jobs in upland bird hunting; assisted Ysleta del Sur Pueblo to create new economic development uses for a dormant tribal wellness/recreation center; and helped the Mescalero Apache Tribe review the potential for new employment opportunities through the installation of a glass-covered greenhouse heated by way of woody biomass.

- **Develop Tribal Workforce**: In 2000 legislative amendments to Public Law 102-477 (477) allowed tribes to use a portion of their funds for economic development. IEED provide technical assistance to tribes in creating projects that successfully make the connection between economic infrastructure and workforce development through their 477 programs. IEED staff then periodically review programs for consistency with stated objeetives and facilitate improvements to project operations. As an example, the Chickasaw Nation of

Oklahoma's 477 programs assisted 316 businesses during 2007. In another case the Spokane Tribe of Indians awarded 10 grants through their Entrepreneurship Program allowing tribal entrepreneurs to open new businesses providing services to the community and creating more than 40 new jobs for tribal members. The 477 program is now in the process of setting up contracts with the tribe to use some of the services such as janitorial and carpet cleaning. The tribe in its annual reports said "Overall, the 477 program has made an impact of $8.2 million within the tribal and regional economy in its first 9 months of operation." Once successful, IEED invites these tribes to share their experiences at its bi-annual nationwide 477 conference and at its 477 tribal work group meetings.

- **Support Small Businesses**: In March 2007, IEED staff trained members of the Ysleta del Sur Pueblo about how to form a Small Business Administration 8(a) business enterprise and how to take advantage of Federal government procurement opportunities.

- **Support Youth Entrepreneurs**: IEED developed, planned, and funded a one-year Entrepreneurial Education Pilot designed for students at five reservation high schools. IEED recognizes that individual initiative, risk taking, and innovation are the dynamics behind reservation economic growth. IEED is therefore working to expose tribal members to entrepreneurship at the earliest educational stages. The pilot is a collaborative effort with the Bureau of Indian Education and the National Foundation for Teaching Entrepreneurship (NFTE). NFTE has developed award-winning text books, teacher plans, and support materials along with a Certified Entrepreneurship Teacher Training Program. Two teachers from each reservation school will be able to take advantage of NFTE training, and NFTE curriculum and training materials will be used by pilot program participants. In order to ensure that students are exposed to the business world and to validate that Native Americans can become successful entrepreneurs, the program will include field trips to successful Native American owned business locations and guest lectures from high-achieving Native American business persons.

Share Business Development Information:

- **Business Alliance 2007 Conference**: IEED helped plan and sponsored the South Dakota Indian Business Alliance 2007 Conference in Rapid City, South Dakota in February 2007.

- **Business Structure Handbook**: Indian and tribally owned businesses often lack guidance as to how best to form business entities that minimize tax liability, preserve tribal assets, and enhance tribal sovereignty. IEED initiated a project with the Tulalip Tribes to create a Tribal Business Structure Handbook. IEED coordinated the review and evaluation of the handbook and coordinated its publication. The handbook will serve as a primary reference for tribal governments to use when contemplating the creation of a business enterprise and enables tribal governments to make informed decisions about the type of structure to discuss with tribal legal counsel and financial officers. The handbook can also impart an understanding of how various Indian business enterprises function by comparison. IEED next plans to distribute the handbook throughout Indian country and encourage tribal

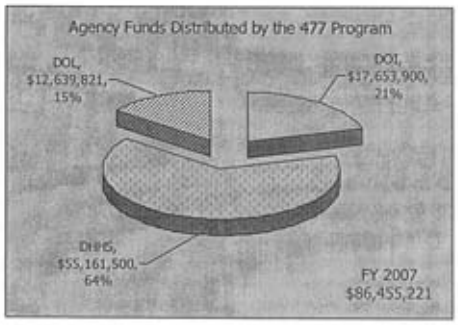
governments to consult with one another regarding the success tribal businesses have achieved.

- **Inter-Agency Agreement**: IEED established an Inter-Agency Agreement with the Department of Health and Human Services' Administration for Native Americans to develop a demonstration project for a regional business training center in Billings, Montana. The center will provide Native Americans with business development services in the Great Plains Region where Indian private enterprise is underdeveloped and where the unemployment rate for Native Americans is extremely high.

- **Buy-Indian Act and Federal Procurement**: In 2007, IEED staff educated Indian business persons about the Buy-Indian Act and Federal procurement and 8(a) SBA programs at workshops conducted at the Rocky Mountain Indian Chamber of Commerce in Denver, Colorado on March 21-22; the Mille Lacs Band of Ojibwe at Onumla, Minnesota on April 10; the Rapid City Pro-Biz Summit (co-sponsored with Rapid City Chamber of Commerce, Pine Ridge Chamber of Commerce and U.S. Department of Commerce) May 21-23; Albuquerque (co-sponsored with the National Center for American Indian Economic Development), July 30-31; the Seminole Tribe of Florida, Ft. Lauderdale, Florida, August 21; the BIA Tourism Conference, Cherokee, North Carolina, September 16-20; and Milwaukee, Wisconsin, September 25-26.

Increase Jobs and Businesses:

- **Increase Efficient Delivery of Tribal Funds**: FY 2007 is the 14th year of the 477 project implementation. Under 477 IEED serves as the coordinating Federal agency for fund distribution from the Bureau of Indian Affairs' (BIA), General Assistance program, the Bureau of Indian Education's Higher Education, Adult Education and Johnson O'Malley Programs, the Department of Labor's Workforce Investment Adult and Youth programs, and the Department of Health and Human Services' Temporary Assistance to Needy Families, Child Care Development Fund, including the discretionary and mandatory programs and the Native Employment Works program.



In FY 2007, IEED coordinated the distribution of approximately $94 million through the 477 program to provide employment, training, education, childcare, welfare reform, economic development, and related services to assist the economically disadvantaged, unemployed or

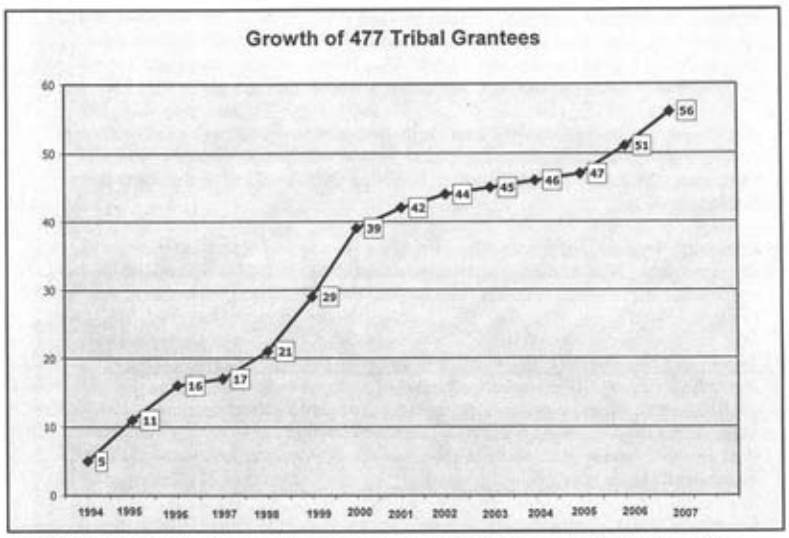
underemployed. The 477 program served more than 40,000 clients and currently has oversight responsibility for 56 agreements that cover 243 Federally-recognized tribes.

- **Increase Youth Financial Literacy**: IEED works with many of the 477 grantees to create and evaluate projects that will increase financial literacy and provide leadership training for youth. In FY 2007, 477 facilitated tribal programs served more than 12,000 youth on reservations. For example under the auspices of its 477 program the Chickasaw nation provided tutoring in reading, vocabulary and math services to 675 youth and provided 39 participants with the opportunity to attend a Native American leadership conference.

- **Program Outreach:** IEED has developed a coordinated approach to enable tribes to take advantage of the cost-saving and efficiency enhancements of participating in the 477 program. In FY 2007, we developed a competitive grant program (up to $25,000) for tribes that want to participate in the 477 program but lack the planning resources. These grants provide the resources that can allow a tribe to prepare a plan for review and evaluation. IEED also provided funding for the 477 Tribal Work Group to develop educational materials about the 477 program, and IEED staff coordinated and provided technical expertise for two in-depth training sessions for tribes seeking 477 participation. This approach has resulted in 20 percent growth in the number of 477 participating grantees in the last two years. To help ensure the success of the 477 grantees, IEED conducted on-site reviews of existing programs to ensure compliance with goals and objectives. In each of these cases, IEED staff prepared a final report for the tribe's governing body that documented the review and any required changes or recommendations. IEED staff will continue to monitor the tribe's performance and conduct follow-up reviews to ensure that the tribe makes the required changes (see *Table 1 and Figure 2*)

Table 1 – Fiscal Year 2007

Tribes that submitted new 477 plans	
Chickaloon Native Village	Alaska
Choctaw Nation of Oklahoma	Oklahoma
Fort Peck	Montana
Grand Traverse Band of Ottawa and Chippewa	Michigan
Leech Lake Chippewa	Minnesota
Makah	Washington
Tohono O'dham	Arizona
Tribes whose program had on-site reviews	
Cook Inlet Tribal Council	Alaska
Knik Village	Alaska
Pawnee Tribe	Oklahoma
Port Gamble S'Kallam	Washington
Red Lake Chippewa	Minnesota
Seneca	New York
Shoshone Bannock	Idaho
Siletz Tribe	Oregon
Spokane Tribe	Washington
Tohono O'dham	Arizona
Pueblo of Zuni	New Mexico



- **Build Support for Indian-owned Businesses**: IEED has increased DOI's Buy-Indian efforts, which will increase revenue for Indian-owned firms, and has created a larger role for qualified Indian firms in Federal procurement by expanding an IEED-funded Intranet website it has been developing this fiscal year. In FY 2007, IEED established a performance measure to increase by 5 percent the FY 2006 total dollar value of DOI-Indian Affairs government charge card purchases from Buy-Indian vendors of office supplies and services, followed by a 1 percent annual increase in FY 2008-2011. The Buy-Indian web site directory identifies more than 100 qualified Indian-owned vendors and offers profiles about them, including their revenue volumes and recent service arrangements with DOI-Indian Affair programs. DOI-Indian Affairs contracting officers will use the site to identify qualified Indian and Native Alaskan vendors for future procurement projects.

- **Interagency Collaboration to Develop Business Expertise**: In FY 2007, IEED submitted a proposal to the Department of Transportation, Federal Highway Administration (FHA) to create an American Indian/Alaska Native Business Opportunity Workforce Development (BOWD) Center. We received a 2-year grant from FHA of $1.8 million to develop a BOWD Center with a focus on assisting disadvantaged American Indian/Alaskan Native business enterprises (DBE) engaged in highway construction work. IEED developed a working partnership with the Citizen Potawatomi Nation (a 477 tribe), the Council for Tribal Employment Rights, and the 477 Tribal Work Group to achieve goals and benchmarks identified by the FHA. We believe the BOWD Center is successful in providing direct assistance to individual Indian-owned DBE's interested in expanding their business to effectively compete for Federal-aid highway construction work.

IEED has agreements with State agencies in Alaska, Washington and Oklahoma, and has arranged for support from the following businesses: Treas Construction, Oklahoma Guardrail, and L & M Construction – Oklahoma; Tolovana Construction and Tyonek Contractors – Alaska; and Moyer Construction – Washington

The following tribes are assisting with the implementation of this project: Knik Tribe of Alaska, Tananna Chiefs Conference, Citizen Potawatomi Nation, Choctaw Nation of Oklahoma, Chickasaw Nation, Cherokee Nation of Oklahoma, and the Spokane Tribe of Washington.

In addition the following construction companies have agreed to serve as mentors to assist the participating DBE's to grow and improve their ability to bid for Federal-aid highway construction jobs: Sewell Brothers Construction, Haskell Lemon Construction, and Cruz Construction

- **Tribe and Government Collaboration to Improve Delivery of Program Services**: In FY 2007, IEED initiated a demonstration project in partnership with the Bureau of Indian Affairs (BIA) Social Services program. This project will evaluate welfare clients and identify their needs so that the 477 program and BIA connect these clients to work opportunities that allow them to obtain jobs at livable wages. The demonstration project will be complete in September 2008.

  In addition, IEED is collaborating with the Sisseton Wahpeton Sioux Tribe to train other 477 tribes on how to enhance opportunities for welfare recipients at the National 477 conference in October, 2007 using the tribe's nationally recognized Professional Employment Program as a model of success. Also, the Citizen Potawatomi Nation continues to collaborate with IEED in providing one-on-one technical assistance training sessions to other tribes towards using the 477 initiative as a tool in creating jobs and enhancing business development. With the technical evaluation from IEED, the Central Council Tlingit and Haida Indians have developed numerous models for developing operating procedure manuals, intake forms and related sampling tools to be used by tribes.

Public/Private Partnerships to Enhance Employment Opportunities

- **Laborers-Employers Cooperation and Education Trust (Trust)**: IEED formed a collaborative effort with the Trust to make data available to tribes that detail upcoming industrial, transportation, and other projects being developed within 15 miles of Indian lands. The Trust has identified more than $300 billion in potential projects. IEED coordinated sharing this information with tribes to assist them in planning for and preparing their workforce to compete for jobs and to work in fields associated with highway construction.

- **International Carpenters Training Center**: IEED initiated an agreement to obtain, at little or no cost to tribes, worker training to be carpenters, mill wrights, divers and pile drivers. We are working with the National Building trades to develop a cooperative agreement for occupational training for jobs as painters, tile layers and related skills.

National Indian Ironworkers (NII): Since 1972, the NII pre-apprentice program based in Chicago, Illinois has trained American Indians and Alaska Natives for jobs in the ironworking trades and has a 100 percent placement rate. IEED was made aware that the tools being used for training at the NII training site were old or being borrowed. IEED took the initiative to improve the program by coordinating the provision of funds for an effort to upgrade and update the NII School's training equipment to ensure that students receive modern up-to-date technological training opportunities.

Increase Capital Investment:

- **Maximize Loan Guarantee Program Leverage:** IEED approved loan guarantees amounting to about $86 million – our ceiling for Guaranteed and Insured Loans for FY 2007. We guaranteed 51 loans ranging from $15 million to Ahtna, Inc., an Alaska Regional Corporation for operating capital to $11,000 for an Indian regalia sales shop in the Midwest. Ahtna, Inc. mainly serves the Copper River Region and is diversified – operating a construction company, pipeline maintenance, fiber optic telecommunications, forestry products and sand and gravel sales, among other things. Guaranteed loans in FY 2007 financed agricultural, tourism, data processing, minerals development utilities, and other projects.

Indian Affairs Region	Loan Guarantee Amount ($$)
Alaska	19,878,361
Eastern Oklahoma	17,400,000
Eastern	8,833,000
Great Plains	11,559,973
Midwest	789,591
Navajo	1,327,000
Northwest	13,597,501
Pacific	– 0 –
Rocky Mountain	1,978,000
Southern Plains	712,000
Southwest	4,683,494
Western	5,390,000

- **Maximize Program Reach:** In FY 2007, IEED approved four Community Development Financial Institutions (CDFI) as program lenders, and will be actively pursuing enlistment of other CDFIs. A CDFI is a small, community-based organization that serves the modest financing needs of areas that are typically rural or impoverished. Much of Indian country meets this description. In the Native American Technical Amendments Act of 2006, Congress authorized the Loan Guaranty, Insurance, and Interest Subsidy Program to include CDFIs as authorized lenders. We are hopeful that CDFIs will be a natural fit for the loan insurance feature of the program, and offer meaningful access to smaller business loans in many Indian communities for the first time ever.

- **Connect Lenders to Borrowers:** The Alaska BIA Regional Office and IEED collaborated to conduct an Alaskan Economic Development and Energy Conference in Anchorage on June 11-13, 2007. The agenda included training on the Indian Affairs Loan Guaranty and Insurance Program; government procurement; and SBA 8 (a) tribally and Indian owned business formation; law and lending in Indian Country. The conference also featured a networking session to link lenders with tribal and Alaska Native borrowers. In addition, IEED sponsored and participated in the April 17-18, 2007 Great Plains Regional Economic Summit in Rapid City, South Dakota, which is organized and conducted by the BIA Great

Plains Regional Office. IEED staff addressed attendees regarding the Indian Affairs Loan Guarantee and Insurance Program. It developed and moderated a capital investment panel consisting of representatives from Native American Bank of Denver, directors of Tribal Community Development Financial Institutions (CDFI), the Regional SBA office, Office of Comptroller of the Currency, and the Federal Reserve Bank of Minneapolis.

- **Independently Evaluate Program Effectiveness:** IEED obtained two independent reviews of the Loan Guaranty, Insurance and Interest Subsidy Program, administered under the Indian Financing Act of 1974, as amended. One was conducted by a group of Presidential Management Fellows, and focused on the penetration of the Program into lending and Indian business communities. The other was arranged through Chickasaw Nation Industries, and involved having Gabbard & Company and Dr. Brien Benson assess the extent to which Department personnel and systems effectively deliver Program services.

- **Improve Delivery of Program Services:** IEED worked with the Office of Management and Budget (OMB) to develop procedures for the adoption of OMB's new Credit Subsidy Calculator model at the end of FY 2007. This new model will help determine the multiplier used to determine our loan allocation ceiling. The Loan Guaranty, Insurance and Interest Subsidy Program GPRA goal for FY 2007 was to maintain a loss rate on DOI guaranteed loans of less than 4 percent. We ended the year at 1.6 percent, and have recently completed the acquisition and testing of Risk Analyst software to improve and standardize the credit analysis of our credit officers and the credit committee so that we continue to meet our GPRA performance goals without compromising our ability to issue loan guarantees.

- **Implementation of Regulatory Changes**: IEED held a series of tribal consultation meetings concerning forthcoming regulatory changes required by Title IV of the Native American Technical Corrections Act of 2006, and still other changes authorized by statutory authority dating back to 1988. A draft of the complex new rule – which adds Community Development Financial Institutions as authorized lenders, not-for-profit enterprises as authorized borrowers, a new loan sale system facilitated by a fiscal transfer agent, and bond guarantee procedures – has now been circulated among some 50 tribal representatives, financial executives, and private attorneys for initial review. Early reports are that the Division has done an excellent job of distilling several complex procedures into a comprehensive, fair and easy to understand rule.

Provide Assistance to Develop Energy & Mineral Resources

- **Nationwide Renewable Study:** IEED staff is creating a screening process to determine which Reservations have the most economic, utility scale wind farm potential. The goal is to determine the Reservations with top economic potential, and then find out which Reservations want to develop their wind resource. If a tribe is interested in a joint venture or lease agreement, IEED plan to assist in marketing their wind through an exhibit at an appropriate conference. Criteria used for the screening process includes, but is not limited to, a wind resource of class 3 or higher, a wind resource area with the potential for at least

50 MW (assuming 50 acre/MW), distance to transmission lines, road access, and whether the tribal land is in a state with a Renewable Portfolio Standard that has not yet been met.

- **Revived Mineral Lease Bonding Program:** IEED assumed administration of the program for authorization and tracking of bonds issued for mineral leasing activity in Indian country. A private company must post a bond before beginning mineral development operations. The amount and types of bonding required vary based on the location and the number of leases held by an operator. In FY 2007, IEED approved 12 companies for nationwide oil and gas lease bonds through an approved surety company. Six companies were approved for replacement bonds. Replacements are issued when companies change surety companies. Four companies were approved for riders to existing bonds. Riders are issued to add additional principal names, in cases of mergers and acquisitions. Two companies were approved for assumption riders. Assumption riders are issued when companies assume the liabilities of previous approved bonds in cases of mergers and acquisitions. Two companies were approved for the cancellation of bonds. Cancellations are issued when companies are terminated and/or no longer have active leases on Indian lands. Cancellations are issued only after receiving approval from all regional oil and gas lease offices.

- **Tribal Energy Development Capacity Grants**: In FY 2007, IEED developed a competitive process to provide about $400,000 in grants to tribes to develop in-house expertise and capabilities for energy development activities. We developed program guidelines and requested and evaluated proposals from tribes. Eight tribes were selected to receive TEDC grants with target completion date of September 2008.

- **Preparing Youth for Careers in Energy Development:** In FY 2007, IEED continued its contract with the Colorado School of Mines to develop a curriculum component for use at tribal community colleges to provide students with a foundation in the energy and/or environmental sciences. Working with faculty and staff at Navajo Technical College and United Tribes Technical College, CSM faculty developed core classes and trained NTC and UTTC faculty on curriculum delivery. The CSM effort will conclude in fall 2008.

- **Energy Rights-of Way Study**: In FY 2007, IEED in collaboration with the Department of Energy continued to collect comments on the draft report from individual tribal consultations and in a series of public meetings with interested tribes, energy companies and interest groups. IEED and DOE representatives conducted information collection, and technical analysis and evaluation on a range of issues ranging from tribal sovereignty and its inherent connectedness to the statutory and regulatory requirements of tribal consent; energy ROW matters; the importance of tribal self-determination policies in advancing oversight of energy ROWs and expanding energy production; the rising costs to industry of energy ROW renewals; and the trend toward shorter term lengths (in years) for ROWs and longer negotiation periods. In June 2007 the Departments delivered the final report to Congress.

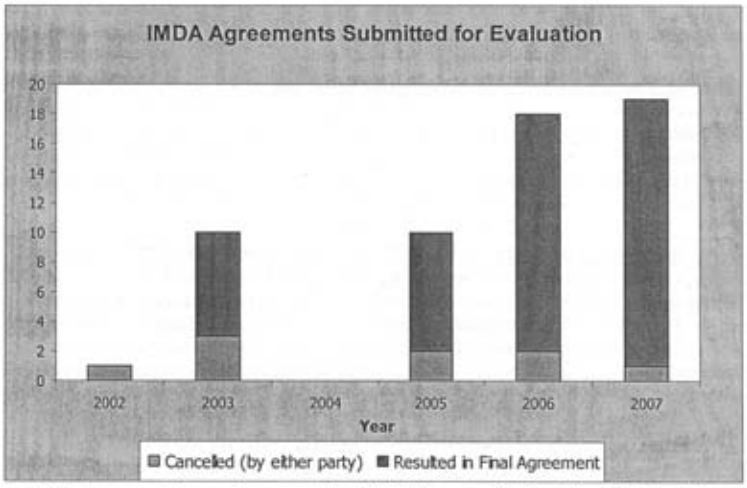
- **Tribal Energy Resource Agreements**: In FY 2007, IEED analyzed public comment on the proposed Tribal Energy Resource Agreement (TERA) regulations (25 CFR Part 224) and worked with the DOI Solicitor's office to develop responses and make necessary changes to work towards finalization of the regulations. TERAs are an innovative alternative for tribes to

enter into energy-related business agreements and leases and to grant rights of way for energy facilities without having to obtain separate approvals from the Secretary. This enhancement to the self-governance authority of tribes allows for increased tribal oversight and management of energy and mineral resource development on tribal lands. The regulations await approval from the Office of Management and Budget before finalization and publication.

- **Managed Growth in Development Proposals:** Indian energy and mineral resources generated $440 million in royalty revenue paid to tribes and individual Indians in 2005. It is estimated that an additional 15 million acres of undeveloped energy and mineral resources exist on allotted Indian and tribal lands. Since 1982, IEED has developed the most comprehensive collection of energy and mineral resources information on Indian Trust lands. This database has identified and catalogued approximately $800 billion of potential energy and mineral resources in Indian country.

  In 2007, IEED redirected its energy and mineral development efforts to focus on an integrated approach of using market studies, business plans, economic analysis, and lease negotiations in a coordinated package to support Tribe's economic development prospects. In the last two years IEED has been involved in 34 Indian Mineral Development Act (IMDA) agreements with a potential economic impact value of $4.3 billion.

  Specifically in FY 2007 IEED staff evaluated and recommended the approval of 11 oil and



gas IMDA agreements covering more than 900,000 acres of Indian Trust lands, with a potential value of several billion dollars (see *Figure 3*). In addition, we promoted Indian energy and mineral properties to energy investors and private industry resulting in over 100 new contacts and potential partnership agreements. IEED staff also assisted Tribes in

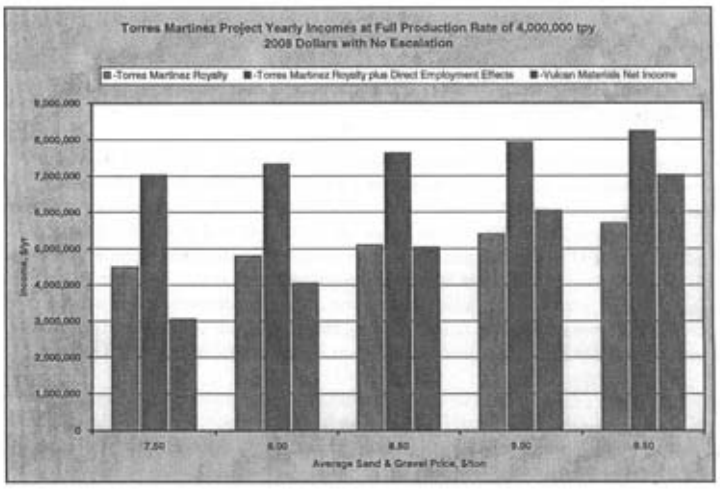
realizing their self-determination by conducting several high-level strategic planning, resource assessment, and good governance seminars.

As a result of these efforts in FY 2007, IEED expects the following projects to achieve significant milestones in the in FY 2008:

- **Crow Reservation**: Vast coal resources exist along the eastern portion of the Crow Reservation, Montana in an area 60 miles long and up to 12 miles wide, containing over 10 billion tons of coal recoverable by surface mining methods. This coal area is the western edge of the northern Powder River Basin, part of the largest coal producing area in the Untied States. IEED performed geologic and engineering studies that identified 6 billion tons of sub-bituminous coal that could be surface mined and marketed in the near future. These studies gave the Crow Tribe detailed information about the economic value of their coal resource that allowed them to consider entering into a resource development agreement, known as the White Horse coal project, with Rio Tinto Energy America (RTEA).

  The White Horse project would be a surface coal mining operation that will take place over a 35 year period. To date IEED staff is providing on-going support to the Tribe in that negotiation, and is providing technical support in evaluating the coal resource. Current plans project a final agreement in 2008.

- **Torres Martinez Reservation:** Vulcan Materials Company has presented the Torres Martinez Desert Cahuilla Indian Tribe with a proposed IMDA agreement to lease sand and gravel mineral rights on the Torres Martinez Indian Reservation in southern California for a term of 40 years. IEED staff evaluated the proposed mineral lease and presented our findings and recommendations to the Tribe and the Southern California Agency of the BIA. In addition to benefits from production royalties this mining operation would create about 40 jobs for tribal members which would be among the highest-paid in the region. These jobs would be at the pit and processing plant plus associated facilities, such as an asphalt plant and a concrete ready-mix batch plant.



- **Rocky Boys Reservation:** The tribe has been planning the development of a wheat ethanol plant. IEED assisted the tribe with conducting feasibility studies, formulating a business plan and beginning negotiations with potential industry and financial partners to build the wheat ethanol plant. Environmental studies have started, and the Tribe hopes to build the facility in 2008. This plant has the potential to generate 75 jobs for tribal members.

  In addition, the tribe with IEED assistance is evaluating gas reserves on the reservation, and tribal energy company, Chippewa Cree Energy Corporation intends to purchase other private companies production interest on the reservation. The purchase of this asset will create 10 jobs for the tribe, and should increase net revenue to the tribe. This deal could lead to additional tribal negotiations with private industry to establish joint venture agreements to explore other reservation lands for oil and gas.

- **Blackfeet:** IEED is assisting the tribe with negotiations for a transmission right-of-way that is needed for a proposed 1,000 MW wind farm on the reservation. The first step in an agreement would lead to the installation of meteorological measurement towers with construction of the wind farm starting in 2009. Project construction could result in as many as 200 temporary jobs and once in operations about 50 full-time jobs.

- **Wind River:** IEED is assisting the Tribal Council with formulation of a Tribal energy policy and a Tribal energy company. The formation of a tribal company will assist the Tribe to become more independent and financially able to expand the economic holdings. At the same time we are also providing technical assistance and evaluation for four proposed Indian Mineral Development Act (IMDA) agreements for oil and gas exploration on the reservation.

- **Northwest Shoshone:** .The tribe has developed a business and development plant to install a 100 MW geothermal generation facility on the reservation, which is a known area of geothermal potential and has previously been used for electrical generation in the area. IEED staff provided technical support and economic analysis for this project and is also conducting economic analyses for related business associated with the power generation. Financing is currently being arranged and the first well should be drilled by July 2008.

- **Colville**: IEED staff is assisting with the development plan for a 10 MW biomass cogeneration power plant to be located at the tribe's saw mill, with completion of the project scheduled to be during 2008. IEED support for the development plan includes technical assistance with technology selection, power purchase agreement negotiation, permitting assistance, and securing financing options. We are also assisting the tribe with negotiating their joint development agreement with Clipper Windpower to develop 300 MW of wind power on the reservation. Lease agreements should be finalized by early 2008 with wind meteorological measurement towers installed immediately after the agreement is signed.

- **St. Croix:** The Tribe is developing a 6 MW biomass power plant for a cogeneration system co-located with the tribal fishery. IEED provided technical assistance with contractor selection, finalizing equipment selection with the local utility, negotiating a power purchase agreement, signing letters of intent with fuel suppliers, and securing project financing. Agreements are currently in negotiations with industry partners, and development of this project is expected to begin in late 2008.

The CHAIRMAN. Dr. Middleton, thank you very much.

Next we will hear from Mr. Steven Morello, Deputy Assistant Secretary, Intergovernmental and External Affairs and Director, Office of Indian Energy Policy and Programs.

STATEMENT OF STEVEN J. MORELLO, DEPUTY ASSISTANT SECRETARY, INTERGOVERNMENTAL AND EXTERNAL AFFAIRS; DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

Mr. Morello. Good morning, Mr. Chairman, Madam Vice Chairman, Senator Tester. I am Steve Morello, the Deputy Assistant Secretary for Intergovernmental and External Affairs at the Department of Energy. I also carry the title of Director of the Office of Indian Energy Policy and Programs, and I am also a very proud member of the Sault Ste. Marie Tribe of Chippewa Indians.

I would like to thank you for the opportunity to discuss the Department of Energy's implementation of the tribal provisions of the Energy Policy Act of 2005 this morning. The Department has long recognized the important role that American Indian, Alaska Native and Native Hawaiians play in the deployment of environmentally sound energy technology and renewable energy production. We look forward to continued successful relationships with tribal governments as we work together to meet the growing demand for affordable, clean, and reliable energy.

The Department of Energy has taken several steps to implement the tribal provisions of Title V of the Energy Policy Act of 2005. In September 2007, Secretary Bodman named me to be the first director of that office. The office is part of the Office of Congressional and Intergovernmental Affairs. In addition, the Department has requested other funding that supports pre-existing tribal programs

that continue the important mission of promoting opportunities for tribes to participate in the work of the Department of Energy's program offices.

One tribal energy assistance program at the Department is the Tribal Energy Program within the Office of Energy Efficiency and Renewable Energy. This program offers financial and technical assistance to tribes through government to government partnerships that enable tribal leaders to power Indian reservations with clean, renewable energy, enhance education and training for tribal nations on various energy options and improve local tribal economies and the environment.

To support this mission, DOE has issued two funding opportunity announcements for the deployment of renewable energy and energy efficiency in Indian Country. The hope is through the resulting projects, DOE's investment of $4.5 million in Fiscal Year 2008 will reduce tribes' use of fossil fuel and enable economic development within these Native communities.

In Fiscal Year 2009, the EERE tribal program will continue critical energy assessment and technical assistance activities. Also, the activities will include ongoing project/program management, training, internships, and technical assistance through the DOE laboratories.

Another initiative is the Tribal Electrification study to support tribal acquisitions of energy as contemplated by Title V. DOE is commissioning this study in the Office of Electricity Delivery and Energy Reliability. This study is being conducted by the Chickasaw Nation with the goal of determining where the greatest needs for electrification exist on the reservation. Upon completion of the study, it will provide a road map of the next steps in this important matter.

Section 503 of the Energy Policy Act, which added new provisions to Title XXVI of the Energy Policy Act of 1992, mandated a report on "the use of Indian tribes of Federal power allocations of the Power Marketing Administration." This report was submitted to Congress in December of 2007.

Another provision of interest to tribal governments is the tribal loan guarantee authorized under Title V of the Energy Policy Act. While DOE is not implementing Title V loan guarantees specifically at this time, tribal governments and entities are permitted to participate in the Title XVII solicitations issued by the Department's Loan Guarantee Office. The Title XVII program is designed for projects that employ advanced technologies that avoid, reduce or sequester air pollutants and man-made emissions of greenhouse gases.

Under the Consolidated Appropriations Act of 2008, DOE has authority until September 30, 2009, to issue loan guarantees for qualified projects.

Since I have come to office, I have tried to look for ways to involve tribes in programs that we have at the Department of Energy. One such program is the Department's Solar Decathlon, which was held in Washington, D.C. last fall. This event drew over 100,000 people to the National Mall, where zero-emissions solar powered homes showcased the ingenuity of college students who incorporated energy efficient measures and available technology. My

office hosted a delegation of tribal leaders, tribal colleges and universities, administrators and Federal agency personnel. Together, we toured the homes. We were able to highlight available clean energy technologies and demonstrate the energy-saving potential and economic development opportunities. Some day, I hope to see a tribal college or university exhibiting one of their products on the Mall at this event.

Finally, my office supports an important initiative, which was started by the White House Indian Affairs Executive Working Group. Working with several Federal agencies, we created an "Indian 101" online training program to educate Federal Government employees on the unique status of Indian tribes and how their historical relationship with the Federal Government affects Government programs, responsibilities and initiatives. My office aims to promote this training for DOE employees at headquarters and across the complex as well as at other Federal agencies.

This concludes my prepared statement. I would be pleased to answer any questions the Committee may have.

[The prepared statement of Mr. Morello follows:]

PREPARED STATEMENT OF STEVEN J. MORELLO, DEPUTY ASSISTANT SECRETARY, INTERGOVERNMENTAL AND EXTERNAL AFFAIRS; DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

Chairman Dorgan, Vice Chairman Murkowski, and Members of the Committee, I am Steve Morello, Deputy Assistant Secretary for Intergovernmental and External Affairs, Director of the Office of Indian Energy Policy and Programs, and a proud citizen of the Sault Ste Marie Tribe of Chippewa Indians. I would like to thank you for the opportunity to discuss the Department of Energy's implementation of the tribal provisions in the Energy Policy Act of 2005.

The Department has long recognized the important role that American Indian and Alaskan and Hawaiian Natives play in the development of environmentally sound energy technology and renewable energy production. We look forward to continued successful relationships with tribal governments as we work together to meet the growing demand for affordable, clean and reliable energy.

The Department of Energy has taken several steps to implement the tribal provisions of Title V of the Energy Policy Act of 2005 (EPACT). In September 2007, Secretary Bodman named me to be the first Director of the Office of Indian Energy Policy and Programs. This Office was created in Title V of EPACT, Pub. L. 109–58, August 5, 2005.

The Office is part of the Office of Congressional and Intergovernmental Affairs. In addition, the Department has requested other funding that supports preexisting tribal programs that continue the important mission of promoting opportunities for tribes to participate in the work of DOE's program offices.

One tribal energy assistance program at the Department is the Tribal Energy Program within the Office of Energy Efficiency and Renewable Energy (EERE). This Program offers financial and technical assistance to tribes through government-to-government partnerships that enable tribal leaders to power Indian reservations with clean, renewable energy; enhance education and training for tribal nations on various energy options; and improve local tribal economies and the environment.

To support this mission, DOE has issued two funding opportunity announcements for the deployment of renewable energy and energy efficiency in Indian Country. The hope is through the resulting projects DOE's investment of $4.5 million in FY 2008 will reduce tribes' use of fossil fuel and enable economic development within these Native communities.

In FY 2009 the EERE tribal program will continue critical energy assessment and technical assistance activities. Also, the activities will include ongoing project/program management, training, internships, and technical assistance through DOE laboratories.

Another initiative is a Tribal Electrification study to support tribal acquisitions of energy, as contemplated by Title V. DOE is commissioning this study in the Office of Electricity Delivery and Energy Reliability. This study is being conducted by the Chickasaw Nation with the goal of determining where the greatest needs for

electrification exist on the reservation. Upon completion of this study, it will provide a road map of next steps in this important matter.

Section 503 of EPACT, which added new provisions to Title XXVI of the Energy Policy Act of 1992, mandated a report on "the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration." (EPACT used the singular "power marketing administration" although there are four such administrations.) This report was submitted to Congress in December 2007.

Another provision of interest to tribal governments is the tribal loan guarantees authorized under Title V of EPACT. While DOE isn't implementing Title V loan guarantees at this time, tribal governments and entities are permitted to participate in Title XVII solicitations issued by the Department's Loan Guarantee Office. The Title XVII program is designed for projects that employ advanced technologies that avoid, reduce, or sequester air pollutants or anthropogenic (manmade) emissions of greenhouse gases. Under the Consolidated Appropriations Act for 2008, DOE has authority until September 30, 2009 to issue loan guarantees for qualified projects such as Uranium Enrichment, Coal Based Power, Advanced Coal Gasification, Renewables, and Electricity Delivery. It is anticipated that future solicitations will be forthcoming in the near future announcing the availability and methods of applying for loan guarantees.

Last month, DOE announced plans to issue solicitations this summer for up to $38.5 billion for the most promising nuclear projects; efficiency, renewable energy and electricity infrastructure projects; and advanced fossil energy projects that avoid, reduce or sequester greenhouse gas emissions. This will mark the second and third rounds of solicitations for DOE's Loan Guarantee program, which encourages the development of advanced energy technologies and is an important step in spurring investment in clean energy projects.

In my time as Director, I have focused on working with tribal governments and entities to create appropriate partnerships in energy development, and have traveled extensively throughout Indian country to do so.

An example occurred last fall during the Department's Solar Decathlon in Washington, DC. This event drew over 100,000 people to the National Mall where zero-emissions solar powered homes showcased the ingenuity of college students who incorporated energy efficient measures and available technology. My office hosted a delegation of tribal leaders, Tribal College and Universities' (TCUs) administrators, and federal agency personnel, and together we toured the homes. We were able to highlight available clean energy technologies and demonstrate the energy saving potential and economic development opportunities. We hope that a TCU will compete for selection as a future Solar Decathlon team.

My office has not only reached out to Indian Country and others, but we have worked internally as well through the DOE senior-level Tribal Steering Committee. The committee meets monthly to coordinate between and among the program offices about tribal energy issues that affect DOE. Through this committee, we can harness the resources of various program offices and successfully collaborate on issues of importance to Indian Country. As Director, I chair these meetings, and I find this group to be an important component in maximizing opportunities for the Indian Country.

Additionally, my office supports an important initiative started by the White House Indian Affairs Executive Working Group. Working with several federal agencies, we created an "Indian 101" online training program to educate Federal Government employees on the unique status of Indian tribes, and how their historical relationship with the federal government affects government programs, responsibilities, and initiatives. My office aims to promote this training for DOE employees at headquarters and across the complex as well as at other federal agencies.

We are confident that our current and future activities with tribes will assist us in delivering a balanced and diverse portfolio of solutions to address the urgent energy and environmental challenges facing our country today. We hope that more tribes will become our partners in accelerating the development of clean and renewable energy technologies to dramatically increase the amount of clean energy produced in the United States.

This concludes my prepared statement and I would be pleased to answer any questions the Committee may have.

The CHAIRMAN. Mr. Morello, thank you very much.

I understand that Senator Murkowski has to be at the Energy Committee. Did you wish to make a comment, Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you, gentlemen, for your testimony here this morning. Mr. Middleton, thank you for acknowledging that in Alaska, our situation is a little bit different with our Alaska Natives and the challenges we face. We recognize that across the Country energy issues are a challenge to families. But our situation with so many of our Alaska Natives in their villages is even further complicated. So I appreciate your recognition of that.

Mr. Morello, I appreciate your visit to the State and the opportunity to see what we experience. I guess I would leave you with this, in your capacity as the Director of the Office of Indian Energy Policy. You have mentioned the loan guarantee program, other financial assistance programs that we have authorized through the Congress in the 2005 Energy Policy Act.

I believe that if we were to do right by those and provide for the funding, we would see more tribes stepping up to help this Country develop their energy sources. I do hope that we can do more than just provide for the authorization, that we can take that next significant step, which is to provide for that level of funding in Title V. I would hope that you would advocate the funding of these very critical programs when you discuss with Secretary Bodman.

It is one thing for us to say we are going to put them into law, it is another thing for us to put the muscle behind the action that we have made. So you hear the frustration and the concern coming from the tribes. They need some assistance, whether it is the technical assistance, whether it is the financial assistance. So if we do our job here in Congress, it is not just the authorization, it is making sure that we put the money behind it. So I would hope that you would take that message back.

Mr. Morello. Yes, ma'am.

Senator MURKOWSKI. With that, Mr. Chairman, I appreciate the accommodation and I am sorry that I must excuse myself.

The CHAIRMAN. Let me ask a couple of questions, then I will turn to Senator Tester. I am trying to understand the testimony that both of you have offered. And you represent the energy function for Native Americans, for tribes, that we have established in the Bureau of Indian Affairs and the Department of Energy. I am trying to reconcile what you have told me relative to what the tribal leaders and others have said to us and how this addresses their problems.

Dr. Middleton, the Tribal Energy Resource Agreements, I think these can be unbelievably important to tribes. But the DOI's final regulations for the TERA program state the Secretary will not allow tribes to take over "inherently Federal functions." This phrase is not explained in the regulations at all that I am aware of. Despite comments from Indian tribes, the final regulations do not define or list what is "inherent Federal functions."

How does a tribe proceed without understanding how this Administration or some future administration will determine what is an inherently Federal function?

Mr. Middleton. Yes, Mr. Chairman. From the perspective of my office, we believe there are certain inherent Federal functions that the Secretary's office needs to retain, such as putting a liability on the Federal Government. In other words, if in cases of where tribes

may want to take over the collection of royalties from development on trust tribal lands, at some point there may be a need to do an order to pay. This is typically a function that the Minerals Management Service performs. We believe it still needs to be retained in the Secretary's office, to have that order to pay presented to a company from the Federal Government, who has the fiduciary trust responsibility still under Title V of the Energy Bill.

Title V, of course, explicitly says that the trust responsibility shall remain with the Federal Government. Therefore, we believe that certain functions like that probably need to be retained by the Federal Government.

However, we are very open and I have been directed by the highest levels of the Department to be as flexible as we can to turn over responsibilities for managing these energy resources on trust tribal lands to the tribes.

The CHAIRMAN. Would it not be wise to outline what does this mean in the regulation itself? In the rulemaking process, you want to try to clarify, not confuse. If I were a tribal chairman trying to figure out what this means, it means nothing except a phrase and how someone at some point will interpret that phrase, which can either make this TERA workable or make it largely meaningless.

Why is this not defined anywhere?

Mr. Middleton. Mr. Chairman, we fully understand those concerns that have been raised. We have been in long-term discussions with tribes and representatives of tribes to try and delineate what these inherently Federal functions would be. To be honest, we haven't quite come to completion on our internal thought processes on that yet. We are in discussions with the Solicitor's office to try and determine what those functions would be.

But we thought it would be beneficial to make sure we at least got the regulations published as we were then continuing to clarify what inherently Federal functions are, rather than holding up the regulations themselves. But we do intend on trying to provide some clarification in the future.

The CHAIRMAN. You indicated you had been in long-term discussions, which always offers warning bells for me. If they have been long-term so far, this Act was passed three years ago. If they have been in discussions now for some while and you don't have it yet resolved, when will it be resolved, do you think?

Mr. Middleton. At this stage, Mr. Chairman, I am unable to give you an exact date. But I would like to be able to respond to that in writing and see if we can come up with an exact date.

The CHAIRMAN. Yes. Now, Mr. Middleton, you are the Office of Indian Energy and Economic Development. You heard the testimony, and I understand you are not involved in the issue of approving leases and so on. Yet, the title of your job is to try to make these things work. So your response to Chairman Wells, for example? How do you respond to what he is saying is happening on his reservation? Because that is your agency, it seems to me.

Mr. Middleton. That is correct. We do provide a lot of technical assistance. To be honest, as Chairman Wells pointed out, there has been an erosion of technical capability for energy and mineral development in BIA as well as Indian Affairs in general. We are try-

ing to rectify this situation. As I am able to, I am bringing on staff to be able to provide technical assistance.

Once Secretary Artman realized that there in fact was a delay in processing these leases in Fort Berthold, he did immediately pull together resources from the Office of Trust Services as well as my office out in Denver, as well as some of the local and regional offices folks, to take them up to the agency and start processing leases.

At the same time, it is not simply a paperwork exercise either. There is a fiduciary responsibility inherent there, so there has to be some due diligence and processing leases. I know that people are working diligently on this. The delay is not an intended delay but simply was a manpower and technical capability shortage that hopefully has been rectified. We will be quickly working on issuing the remainder of the leases.

The CHAIRMAN. Is there a plan underway at this point? You say hopefully rectified. We want to determine whether it is rectified. Is there a plan underway to marshal resources so that we don't have a tribe out there that wants to be engaged in development but can't get leases approved because it goes through a bureaucratic funnel, the end of which is plugged?

Mr. Middleton. Definitely. At least for Fort Berthold, there is a plan in place. There are people on the ground actually processing leases at this time. I believe from the experience that we have had at Fort Berthold, we would be prepared in other areas of Indian Country as we may experience some boons in energy and mineral development.

The CHAIRMAN. Chairman Wells is here, so I don't mean this just to represent Fort Berthold, it is a problem for them right now, because they are right smack in the middle of the most aggressive oil activity in America. It applies also over to Montana. But this issue is an issue that we want to understand as it represents other tribal challenges as well.

So I am going to ask that there be a roundtable discussion in a couple of places in the Country here, so that we can have our staff go out and understand who is doing what, or who is not doing what, even more importantly. You know and I know, having watched this and participated in the Federal Government for some while, that sometimes to subsume something in a Federal agency means you will never, ever see it again, because people will study it to death. I really worry about Federal agencies not performing.

The BIA, I must tell you, does not have a great reputation in performing, and for lots of reasons. As I indicated earlier, I am very distressed that we are losing the Assistant Secretary now, he has been there a year, it was vacant two years, probably vacant another year and a half. It is unbelievable to me.

So I want to have our staff work closely with you, Mr. Middleton, because we need to address these issues. Your title is Director of the Office of Indian Energy and Economic Development. So whether you are involved in leasing or not, the fact is, that umbrella includes all those activities for me. I appreciate your coming and testifying.

I want to ask Mr. Morello a couple of questions. We passed the Indian Tribal Energy Development and Self-Determination Act in

2005. It took the Department of Energy until almost the end of 2007 to appoint a director. That was because, I think, the House Appropriations Subcommittee for Energy and Water included report language that directed the Department of Energy to hire a director. So that was a two-year delay.

It also says, Mr. Morello, that the Director is empowered to establish programs to assist tribes in meeting energy education, research development, planning and management needs, to develop a program to support and implement research projects, tribes with opportunities to participate in carbon sequestration and so on. It appears to me from what I hear from you that you are coordinating a lot of things, but your blueprint and your opportunity in this law is much greater than that, than just being a coordinator.

My understanding is that the request for funding is just to cover payroll, travel and overhead. Do you have grant requests, do you have funding for grants and other opportunities that you are going to reach out to tribes with?

Mr. Morello. Mr. Chairman, there are a number of grant opportunities in the Department of Energy. But they are dispersed throughout the program offices. The reason that I haven't requested any funding specific to my office at this time is because the office has very specific duties set out in the statute. They are very large responsibilities, very large duties. It is a couple of things going on here.

The first thing is, I happen to believe that most of the wisdom for doing this job the right way resides not necessarily in the Forrestal Building but in Indian Country. So I wanted to spend a significant amount of time traveling in Indian Country, listening to the wisdom of the tribes with regard to what they need, how they would like to see this handled and what are their expectations, what are their hopes and their dreams, what energy resources do they have, how do they want to develop them.

So I have traveled extensively and I have listened and I have heard a number of things, I have met three of the four panelists this morning in my travels before I came here.

The second part of that is that there are approximately 40 different people throughout the Department of Energy which touch Indian Country in one way or another. So before I go in like a bull in a china closet and say, I am the Director and I want this one and I want that one and make it look like I am just a power grabber, I wanted to do it in a deliberate way to understand what the needs are in Indian Country and then to go back and talk to the Secretary and the various unders and assistant secretaries and say, this is why I have found. You asked me initially how we should organize this. Now, after I have been at it for a year or so, this is what the real issues are and this is my recommendation.

The CHAIRMAN. Mr. Morello, I understand that. But I think again, because there was a vacancy for two years, and so now it is three years after the law was passed and you are still doing an inventory, and I don't criticize you for trying to go out and being involved in understanding the needs, it is an important thing to do, but I think we also need to understand what specific program opportunities, what specific tools and techniques are going to be used to really reach out and help tribes.

I have to be at Senator Reid's office at 11:15 for a very important energy meeting, in fact. So I am going to depart. I am going to submit questions to both of you, and Senator Tester, if you will take this chair, Senator Tester has agreed to complete the hearing as Chair, and I know he has questions as well on behalf of what is happening in Montana. In many ways, we have very similar circumstances, because it is one field, the Bakken Shale field. Both of us are very interested, not just for our part of the Country, but for Indian economic and energy development across the Country.

Senator Tester, thank you very much. I regret that I do have to leave, but I am going to be submitting questions to both of you.

Mr. Middleton. Thank you, Mr. Chairman.

Senator TESTER. [Presiding] Thank you, Chairman Dorgan. I appreciate once again holding this hearing, and I appreciate the panelists.

You fellows were both here to hear the first panel. You heard their testimony. Do you feel a sense of urgency in the jobs you guys hold to help move this along? Or do you see it as much more working through the bureaucracy and structure? Do you understand what I am saying? Do you feel a sense of urgency to move this forward?

Mr. Middleton. Most definitely, Senator Tester. As a matter of fact, my office was specifically formed by Secretarial order in 2005. Because the Secretary of Interior, Secretary Norton at that time, understood that energy development and economic development in Indian Country was crucial to continued success. Since that time, I think we have established a very good track record with my office on working in Indian Country, both on energy and economic development. We are providing workforce training, guaranteed loan programs, business development, energy and mineral development and now implementation of Title V of the Energy Bill.

So we definitely have that sense of urgency and we are working hard on it.

Senator TESTER. Mr. Morello?

Mr. Morello. Senator, when I came to this job, I had to decide if I would stay in Washington and work through the organizational issues, or if I would go out into Indian Country, find out what the real issues are try and figure out how to do business so that we could get renewable and sustainable energy projects off the ground. I decided to go out into Indian Country, find out what the issues were and work very hard at getting those projects put together.

I had the opportunity to address the Crow Nation when they were in town for their UCC signing ceremony, over in the Indian Treaty Room. One of the points that I make whenever I address Indian nations and I made on that particular day is that it is very important for tribes to understand that when they do these deals, particularly with regard to renewable energy, they take a significant equity position in the deal and not just become lessors of their land.

That message obviously is taking hold in Indian Country and it is a message that resonates. When the tribes understand that they can take ownership, this is their land and these are their projects, they are much more likely to want to proceed with the project and get the project out of the ground.

Two other things that we have done in understanding this urgency is, we took $4.5 million, which was available generally for studies, feasibility studies and what-not, under the guidance of Secretary Karsner, we have put out two bids on the street right now, which are currently open for the tribes to respond to, $2 million for the lower 48 tribes and $2.5 million for Alaska for the purposes of actually getting projects out of the ground. This is not further studies, these are tribes that have already done studies that are on the verge of starting a project and just need the seed money to get projects started.

So that is an opportunity that we made available to tribes in a fairly quick fashion.

Senator TESTER. Okay. How do you explain—we have all day, by the way, I don't have a meeting with Senator Reid,

[Laughter.]

Senator TESTER. How do you explain the fact that Chairman Wells talked about, when you derive on his reservation, there are lights all around it and there is one well in the middle of it?

Mr. Middleton. Actually, historically, a lot of production has taken place on fee land, on public lands, surrounding reservations, State land as well. However, for various reasons, moving in and working on reservations just hasn't occurred at the same pace. We are trying to rectify these situations by marketing the resource availability, determining what those resources are so that companies understand what the risks would be coming in on Indian land to develop these resources. We think we are making significant headway now.

Senator TESTER. You have a field that has 3.65 billion barrels of oil that is being developed all the way around. What is the problem?

Mr. Middleton. In many cases, the tribes themselves have to make a determination amongst their members whether they in fact want to develop these resources. Part of the delay has been in tribes working with the——

Senator TESTER. Do they need to put a resolution together to the BIA? What I heard today was these guys want to develop the resources. They can't get it done because of leasing or whatever. And then you had mentioned in an earlier question that there has been an erosion of technical assistance in the Department. At a time when we are in a war with Iraq, which I would argue is to get oil, we are eroding our own technical assistance in Indian Country to be able to get oil domestically. It doesn't make any sense.

Mr. Middleton. Senator Tester, you are correct. Back when there was the original oil boom in the late 1980s, there was quite a bit of technical assistance available in Indian Affairs, petroleum engineers, petroleum geologist, geophysicists, mining engineers. But over time, the need for those technical staff decreased somewhat. So when people retired, they weren't filled, they were filled with other skills that were needed.

However, we have been increasing our technical assistance over the last few years. From the inception of my office, which as I mentioned, was done by Secretarial order, we are attempting to rebuild at a time when it is needed all of these technical skills that are

available for oil and gas development, as well as renewable energy development.

Senator TESTER. Okay. We have to do better.

Mr. Morello, are you working with any tribes in Montana?

Mr. Morello. I have received invitations to visit the tribes in Montana. I am planning to go there this summer. I have an invitation from the Crow Nation, from the Blackfoot Nation and I am looking very much forward to going there.

Senator TESTER. Okay. I look forward to your being there also, and I am sure that the individual tribes you are going to represent do, too.

As Chairman Venne pointed out in his particular area, he lives in the fourth poorest county in the Nation. I don't want to lecture anybody about anything, to be honest with you. But I look forward to you going out to Crow Country or the Blackfeet or any of them, Fort Belknap, I don't care, any of them, and looking around and seeing what is going on.

Because the truth is that there is a sense of urgency. There is a sense of urgency in Indian Country and there is a sense of urgency from my perspective and I know Senator Dorgan and Senator Murkowski's perspective also. Because we have to get some things done here. These folks don't want to be dependent on the Federal Government. They want to be self-determining. They want to be able to set their own agenda, and this is the opportunity, $120 a barrel oil is an incredible opportunity. The fact that we have coal reserves in Montana, the best in the Nation, is an incredible opportunity for this State.

All I ask you to do is this. And I am not implying this is the case, but all I am asking you to do is, both of you, you are in a position where you can make a difference, and a difference for the right reasons. You have people on the ground that want to make a difference for their people. All I ask you to do is, if the people above you are saying, whoa, whoa, whoa, we don't want you to proceed here, slow-walk the leases or whatever, I hope you ferret them out and bring them to the transparency of the public eye. Because I don't think the people in this Country would buy it. I don't think they would accept it for an excuse.

So I wish you the very best in your positions. I want to tell you, I think they are very, very important positions. And I think that, I haven't seen the kind of energy development that Mr. Begay talked about, what they are planning in the southern part of this Country. I applaud those efforts.

But we need to not give them, but give them the opportunity.

Mr. Morello. I understand that.

Senator TESTER. If we give them the opportunity, they will maximize it and they will run with it and things will happen. And it will make this Country stronger all the way around. It will make Indian Country absolutely stronger. But it will make the whole Country stronger, too, so everybody benefits.

I don't mean to lecture anybody. I just appreciate your being here. There is a tremendous opportunity here, there is a tremendous challenge and with that challenge comes success if we approach it from the right direction. I think, I want to tell you, the people that I know that are on the ground are working hard and

they are trying to make it happen. As Chairman Venne said, we want to know how to own our own company, well, let's figure out how to make it happen, because they will make it a success if we allow them the opportunity.

Thank you very much. With that, we will adjourn.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. CURTIS R. CESSPOOCH, CHAIRMAN, UTE TRIBE OF THE UINTAH AND OURAY RESERVATION

Introduction

My name is Curtis R. Cesspooch and I am the Chairman of the Ute Indian Tribe (Ute Tribe) of the Uintah and Ouray Reservation located in northeastern Utah. Our headquarters are located in Ft. Duchesne, Utah. On behalf of the Ute Tribe, I want to thank Chairman Dorgan and Vice Chairman Murkowski for holding this important hearing on Indian energy development and affording me the opportunity to contribute this statement for the record.

I would also like to commend the Chairman and Vice Chairman for their hard work and dedication on important matters such as the reauthorization of the *Indian Health Care Improvement Act* and the reauthorization of the *Native American Housing Assistance and Self Determination Act.* My Tribe and Tribes across the country very much appreciate your efforts to get these bills enacted this year.

Background and History of the Tribe

The Uintah and Ouray Reservation is the second largest Indian reservation in the United States, totaling 4.5 million acres. The Tribe has 3,157 tribal members and its government is an effective provider of services though 60 separate tribal departments ranging from land, fish and wildlife management; housing; education; emergency medical services; public safety; and energy and minerals management.

My Tribe has come a long way in developing a stable economy and a tribal government with sound management practices. As settlers migrated west and began to populate the Ute tribal areas, the United States government created the Uintah Valley Reservation in 1861 and removed the Ute Indian bands from their homelands to the barren lands of the Uintah basin. Starvation and disease significantly reduced our numbers yet the Tribe endured.

Using revenues from its energy resources, my Tribe has become a major employer and engine for economic growth in eastern Utah with a diverse array of tribal businesses including a bowling alley, a super market, gas stations, a tribal feedlot, an information technology company, a manufacturing plant, and an oil and gas development company. Our governmental programs and tribal enterprises employ 450 people, 75 percent of whom are members of the Tribe. Each year the Ute Tribe contributes millions of dollars to the surrounding towns and communities.

Because Utah state law completely prohibits gaming of any sort, the Tribes in Utah may not legally conduct gaming activities on their lands. As a result, the Ute Tribe's primary source of income comes from oil and gas development. The Ute Tribe has an interest in Ute Energy LLC which is pursuing oil and natural gas development on 300,000 acres of our reservation. The Tribe now averages a daily production of 1,000 barrels of oil per day and is in the process of opening an additional 150,000 acres of mineral leases on the reservation with invested $80 million in exploration.

Energy Development and Improved Tribal Economies

There are three reasons this Committee and the Congress should focus on energy development in order to strengthen Indian economies and improve the standards of living of Indian people. These are (1) the economic potential of Indian energy; (2) a very favorable market for energy prices; and (3) the new Indian energy law passed in 2005 and now being implemented.

In terms of the economic potential of Indian energy, geography alone suggests that Indian Tribes have at their disposal huge stores of renewable and non-renewable energy and resources. Close to 20 Indian Tribes are regarded by the Department of Interior to have "High Potential" for hydrocarbon development. These same estimates show enormous potential of Indian energy—both renewable and non-renewable—to generate significant revenues to Tribes and job opportunities to their members.

With the enactment in 2005 of the *Indian Tribal Energy Development and Self Determination Act* Indian Tribes now have available a tribal-centric and pro-development energy law to aggressively develop their energy resources. Significantly, the new law emphasizes tribal decision-making and does not discriminate against any variety of energy resource an Indian Tribe might choose to develop.

Last, the market conditions could not be more favorable. Current projections based on estimates conducted by the U.S. Government in 2001 suggest hundreds of billions in revenues from renewable energy sources alone. *See* "Oil, Gas and Coal Resources on Indian Lands", Division of Energy Mineral Resources Management, U.S. Department of the Interior, Bureau of Indian Affairs, 2001.

The Ute Tribe's Experience With Energy Development

Like all Indian Tribes, my Tribe has also survived the wide swings in federal Indian policy from termination and assimilation to the present policy of Indian self-determination. Under Indian self-determination the Tribe has thrived and is improving its members' lives by responsibly developing its energy resources such as oil and gas, tar sands, and oil shale.

In 2005 this Committee was instrumental in drafting and shepherding through Congress legislation that the President signed into law. This law is the *Indian Tribal Energy Development and Self-Determination Act* (Pub.L. 109–58) and I am happy to say that my Tribe played a significant role in developing the legislation as well as the recently-issued Final Rule to implement the Act.

Together with the enormous energy reserves in Indian communities and robust prices for energy, the new Indian energy law will assist those Indian tribes that are willing and able to become energy producers on regional and national scales.

A Final Rule to implement the key provisions of the Act was recently issued by the Department of the Interior's Office of Indian Energy and Economic Development (OIEED). This Final Rule, together with capacity building grants and other assistance forthcoming from the OIEED, will set the stage for an "energy takeoff" in Indian communities that has never been witnessed before. The centerpiece of the new Act is authority to the Secretary of Interior to review and approve "Tribal Energy Resource Agreements" ("TERAs") submitted by Tribes that will, in turn, enable the Tribes to negotiate energy leases, business agreements, and rights-of-way without the step of securing the approval of the Secretary. Participation in energy development through a TERA is entirely left to the discretion of the Tribe and if it wishes it may continue to operate under pre-2005 laws that require the Secretary to review and approve energy-related leases, business agreements, and rights-of-way between a Tribe and its private sector partner.

In Fiscal Year 2008, Congress appropriated funding for the OIEED and its counterpart in the Department of Energy—the Office of Indian Energy Policy and Programs (OIEPP)—to begin implementation of the new Act. Again this year, Congress appears prepared to appropriate even greater levels of funding for the operation of these two offices. While private capital is more appropriate for the actual development of the energy projects, Federal funding is appropriate in this instance because there are very specific Federal functions involved, such as the review by the Secretary of TERAs submitted by a Tribe, that cannot be legally delegated to the Tribe or any other entity.

Tax Incentives and Indian Energy Development

In 1993, Congress amended the Internal Revenue Code to add two incentives to attract and retain capital investment and jobs to Indian reservations. These incentives are an accelerated depreciation provision that allows Federal taxpayers (i.e. private entities) to achieve faster write-offs for equipment and infrastructure placed in service on Indian reservations, and a wage a health credit against income to those same taxpayers that hire qualified Indians on Indian reservations.

The incentives were authorized for a period of 10 years (1993–2003) and since 2003 Congress has chosen to re-authorize them in one year increments as part of what has become an annual "tax extenders" bill.

There are difficulties presented to business planners with these one-year extensions. Were the incentives to be extended over a significant period, e.g. 20–25 years, investors would be encouraged to invest in ventures on Indian land and hire Indians as employees. Because it requires significant equipment and related infrastructure, energy development is particularly susceptible to these incentives. In fact, in its March 11, 2005, analysis of the accelerated depreciation provision, the Joint Committee on Taxation stated that

> "[t]he shorter recover periods can have the effect of substantially decreasing the tax liability of a business. However, the degree of benefit for each business varies based on the particular nature and situation of the business. For businesses

engaged in activities that rely heavily on large depreciable assets, such as those involved in power generation, the shorter recovery periods could be very attractive." *See* "Description and Analysis of Certain Federal Tax Provisions Expiring in 2005 and 2006." (March 11, 2005, JCX–12–05).

Conclusion

There are good reasons why this Committee should continue to focus on energy issues as it has done in the past. The new Indian energy law stresses tribal decision-making, tribal authority and non-discrimination in terms of renewable versus non-renewable development. In my mind that is the appropriate recipe for strengthening tribal governments and tribal economies and improving the standard of living of tribal members.

Thank you again for the opportunity to share my thoughts with the Committee.

PREPARED STATEMENT OF NEAL W. FOSTER, BOARD MEMBER/VICE-PRESIDENT, SITNASUAK NATIVE CORPORATION

On behalf of the Sitnasuak Native Corporation in Nome, Alaska please distribute this written statement regarding energy development to all Committee Members. For the record my name is Neal W. Foster, and I am a board member and also vice-president of the corporation. Currently, we are working in partnership with our regional corporation—Bering Straits Native Corporation—to develop a wind farm on our native lands.

On May 1, 2008 Julie Kitka (President of the Alaska Federation of Natives) testified before you on "Regaining Self-Determination Over Reservation Resources" at a oversight hearing on Indian Energy Development. Please consider this statement as support for the testimony and the recommendations given by Ms. Kitka.

In particular we would like to emphasize the need for economic incentives. The wind farm that Sitnasuak intends to have constructed by the fall of this year will have eighteen wind turbines. The key to making the project feasible was through federal tax credits and the ability to depreciate 50 percent of the project. However, these two incentives are set to expire this year. This makes it difficult to justify further investment to expand the wind farm in the future.

Ms. Kitka recommends that the Committee hold energy hearings in regional centers in Alaska this summer, and Sitnasuak supports this recommendation.

If you have any questions please feel free to contact me. Thank you.

PREPARED STATEMENT OF ELOUISE BROWN, PRESIDENT, DOODA DESERT ROCK ORGANIZATION

Mr. Chairman and Honorable Members of the Senate Committee on Indian Affairs:

I am Elouise Brown, the President of the Dooda Desert Rock Organization. It is a grassroots advocacy group, and it takes its name from the Navajo word for "No!" (dooda) and the proposed Desert Rock mine-mouth power plant discussed in the testimony of the Dine Power Authority. We have reviewed the hearing presentations and we want to alert the Committee to some issues that were not fully developed during the hearing.

I am Navajo, and as Navajos often do, I look to the document that establishes our relationship with the United States of America — the Treaty of June 1, 1868. To give it some context, in 1863 the United States Government marshaled a military campaign against us that led to several forced marches and death marches about four hundred miles from our homeland to an alkali-laden patch of sand on the Pecos River in eastern New Mexico. That was the solution to the "Navajo problem" and there was a plan to put us on the Bosque Redondo Reservation there to "civilize" us.

As is typical of U.S. Indian policy, the reservation plan failed and even enemies of Navajos in Santa Fe called for an end to the experiment. Treaty commissioners General William T. Sherman and Colonel Samuel F. Tappan negotiated our treaty with our ancestors on May 28 through 30, 1868. It is important that Sherman and Tappan negotiated with all the Navajo prisoners at Bosque Redondo on the first day. Sherman asked that the Navajos pick "ten men" for negotiations on the following

day, and the number of Navajo negotiators was expanded to twelve on the third day. There is oral history to the effect that the primary Navajo spokesperson, Barboncito, was chosen by a women's caucus.

I make the point of how our treaty was negotiated because the federal trust responsibility was raised in testimony. There is a misconception that the responsibility runs only to Indian nations — it also runs to individual Indians. It runs to Navajos who have allotments inside and outside the main Navajo Reservation, and it runs to Navajos who live inside the Reservation. It also runs to us as individual Navajos who hold land title by customary use. It runs to us as individuals because of the pledge in Article I of the Treaty we will be protected, and General Sherman's oral pledges of protection during treaty negotiations. Navajos were an oral society at the time, and those promises come down to us through the oral histories — we remember.

We do not flatly oppose energy development in Indian Country. We oppose the idea of development that tramples on our rights as people who live on the land. We note Dr. Robert W. Middleton's testimony on the March 10, 2008 regulations that provide for Tribal Energy Resource Agreements (TERA), work with tribes to develop them and grants to help tribes develop "capability" to carry out such agreements. The regulations are fine — on paper. But we are reminded of the General Allotment Act of 1887. It was enthusiastically implemented by Dr. Middleton's predecessors to the end that the taking of "surplus" lands, fraud and theft resulted in the loss of about two-thirds of Indian Country. This committee has struggled, time and again — with the legacy of the "Dawes General Allotment Act" in attempts to frame Indian land consolidation policies and end the fractionation of Indian lands. Is energy the "new buffalo" that will supplant casinos, now that the bloom is off that fad?

We do not have to re-tell detailed accounts of the exploitation of Indians and their tribes for private interests, fraud, or other abuses. However we do offer the caution that TERA agreements should be approved only upon careful review and with an open and transparent process.

I will now offer some comments to put Steven C. Begay's testimony into perspective. He introduces the Dine Power Authority as an enterprise that is "dedicated to wholesale energy development, including fossil fuel and renewable energy." To be accurate, Navajo Nation Council Resolution No. CJA-2-96, adopted on January 19, 1996, says that "There is established an authority of the Navajo Nation to be known as the Dine Power Authority ("authority"), in order to provide an instrumentality of the Nation to participate in the development of *a major coal-fired, mine-mouth steam electric generating station to be located within the extended boundaries of the Navajo Reservation in northwestern New Mexico*" (emphasis supplied).... The purposes section of the resolution allows other kinds of energy development and power transmission activities. "Renewable energy" is not mentioned in the statute.

Put more starkly, the Dine Power Authority was specifically established to build a "major" coal-fed generation station in the Four Corners area as a prejudged and pre-determined policy. Whether or not such a plant would be permitted by federal or Navajo Nation environmental law was not part of that policy decision, and the law was passed *before* an environmental assessment was made. The law was also passed without asking us, the Navajos who live within "the extended boundaries of the Navajo Reservation in northwestern New Mexico," whether we wanted another coal-fired, mine-mouth power plant on our land. There are already two.

We do not know how long the plan has been in existence, or how long the "partnerships" mentioned in Mr. Begay's testimony have been in place. However it is obvious that there is an

intimate link between the 469-mile long high voltage transmission line from the plant to Arizona, Nevada and California and the proposed Desert Rock power plant. It appears, from our review of the power plant lease and its supporting documents, that one project will not fly without the other.

There is an unfortunate rule of rhetoric that if you repeat something over and over, whether it is true or not, then it will be taken as true. The testimony says that the project will "create thousands of jobs" during a four-year construction phase. The Desert Rock business plan says "1,000 jobs per year during construction." The mention of 200 employees to operate the plant and another 200 for the adjacent mine is consistent with past statements.

We know, from news reports, that Desert Rock has negotiated "PILOT" (payment in lieu of taxes) agreements with the New Mexico school district that serves Navajo communities, and also with San Juan College and other San Juan County school districts. There is emphasis on possible adverse impacts because of the construction population. While the "PILOT" initiative appears to recognize the possible impact of a large work force, there are some omissions and inconsistencies.

That is, while arrangements to address the financial impact of "thousands" of jobs have been made with State school districts and a State community college, we see no evidence of similar arrangements with Shiprock Alternative Schools, Inc. (492 students — 238 K-6 and 254 7-12), or with the Dine College branch in Shiprock. While it may be assumed that the central government will share revenues with those schools, or with local communities, because of the impacts on infrastructure, the political history of the allocation of income does not support that assumption. That is not the way our central government divides revenues.

We see no evidence of local infrastructure planning for a large work force — housing, streets and roads, traffic control, social services, law enforcement, or other support services. Accordingly,

it is likely that there will be a large non-Indian component in the projected work force. We are not seeing planning that is consistent with Navajo preference hiring for "thousands" of construction workers. It is likely that new workers and workers seeking better housing will live in off-reservation communities between the Hogback and Farmington — Waterflow, Fruitland, Kirtland and Farmington itself. Wages will be spent there rather than in the Navajo Nation. The money argument assumes that there will be a trickle-down effect when the central Navajo Nation government gets income from the mine and associated projects, and that is not the case at all. The testimony about $1.5 billion going to the "Navajo treasury" during the first 30 years of operation is significant because it is accurate. The $1.5 billion will not go to the Navajo People, chapters or local communities, but only to the "Navajo treasury." We recall that the original central Navajo Nation government was established by the Bureau of Indian Affairs to receive gas and oil revenue in place of the residents of the Shiprock area.

The DPA testimony complains of the delay in granting a permit under the Clean Air Act, and the loss of approximately $5 million per month. We have a complaint too. URS, the corporate engineering company that did the environmental impact statement for the mine, did not get relevant public health data on "the potential for multiple or cumulative exposure to human health or environmental hazards" for the EIS. That is required by the Council on Environmental Quality document, Environmental Justice: Guidance Under the National Environmental Policy Act (1997). We brought that to the attention of the NEPA coordinator of the Navajo Regional Office of the Bureau of Indian Affairs, but we got no response. While Desert Rock spokespeople repeatedly talk about particulate levels, we are not seeing any discussion of the cumulative impact of emissions by two existing coal-fired power plants (Four Corners and San Juan). Added to that mix is testimony

about uranium-contaminated dust in the area from the fiasco of uranium mining (also approved by the federal government) developed during a House Committee on Oversight and Government Reform hearing on uranium and Navajos on October 23, 2007.

There were separate hearings by the Committee on Oversight and Government Reform on the impact of coal-fired power plants on global warming, and one of the products of that hearing is H.R. 5575, a bill "To require new coal-fired electric generating units to use state-of-the-art control technology to capture and permanently sequester carbon dioxide emissions and for other purposes" (introduced March 11, 2008). Section 2 of the bill would create a moratorium on permits for proposed coal-fired power plants "unless the permit requires the unit to use state-of-the-art control technology to capture and permanently sequester carbon dioxide emissions from such unit."

That explains the Dine Power Authority emphasis on addressing carbon emissions, including the description of specific elements of "testing large-scale carbon capture and sequestration technologies." Ron Curry, the Secretary of the New Mexico Environment Department, testified at the November 8, 2007 hearing on EPA Approval of New Power Plants and told the House Committee on Oversight and Government that the Desert Rock Power Plant would "emit about 12 million metric tons of carbon dioxide annually." The EPA did not even ask about carbon dioxide emissions. The DPA discussion of capturing carbon in emissions appears to a promise that the power plant can and will comply with a possible "Moratorium on Uncontrolled Power Plants Act of 2008." The Desert Rock Energy Project web page discussion of "Carbon Dioxide Facts" says something different, namely:

> Even if carbon capture technologies become available and affordable, many unanswered questions remain about the viability and impacts of sequestering carbon dioxide. While some technologies in the oil and gas industries use carbon sequestration today for additional

> development, no long-term storage data is currently available. A study from energy experts at the Massachusetts Institute of Technology (MIT) casts further doubt on the viability of current sequestration technologies. While Sithe Global and other developers believe that the future is promising, carbon sequestration issues still remain a largely unknown factor because of these concerns.

The words "Massachusetts Institute of Technology" have a link to a web page with a large "Interdisciplinary MIT Study," The Future of Coal: Options for a Carbon-Constrained World (2007). The Summary Report states that no currently operating storage project (for example, existing plants in Norway, Canada and Algeria) "has the necessary modeling, monitoring and verification (MMV) capability to resolve outstanding technical issues, at scale." In other words, the technology mentioned by the Dine Power Authority is not yet a reality. The recommendation that Congress fund carbon capture and sequestration demonstration projects underscores that fact.

The testimony of Steven J. Morello, of the Office of Indian Energy Policy and Programs in the U.S. Department of Energy, attempted to lend a "green" flavor to federal policy. It mentions a Tribal Energy Program to encourage clean and renewable energy and two grant announcements, so that "The hope is through the resulting projects DOE's investment of $4.5 million in FY 2008 will reduce tribes' use of fossil fuel and enable economic development within these Native communities." That is a small sum of money in comparison with the figures the Dine Power Authority put out (billions and not a few millions), and it largely isn't tribes that use fossil fuel. It is the coal-fired power plants.

The Dine Power Authority's presentation also had a green tinge to it in discussing the Dine Wind Project. As good as it sounds, we suggest that on closer examination, one would find that the selection of Citizens Energy Corporation as a partner for a wind project has more to do with past associations by the law firm representing Desert Rock than work with Native communities or

"significant due diligence." We suggest that the wind project is a smokescreen to make the Dine Power Authority's dirty projects seem more appealing.

We are concerned about possible abuses or negligence in the TERA-certification process, and we are also concerned about something that is missing — the development of policies on the rights of individual Indians in the process of energy resource development. Energy development can be done in a good way. It can also be done in a way that ignores the rights of individual Indians. We think that there should be policies that encourage the human right to development, but assure that people like our Navajo constituents can participate in the process in a meaningful way, and that our local communities will share in the benefits of development. We recognize that such discussions should take place at home, but we also look to the United States to properly recognize its trust responsibilities to us as individuals as energy policy is developed for Indian Country.

PREPARED STATEMENT OF HON. MICHAEL E. MARCHAND, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribe" or the "Tribe"), I appreciate the opportunity to provide to the Committee on Indian Affairs this statement on Indian energy development, a topic of great interest to the Tribe. The Colville Tribe is hopeful that Title V of the Energy Policy Act of 2005 will soon be fully implemented and adequately funded to ensure that Indian tribes have sufficient support in developing their energy resources.

Before discussing Title V, I would like to take this opportunity to provide some brief background on the Colville Tribe. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of twelve smaller aboriginal tribes and bands from all across eastern Washington State. The Colville Reservation encompasses approximately 1.4 million acres and is located in north central Washington State. The Colville Tribe has more than 9,300 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the Tribe's members live on or near the Colville Reservation.

The Office of Indian Energy and Economic Development

As the Committee is aware, the Bureau of Indian Affairs' Indian energy programs are administered by the Office of Indian Energy and Economic Development (IEED). The Colville Tribe can attest from its productive experience with the IEED in recent years that the IEED brings much needed technical assistance and capacity building to Indian country and enables Indian tribes to maximize, leverage, and develop energy resources on tribal lands.

The IEED provides Indian tribes with grants to assess energy resources on tribal lands, build capacity, conduct feasibility studies, and for other purposes. Since 2005, the Colville Tribe has received grants and technical assistance from the IEED that have allowed the Tribe to begin planning and development of a new cogeneration facility on the Colville Reservation that will utilize woody biomass and other renewable materials. The facility, which is still in the planning stages, would be a 16–20 megawatt cogeneration plant at Colville Indian Power & Veneer, the Tribe's plywood and power plant in Omak, Washington. The existing power plant, which is 70 years old, was designed to produce only steam for the plywood portion of the plant. The current plant can produce only 8–9 MW because of the limitations of the cooling tower.

The Colville Reservation has an unemployment rate of nearly 28 percent, whereas the unemployment rate for Okanogan County is more than 13 percent. Once completed, a project of this size would create approximately 50 full-time jobs. The 15

jobs that would be created at the facility would benefit Okanogan County and the 35 secondary jobs that would be created supplying the woody biomass would benefit both Okanogan and Ferry Counties. In addition to the IEED grant that has furthered this project, the Colville Tribe has received substantial technical assistance from the IEED, particularly from the IEED staff in the Denver office.

Another program administered by the IEED is the Tribal Energy Resource Agreement (TERA) program. Authorized under Title V, TERAs are agreements between Indian tribes and the Secretary of the Interior that are intended to maximize tribal oversight and management of energy resource development. Once the IEED determines that a tribe possesses the requisite management capacity and approves a TERA, the tribe can then engage in a variety of energy development activities under an entirely new, flexible mechanism for entering into energy-related business agreements with third parties. The BIA published its final rule implementing the TERA program on March 10, 2008, and numerous applications are expected. Again, the Tribe is hopeful that the IEED will be provided sufficient resources and support to allow Indian country to fully utilize this unique tool.

The Office of Indian Energy Policy and Programs

As the Committee is aware, Title V authorizes a number of new programs and initiatives in the Department of Energy (DOE). Among these programs are the establishment of an Office of Indian Energy Policy and Programs (OIEPP), a grant and technical assistance program, and a guaranteed loan program. The Colville Tribe is encouraged that DOE hired a Director for the OIEPP in September 2007. The Tribe is concerned, however, that since enactment of Title V in 2005, DOE has not requested funding for the OIEEP or any of the other Indian-specific programs authorized by the Title V and has not otherwise taken any steps to implement those programs.

The Colville Tribe looks forward to working with the Committee and the respective appropriations committees to ensure that the IEED and the Indian energy programs at DOE have the tools and resources they need to fully realize the potential of Title V.

Thank you for the opportunity to provide this statement and for your consideration of these issues.

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510 4/25/08
Attention: Chairman Senator Byron Dorgan
Attention: Crow Nation: non-ratified government trust land mineral exploitation

I, Karmelita Plains Bull Martin, began contacting this office last October 2007 requesting an "inquiry" regarding the Crow Nation's Constitutional by-laws and/or its government had not been ratified. Since 2001, the Crow Nation's government has not met the federal elections criteria: a) signatures were not allowed or collected by a voting body (i.e. Crow Nation's council participants were not aware); b) signatures were not notarized; c) signatures were not audited and the proposed illegal referendum presented by Chairman Carl Venne toward running for office for a third term had not met the same federal elections criteria. Therefore, there has not been a legitimate governing body since the inception of 2001 Crow Nation's Constitutional By-laws created by formerly Elk River Law office's attorney Majel Pease Russell. Majel Pease Russell was formerly a private attorney for Carl Venne for his personal legal affairs incidently was awarded the approval by the legislative branch members included on Crow Nation's budget payroll arrangements.

I, Karmelita Plains Bull Martin, am currently the Crow Nation's Allotee Land Commission Chairperson on a fact finding commission discovered trust land becoming exploited due to its mineral content being oil, coal + gas (coal bed methane). The mineral content becoming extracted + exploited by these entities and/or federal agencies: Department of Interior - Bureau of Indian Affairs enabling Bureau of Land Management; Crow Nation's Administration:

Attention: Chairman Senator Byron Dorgan
Attention: Crow Nation: non-ratified + trust land mineral exploitation

executive branch, legislative, legal department branch members; First Interstate Bank's CEO Dan Scott's various energy companies: Golden Arrow Exploration, Elk Petroleum, and Long Shot Oil Company; Ursa Major - Great Bear Energy Consulting company; Montana + Wyoming Board of Oil + Gas were approved thru Crow Nation's legislative member Carlson Goes Ahead, House Speaker.

Again, I have contacted this committee's office last November 2007 but my faxes with my voices messages were becoming re-routed to a Lisa M, Vice-Chair while a John Murphy returned my calls in Jan 2008?

Please note, I again repeated my contact cycle in December 2007 trying to present my request for an "inquiry" regarding trust land and its mineral content becoming exploited as well as extracted. My final contact and its faxed documents included the strong emphasis on the concerns for Crow Nation's former tribal attorney 2000-2007, Majel Pease Russell's involvement as well contributive part for the ongoing "abusive powers" beyond her job's scope of jurisdiction as a former Crow Nation employee employed by Chairman Carl Venne. The most recent "state economic compact" w/ Brad Johnson. Please forward my statement of grievances and complaints to the appropriate department and/or staff contacts for these requested inquiries toward these committee's offices.

Thank you and respectfully
Karmelita Plains Bull Martin

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO STEVEN J. MORELLO

Q1. Why did it take the Department of Energy (DOE) two years to appoint a Director to the Office of Indian Energy Policy and Programs? When did the search begin for a candidate for your position?

A1. There are a number of requirements and provisions in EPAct 2005 that we were not able to complete quickly, and the Office of Indian Energy Policy and Programs was one of these.

However, the search for a Director began after passage of the Energy Policy Act of 2005. Prior to naming a Director, we took several steps to properly manage and monitor Tribal issues at the Department in a consistent way. The Department solicited input from interested Tribal governments and Tribal organizations on how they envisioned a new office would interact with the existing DOE missions, and how this office could improve on the existing organizational structure. In addition, to assisting us in coordinating our Tribal policies among various DOE programs, we created a Tribal Energy Steering Committee comprised of representatives from all major program offices to address cross-cutting Tribal issues.

Q2. You are also the Deputy Assistant Secretary for Intergovernmental & External Affairs. What are the responsibilities of this position? How do you split your time between your Deputy Assistant Secretary Position and your Office Director position?

A2. The responsibilities for the Deputy Assistant Secretary ("DAS") for Intergovernmental and External Affairs are as follows: coordinating and directing the Department of Energy's intergovernmental programs and other political and policy relationships between the Department and officials of State, local, Tribal governments, other Federal Agencies, environmental industry, and community or stakeholders interests.

I use my title as DAS to further the causes of the Office of Indian Energy Policy and Programs. Working with state governments, I ensure that the needs of tribes are being incorporated when appropriate in the state's decision-making processes. I do not have a clear distinction about how I separate my time between the DAS and Director responsibilities. Many of the Tribal liaison responsibilities of the DAS position overlap with my interactions with tribes in my capacity as Director. For many of the state and local governments, I delegate duties to others within the Office of Congressional and Intergovernmental Affairs.

Q3. How many people work for you in the Office of Indian Energy Policy and Programs? Do any of them hold positions and responsibilities in other offices?

A3. Currently, there are a total of three people working for me in the Office of Indian Energy Policy and Programs. After the Office was established in September of 2007, two individuals within the Office of Congressional and Intergovernmental Affairs were reassigned, in part, to support me and the new Office. Both of these people were already reporting to the Deputy Assistant Secretary for Intergovernmental and External Affairs. The third person in the Office is a career Department employee on detail from another program office within DOE, and works as a temporary Deputy. It is my intention to keep this person on detail to the Office throughout the end of the administration and to have them assist with the transition and insuring continuity for the Office until a new Director is appointed.

Q4. For each fiscal year since the Office of Indian Energy Policy and Programs was established by the Energy Policy Act of 2005, what level of funding has been requested for the office either internally within the Department or directly to Congress?

A4. Funding for this program is included within the overall budget for the Office of Congressional and Intergovernmental Affairs. The budget for the Office of Congressional and Intergovernmental Affairs in FY 2008 is $4.7 million, and the FY 2009 Request is $4.7 million as well. Of the total available, approximately $0.5 million supports the Office of Indian Energy Policy and Programs.

Q5. For each fiscal year since the Office of Indian Energy Policy and Programs was established by the Energy Policy Act of 2005, what has been the budget of the office? Please indicate the total budget and major spending categories for your office, including travel.

A5. The funding for the Office of Indian Energy Policy and Programs is included within the overall budget for the Office of Congressional and Intergovernmental Affairs. The approximate budget for the Office of Indian Energy Policy and Programs in FY 2008 is $521,000. This funding supports 3 full time equivalent employees ($355,000), travel ($71,000), and overhead including all costs associated with the DOE Working Capital Fund ($95,000).

Q6. In your testimony you stated that the office has very specific duties. As set out in provisions of Title V of the Energy Policy Act of 2005 that are codified at 25 U.S.C. § 3502 (b), some of these specific duties are to:

> "establish programs to assist ... tribes in meeting energy education, research and development, planning, and management needs," and, "develop a program to support and implement research projects that provide ... tribes with opportunities to participate in carbon sequestration practices on Indian land,..."

What specific actions have you taken to establish or develop the programs required by the statute?

A6. The provisions under 42 U.S.C. 7144e authorized the establishment of the Office of Indian Energy Policy and Programs ("Office"). I was appointed in September 2007, and the Office resides in DOE's Office of Congressional and Intergovernmental Affairs. Given these circumstances, my approach to the establishment of the Office and execution of the requirements of Title V necessitated a thorough investigation and evaluation of programming that already exists in the Department that may fulfill such requirements. One such existing program that meets some of the energy education and planning expectations of Title V is DOE's Tribal Energy Program, in the Office of Energy Efficiency and Renewable Energy. Part of this investigation includes travelling in Indian Country to gather more specific information about the energy needs of Tribes. As Director, I want to be in a position to leverage the programs already in existence to maximum use while making informed and sound recommendations to senior management about programs and potential organizational changes, budget requests, and staffing in order to meet the requirements of Title V. The topic of carbon sequestration is included in this analysis. Given my limited tenure, I will be making recommendations for the Office as part of the transition.

Q7. The statute at 25 U.S.C. 3502 (b) also requires that your office's carbon sequestration activities "shall be ... coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy; ..." What carbon sequestration research and development programs are being conducted by the Secretary of Energy? How have you coordinated your office's programs with those being conducted by the Secretary of Energy?

A7. The Department of Energy has conducted a research and development (R&D) program on carbon sequestration composed of two main elements: a core R&D activity and a demonstration activity. The core R&D Program involves laboratory and pilot-scale research aimed at developing new technologies and new systems for greenhouse gas (GHG) mitigation. The portfolio includes cost-shared, industry-led technology development projects, research grants, and research conducted through the national laboratories. The program encompasses five focus areas: carbon dioxide (CO_2) capture; carbon storage; monitoring, mitigation, and verification; non-CO_2 GHG control; and breakthrough concepts. The demonstration activity is designed to demonstrate the viability of carbon capture and storage technologies at large scale to overcome real and perceived infrastructure challenges. DOE is also examining regional differences in geology, land practices, ecosystem management, and industrial activity that can affect deployment.

Through these Partnerships, the Program works with several Indian organizations. The Nez Perce Tribe, the National Tribal Environmental Council, and the Intertribal Timber Council are involved with the Big Sky Regional Partnership. The Navajo Environmental Protection Agency (EPA) is involved with the

Southwest Partnership in the permitting of the Aneth enhanced oil recovery (EOR) project.

By developing the necessary field data, CO2 injection, measurement and monitoring protocols and practices, the Carbon Sequestration Program also supports FutureGen, a key DOE program for commercial demonstration of carbon capture and storage technology. The Program also performs systems analysis and economic modeling of new technologies to understand and identify issues associated with integration into full-scale power plants and participates in crosscutting studies and analysis to model future national energy scenarios that incorporate carbon sequestration. Finally, the Program coordinates with other U.S. government agencies and with the international community through its membership with organizations such as the Carbon Sequestration Leadership Forum.

Coordinating with existing carbon sequestration programs has not been an immediate focus of the Office of Indian Energy Policy and Programs, given the focus on oil and gas development that exists in the Department of the Interior. However, future coordination is an important priority.

Q8. The statute at 25 U.S.C. § 3502 (b)(2) also authorizes you to provide grants to Indian tribes for use in carrying out:

> "energy, energy efficiency, and energy conservation programs;"
>
> "studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in security electricity to promote electrification of homes and businesses on Indian land;"
>
> "planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and,"
>
> "development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities."

Have you requested funding for this grant program? How many grants have you provided to Indian tribes under this statute? Please describe some of the projects that grant recipients have initiated. Have you consulted with Indian tribes regarding a formula for providing these grants? What was the outcome of that consultation?

A8. Funding has been appropriated to an existing program for similar purposes under the Office of Energy Efficiency and Renewable Energy's Tribal Energy Program. Since its inception in FY 2002, the Tribal Energy Program has provided over $14.1 million on a competitive basis to 91 Tribal energy projects across Indian Country under the authorities specified in Title V of the Energy Policy Act of 1992 including $3.2 million to Tribes for 26 planning and renewable energy feasibility study projects under 25 U.S.C. § 3502 (b)(2). An additional $8.1 million has been provided to tribes through earmarks. The purpose of the program has been to increase the Tribes' awareness of their renewable energy resources (estimated at 10% of all energy resources within the U.S. (conventional and renewable)) and to provide financial and technical assistance to Tribes to quantify their resources and help them make more informed decisions on whether to develop those resources.

Q9. In your testimony, you state that you had been travelling extensively to listen to Indian tribes and gather knowledge on how the duties of your office should be implemented. How many trips have you taken? What has been the duration of these trips? Which Indian tribes or tribal organizations did you meet with? What are some of the recommendations these tribes have provided regarding implementation of the duties required by statute?

A9. I have taken twenty trips. The duration varies but they average four days each. Most trips out west require a day of travel in each direction, because of connecting flights.

I have met with the following tribes thus far: the Northwest Band of the Shoshone Nation in Utah; several Pueblos throughout New Mexico; Eastern Shoshone Nation and the Northern Arapaho Tribe at Wind River, Wyoming; the Alaskan Federation of Natives; the Mississippi Choctaw; the Oklahoma Cherokee; the Oklahoma Osage; the Viejas Tribe of California; the Quinault Nation of Washington State; the Eastern Cherokee of North Carolina; the United Southern and Eastern Tribes; the Little River Band of Michigan; the Micmac Band of Maine, and several others.

I have met with the following organizations: The Council for Energy Resource Tribes; the Affiliated Tribes of Northwest Indians; NANA Corporation; CIRI Corporation; and the National Congress of American Indians ("NCAI").

I attended several prominent conferences such as NCAI, RES2008, CERT Annual Meeting, White House Initiative on Tribal Colleges and Universities (WHITCU) meeting, and the Federal Bar Association Native Bar Group. Finally, I attended several training seminars sponsored by the Department of Energy and HUD in

order to teach about all aspects of renewable and sustainable energy projects in Indian Country.

I have received several recommendations from the tribes I have met with. Some of these include:

a. Secure funding for the grants and loan guarantees;
b. Organize DOE such that there is one point of entry into the Department for Indian Tribes;
c. Help tribes with the science and technology issues related to doing energy projects;
d. Continue to provide teaching opportunities so tribes can understand the benefits of these projects to local economies;
e. Assist with the conservation methods best suited to Tribal housing needs;
f. Help build homes with integrated conservation and renewable energy features;
g. Assist with available non-government funding sources;
h. Help the Congress and Administration realize the impediment of the lack of ability to transfer production tax credits and investment tax credits;
i. Allow net metering by breaking the monopoly of the rural energy cooperatives;
j. In Alaska there is an urgent recommendation to provide alternatives to the diesel generation of electric power for interior villages;
k. Assist with nation building so Tribal politics do not interfere with good business;

l. Assist with the evaluation of competing proposals/technologies for implementation on Tribal land;

m. Continue listening sessions and consultations regarding the duties of my present position.

Q10. Another provision in Title V of the Energy Policy Act of 2005 that is codified at 25 U.S.C. § 7144*e* requires you to:

> "provide, direct, foster, coordinate, and implement energy planning education, management, conservation, and delivery programs of the Department … that promote Indian tribal energy development … stabilize energy costs … bring electrical power and service to Indian lands and homes."

Other than the departmental coordination described in your testimony, what specific measures have you taken to promote Indian tribal energy development, stabilize energy costs, and bring electrical power to Indian lands and homes?

A10. All of my travel activities are focused on promoting Indian Tribal energy development, including stabilizing energy costs and improving electrical power systems on Indian lands and in Indian homes.

Additionally, my testimony outlined an important Tribal electrification study that is being conducted by DOE's Office of Electricity Delivery and Energy Reliability. My office helped to coordinate the logistics of this study. Further, my testimony also reflected examples such as the Solar Decathlon when my office communicated alternative energy options for Indian Tribes.

Q11. Title V of the Energy Policy Act of 2005 also authorizes the Secretary of Energy to provide loan guarantees to Indian tribes for energy development. I understand from your testimony that the Indian energy loan guarantee program has been included in the Department of Energy's (DOE) national loan guarantee program. How many Indian tribes applied to DOE's loan guarantee program before and after the passage of Title V? What have you, or the DOE, done to advertise this opportunity to Indian tribes?

A11. Tribal governments and entities are eligible to participate in the Title XVII solicitations issued by the Department's Loan Guarantee Program Office. The Title XVII program is designed for projects that employ advanced technologies that avoid, reduce or sequester air pollutants and man-made emissions of greenhouse gases.

The Title XVII Loan Guarantee Program issued a solicitation in 2006 to which the Department received 143 responses, none of which were from Indian tribes. In 2008, the Department expects to issue four additional solicitations that will be advertised through the Loan Guarantee Program's mailing list as well as the Department's traditional systems including Fedconnect and the Federal Register. Like the 2006 solicitation, The Department will welcome applications from Indian tribes under these new solicitations. Under the Consolidated Appropriations Act, 2008, the Department has authority until September 30th, 2009 to issue loan guarantees for qualified projects.

The Office of Indian Energy Policy and Programs will continue to share information about these solicitations with tribes or Tribal entities interested in participating.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO STEVEN J. MORELLO

Q1. In your testimony, you stated that Indian activities are dispersed throughout the Department of Energy (DOE). As Director of the Office of Indian Energy Policy and Programs, what involvement-if any-did you have in formulating the DOE's FY 2009 budget request for these Indian related programs and activities?

A1. I was named the Director of the Office of Indian Energy Policy and Programs in September of 2007. At that time, DOE's internal FY 2009 budget process was nearly complete. As such, I did not have a role in formulating the FY 2009 budget request for Indian related programs and activities. The Department provides approximately $10 million annually to tribal programs within the Offices of Environmental Management, Energy Efficiency and Renewable Energy, and other offices.

Q2. The DOE's fiscal year 2009 budget request proposes $1 million for Tribal Energy Activities, a $4.94 million decrease from fiscal year 2008 enacted levels. The Tribal Energy Activities account has traditionally funded grants to Indian tribes for energy projects. For example, the Colville Confederated Tribes received a grant for the construction a [sic] new substation at Colville Indian Power and Veneer, a plywood and veneer manufacturing facility located in Omak, Washington. As highlighted in the DOE's fiscal year 2009 budget justification, this new substation is projected to save the Tribes $160,000 to $260,000 per year through reduced line losses and demonstrates the success of the grant program.

As an explanation for this year's proposed $4.94 million reduction, the DOE's budget request states "program restructuring was initiated to develop finance mechanisms to streamline project development and increase access to private developers, thereby reducing the need for direct financial assistance to Tribes." Please explain in detail these new "finance mechanisms to streamline project development and increase access" and the level of funding dedicated to these new mechanisms.

A2. The FY 2009 budget request for Tribal Energy Activities is based on an innovative approach that leverages existing public and private funding sources to expand the number of tribal energy projects constructed. In that regard, the Department has collaborated with other agencies (i.e., the Bureau of Indian Affairs, Department of Agriculture) to finance the projects. In addition, the Department is working with private industry, including investors, developers, and legal experts, to identify legal structures and financing mechanisms such as equity ownership, royalty payments, and flip structures that can be used for renewable energy deployment in Indian Country.

In FY 2008, the Program conducted a National Tribal Business Development and Project Financing training session for the Tribes and began holding regional training sessions attended by over 360 Tribal representatives and stakeholders.

These training sessions, combined with technical assistance, will result in model contracts, sample project development documents to include: Power Purchase Agreements; decision matrices, primers, and checklists; primers on business structures and tax implications; and economic and cash flow models based on various financing mechanisms which will then be shared with the larger Tribal community through DOE's website and future training sessions.

In FY 2009, the Program proposes to expend $500,000 of the $1 million request to continue training and disseminating information on business organization, legal frameworks, and various financing mechanisms. The remaining $500,000 is proposed for ongoing project support, technical assistance and the internship program.

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO DR. ROBERT W. MIDDLETON *

Question 1. I understand that the Department of Interior's (DOI) Minerals Management Service (MMS) is forming a committee to consider recommendations for revising the rule governing valuation of oil produced on Indian lands. I further understand that the proposed rule changes are to bring added certainty to oil valuations. Will DOI's Indian Energy and Economic Development office or the Bureau of Indian Affairs (BIA) be involved in that rule change? How will you or the BIA be involved? What factors make MMS uncertain about its existing oil valuations?

Question 2. Does the DOI use a standard form for tribal or individual Indian mineral leases? Can a tribe or individual Indian include provisions in a lease that require mineral production within a certain period of time? Can a tribe or individual Indian develop their own lease?

Question 3. DOI's final regulations for developing a Tribal Energy Resource Agreement leaves the phrase "inherently federal function" undefined. Has this phrase been clarified? If so, how? If not, please explain the process DOI has been using or will use to clarify this phrase. Please also state when you anticipate clarifying this phrase and in what form that clarification will be provided.

Question 4. We continue to be advised of delays in the Bureau of Indian Affair's (BIA) approval of energy related lease documents. I understand that your office has a number of energy experts on staff. Can the expertise in your office be used to train or assist BIA staff who review and approve energy lease documents?

Question 5. I understand that the Energy and Mineral Development Program Grants issued by your office have been very successful for tribes to gain expertise and start mineral development. I further understand that these grants are competitively awarded based on available funding and that competition for these grants is significant. How many tribes apply to this program and how large are the awarded grants? Do you have applications that are denied? Why are applications denied? How many applications are denied per year due to lack of funding?

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* Response to written questions was not available at the time this hearing went to press.

Question 6. In your testimony, you commented that the Secretary of Indian Affairs had recently committed additional staff resources to review and approve mineral leases on the Fort Berthold Reservation. Since your testimony we have been informed that the additional staff committed to this effort have served the time permitted under their "job details" and are no longer working on leases at the Fort Berthold Reservation. What are the past and present BIA staffing levels for approving leases on the Fort Berthold Reservation? In this information, without naming the staff directly, please include the titles or positions for each staff person involved in the lease approval process. Please briefly describe the steps a typical lease takes from an initial advertisement of an auction to final approval—not including environmental reviews of an application to drill. In the lease approval steps you describe, what staff positions are involved in each step and how many staff are currently available at Fort Berthold to perform these functions?

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