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DISCUSSION DRAFT OF THE INDIAN ENERGY PROMOTION AND PARITY ACT OF 2010

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

APRIL 22, 2010

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DISCUSSION DRAFT OF THE INDIAN ENERGY PROMOTION AND PARITY ACT OF 2010

THURSDAY, APRIL 22, 2010

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

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

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

Senator TESTER. [Presiding.] I want to call this hearing to order on the discussion draft of the Indian Energy Promotion and Parity Act of 2010.

We are conducting this hearing to abolish the obstacles to Indian energy development. I am sitting in for the Chairman, Senator Dorgan, that is obvious, and I will put forth to you some of the ideas that he has in his opening statement.

Over the past two years, the Committee investigated these obstacles. There have been two hearings, a concept paper that was released proposing solutions, and the Committee staff has held a series of roundtables throughout Indian Country.

We have a good idea of what the obstacles are. They are outdated laws that create a bureaucratic maze, a lack of infrastructure, a lack of financing for Indian energy projects. Based on the comments of the tribes and their industry partners, Senator Dorgan released a draft Indian Energy Promotion and Parity Act of 2010 on March 12th. The draft bill is our launching point for this hearing, along with additional draft provisions that Vice Chairman Barrasso released.

Let me get right to the point of today's hearing. Indian tribes have vast energy resources that could provide substantial economic development for their communities, while increasing this Country's energy independence. The need for economic development in Indian communities is urgent and obvious. Many struggle with 49 percent unemployment and poverty rates that the rest of America wouldn't tolerate for a moment.

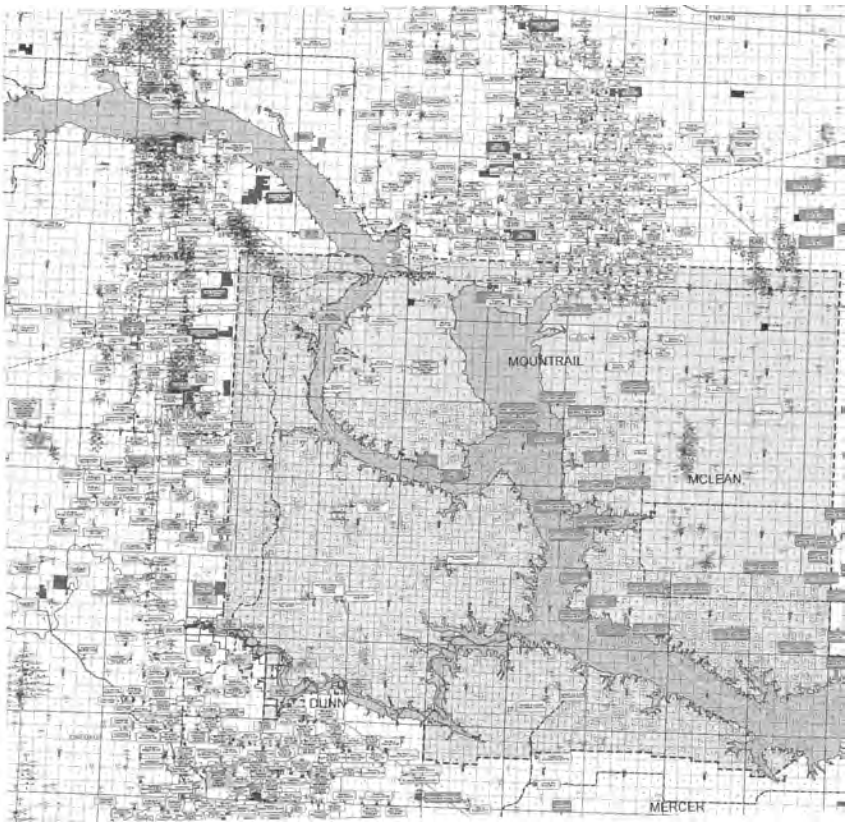
Likewise, the Nation has an urgent need for greater energy independence. Energy production on Indian lands can be a big part of the answer to both problems, even though Indian lands make less than five percent of the United States, it is estimated that about 10 percent of the Nation's traditional and renewable energy re-

sources are on those Indian lands, yet much of that potential is left undeveloped.

Indian energy resources are locked up by a century of Federal law and policy that discourage development. This has had a direct impact on the lives of American Indians and our Nation's energy supply.

I would like to share some of the stories with you today. First chart, and this is a chart of the oil and gas activity on the Fort Berthold Reservation in North Dakota. On the chart, the reservation is outlined in red and all the dots and blues represent oil and gas activity. It has been more than two years since oil and gas activity in this area took off and still most of the activity is to the north, south, and west of the reservation.

[The information referred to follows:]

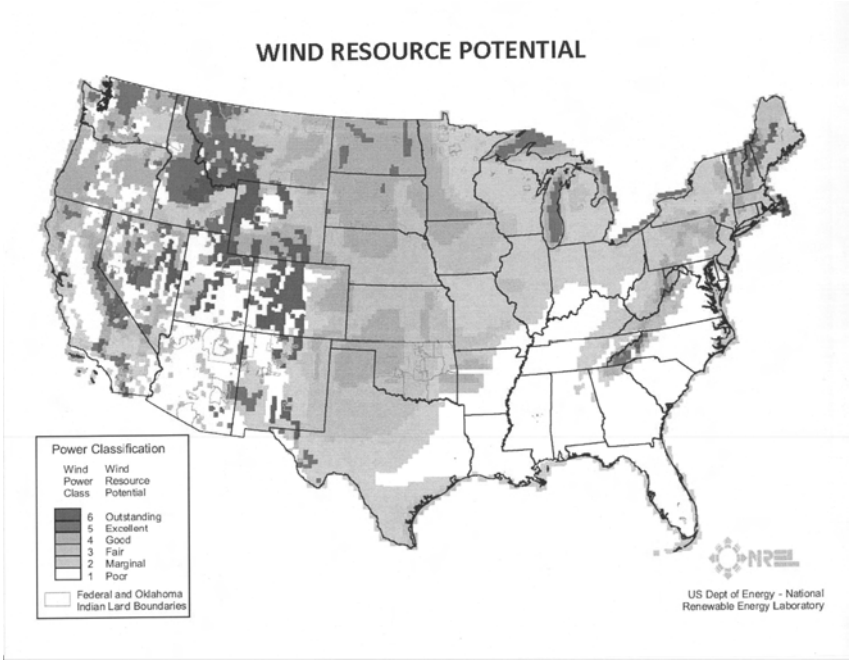


Things are improving. Senator Dorgan has asked the Department of Interior to open up an oil and gas one stop shop. A year later, the number of producing wells went from 10 to 49, and more than $180 million have been paid to the tribes and its members. But this is no comparison to the hundreds of wells in surrounding counties. Obviously, we still have a long way to go.

Now, Senator Dorgan's draft bill would create more of these one stop shops around Indian Country and streamline the bureaucratic 49-step process used to approve a single oil and gas lease.

The next chart shows the renewable wind potential in the Lower 48 States. Wind turbines could be producing electricity in all of the pink, the purple and the red areas. Many of these areas overlap Indian Country, which are outlined in green on the chart. On these reservations, tribes are trying to develop wind projects, including the Blackfeet Nation up in Northwestern Montana.

[The information referred to follows:]



The tribe has 1,000 megawatts of wind capacity, enough energy to power about 250,000 homes, but the tribe's wind project is stuck on the drawing board, like so many tribal wind projects. Energy companies are interested in working with the tribe, but are worried that the Federal approval process will take too long and lease terms on Indian lands are too short. Meanwhile, the tribe is left out of regional electric transmission planning. Senator Dorgan's draft bill specifically addresses these issues.

The last chart shows the weatherization needs of homes on the Cheyenne River Sioux Reservation in South Dakota. You don't have to be an energy auditor to see the energy benefits that new windows, doors and insulation could provide this family. But under current law, the weatherization needs of Indian tribes are barely an afterthought. The Recovery Act provided $5 billion for weatherization and annual appropriations are in the hundreds of millions, yet only a tiny fraction of this gets to Indian tribes.

[The information referred to follows:]

In 2009, the Cheyenne River Sioux Tribe received $3,000 for its weatherization program. The tribe was able to buy some plastic wrap to help a few of their members tape up their windows for the winter. The weatherization assistance tribes receive is so small that the Department of Energy does not even know what it is. The Department told Senator Dorgan's staff it would "take a really long time and an awful lot of effort to figure this out."

Tell that to the members of the Cheyenne River Sioux Tribe who may have to decide between buying food and heating their homes when winter temperatures on the Great Plains drop to 30 below zero.

Senator Dorgan's draft bill changes the law so that the weatherization funding gets to those who need it most, to provide more domestic energy and stimulate economic growth in Indian Country. We need the laws that will support Native American energy and I want to thank our witnesses that are here today for traveling here to share your ideas and we look forward to your testimony.

Senator Barrasso?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. Thank you for holding this very important hearing on one of the Committee's highest priorities.

Each time I meet with the leaders of the Eastern Shoshone and Northern Arapaho Tribes, we discuss how important energy development is to Wyoming's Indian communities, because in the Wind River Reservation energy development means jobs. Energy develop-

ment on the Wind River Reservation means incomes for families. It means paying the heating the bill. It means food on the table.

We know that many Indian communities have more than their share of challenges: unemployment, crime, alcohol, drug abuse. Far too often, I think we turn to government programs to address the problems. And I am not saying that there is no role for government. We do need more police in Indian Country. We do need drug and alcohol programs. But many of these problems are also aspects or features of something much larger: a pervasive lack of opportunity to earn a good living.

Creating strong economies in Indian communities would have a broad and lasting impact on all of these problems. Economic development and employment opportunities, those are the keys to healthy, well-educated, productive communities.

So I want to thank our witnesses for traveling long distances to be here today, and I look forward to hearing your testimony.

Thank you, Mr. Chairman.

Senator TESTER. Thank you, Senator Barrasso.

Senator Franken, do you have any opening statement?

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Yes, thank you, Mr. Chairman.

I want to thank Chairman Dorgan for prioritizing the issue of energy development in Indian Country. Our Country is in the midst of a major transition in the way we produce and use energy. There is no doubt that a clean energy revolution is the key to creating jobs and fostering economic development in communities all across the Country. That chart on the wind potential is a beautiful illustration of that.

No where is this need more urgent than in Indian Country, where unemployment rates are 40 percent, 50 percent and higher, and I so much agree with the Vice Chairman that economic development has got to be the answer.

Energy development is a huge opportunity for Indian Country. As Senator Tester said, and I will repeat it because it bears repeating. Tribal areas comprise only five percent of the land in the United States, but have 10 percent of our conventional and renewable energy resources. And yet, as you saw on the chart on oil production in that North Dakota reservation, around it really, that potential is not being tapped.

Tribes in Minnesota fully understand this potential, the potential that energy development presents for job creation and economic development. For example, the White Earth Reservation is actively pursuing recommendations from a 2008 University of Minnesota study on the potential of biofuels development on the reservation. The Shakopee Sioux community has built a 12.5 megawatt combined heat and power plant that runs on waste agriculture biomass from the local area. In Northwestern Minnesota, the Fond du Lac Band of the Chippewa has built a 25-kilowatt biomass pilot project using waste woody biomass from surrounding forest lands.

There are many more examples like this from tribes in Minnesota and they are a testament to the fact that they are engaged in energy development and looking for ways to scale up these

projects. But while there are successes of energy development in Indian Country on a small scale, broader energy development on tribal lands has so far just been a missed opportunity.

As I have talked to Minnesota tribes about energy development, I keep hearing the same issues again and again: lack of access to financing, regulatory hurdles, and lack of technical assistance.

So I want to thank this Chairman and Chairman Dorgan for bringing these critical issues before the Senate through this legislation, and I look forward to digging into the issues today.

Thank you.

Senator TESTER. Thank you, Senator Franken.

We have five witnesses here today. I will introduce you as a group and then we will start with you, Joe.

We have the Honorable Joe Garcia, Southwest Area Vice President, National Congress of American Indians, Washington, D.C., and Chairman, All Indian Pueblo Council, Albuquerque, New Mexico.

Along to his right, we have the Honorable Matthew J. Box, Chairman of the Southern Ute Indian Tribe in Ignacio, Colorado.

Next to him, we have the Honorable Michael Marchand, Economic Development Committee Chairman, Energy Committee Member, Affiliated Tribes of the Northwest Indians, Portland, Oregon, and Colville Business Council, Omak District Representative, Confederated Tribes of Colville Reservation, Nespelem, Washington.

I hope I didn't butcher that too bad.

And next to him is Mr. Ralph Andersen, CEO of Bristol Bay Native Association, Co-Chair of the Alaska Federation of Native Human Resources Committee in Dillingham, Alaska.

And finally, last but not least, Peter Stricker, Vice President of Strategic Asset Development, Clipper Windpower, Incorporated in California. Let's just put it there.

In want to thank you all for being here. Before we get to your testimonies, and Senator Johanns has come in.

Do you have an opening statement, Senator?

STATEMENT OF HON. MIKE JOHANNS, U.S. SENATOR FROM NEBRASKA

Senator JOHANNS. Just very briefly.

I had the most remarkable experience. I walked in here and everything you were saying, Senator Franken, I think I agree with, so this is really good.

[Laughter.]

Senator FRANKEN. What is the date today? Can we write this down?

[Laughter.]

Senator JOHANNS. No, that was an excellent opening statement. And actually in all sincerity, so many of the points that have been made by Senator Franken are points that I have heard from Native Americans in my State. We just had a summit where I brought all the tribes together. We spent a half day talking about economic development and healthcare and the issues that impact our reservations so much.

I will just say, I think this is an opportunity for us to maybe open up an avenue of economic development that has been untapped, and in some respects a bit unexplored. If we can get the right combination going here, then maybe there are some jobs that can be created, and that is enormously positive.

So thank you, Mr. Chairman, for conducting the hearing. I look forward to the testimony of the witnesses.

With that, I will be that brief.

Thank you.

Senator TESTER. Thank you, Senator.

I once again want to thank the witnesses for being here today. I would ask you to keep your testimony to five minutes. Your entire statement will be a part of the official record, but if you could keep it to five minutes, this is a very important subject and I know you can't cover everything you want in five minutes, but if you are concise, we will get it done and we will get to some good questions.

Joe Garcia, do you want to start out?

STATEMENT OF HON. JOE GARCIA, SOUTHWEST AREA VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS; CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, NM

Mr. GARCIA. Yes, sir. Thank you so much, Senator Tester and Vice Chairman Barrasso. We appreciate the Members of the Committee for also sitting in.

On behalf of the National Congress of American Indians, thank you for the opportunity to testify about our views on the discussion draft on the Indian Energy Promotion and Parity Act. NCAI is appreciative of the Committee's efforts to address our concerns about tribal energy development.

The discussion draft establishes a solid foundation which we wish to build upon to overcome the massive and complex obstacles to tribal energy development. We need to move these ideas forward and to enact them now.

As you are aware, tribal lands contain about 10 percent of the Nation's energy resources. Tribal renewable energy potential can meet the Nation's electricity demands several times over. Tribal energy is critical to the Nation's efforts to achieve energy independence and reduce greenhouse gases. Tribes located in some of the poorest counties in America have vast renewable energy resources that can help overcome this persistent poverty.

I wish to share with you some examples of the tremendous challenges Indian tribes confront, challenges that can become opportunities. First is the DOE programs. NCAI fully supports the discussion draft's elevation of the Department of Energy as the major player in tribal energy and energy efficiency. Tribes do not receive direct funding under some DOE Programs. Under the Recovery Act alone, State governments received nearly $8 billion under DOE's Weatherization program and the State Energy Conservation Plan Program.

However, only two tribes, the Navajo Nation and Northern Arapaho Tribe, received a mere $10 million. Under the Weatherization program a tribe cannot receive direct funding unless it proves to DOE that the State is not serving its people. And so let us be clear.

Tribes are sovereign nations with a direct nation to nation relationship with the Federal Government. Tribal governments therefore should have the option to work directly with DOE to address these conditions our people face.

Second, challenges to large scale renewable energy projects. Tremendous challenges confront tribal efforts to develop commercial scale renewable energy projects. Similar projects just outside of Indian Country have a huge competitive advantage. The map demonstrates that. They have simpler, faster and cheaper approval processes, better access to the grid, and easier access to financing. And setting up a renewable energy project on tribal lands takes three to five years. Whereas on non-tribal lands, this may take only two to three years. Which one would you choose?

And another challenge is the imposition of State and county taxes. State and county taxation on renewable energy projects such as those being imposed on the Campo Band of Kumeyaay Indians and Rosebud Sioux Tribe are affronts to tribal sovereignty and tribal self-determination. They hurt the tribes economically. We urge the Committee to develop additional provisions within the discussion draft that will prevent States and counties from imposing taxes upon tribal energy projects.

Third, opportunity for small scale energy projects. Small scale energy projects, particularly in remote areas, can address the tribe's disproportionate lack of access to electricity and high cost of home heating. We applaud the discussion draft's provision to fund demonstrations projects for distributed energy and community transmission, but we also urge the establishment of a long-term program with consistent funding to support these efforts.

There are additional issues. We have issues such as transmission. We must include transmission as part of the Indian Energy Development Plan because you can generate all the energy in the world, but if you can't get it on the transmission, on the grid, then it is useless. So we need to worry about that.

Applications for permitting to drill. Tribes should not have to pay large fees in the neighborhood of $6,500 imposed by the Bureau of Land Management to drill on Indian lands, whereas off Indian land, the numbers are a lot less.

Fuel cells, this is a new technology in terms of energy generation. Fuel cell driven energy plants are not part of the discussion, but I think it needs to be. It is an important opportunity for new efforts in tribal energy development.

Energy storage, it is another opportunity for tribes to develop the storage capability. For instance, if you generate a lot of solar energy, you have no place to store it until the time that it is needed onto the grid and onto the distribution and to meet the customer base. You have to have storage capability. And again, it is an opportunity for the tribes to develop that.

In conclusion, tribal governments must be able to exercise the inherent right of self-government, including fair opportunities to develop their energy resources. We urge the enactment of the Indian Energy Promotion and Parity Act. We look forward to working with you and the Committee to ensure that the needs of Indian Country for energy development and economic development are addressed.

Thank you so much for the opportunity.

[The prepared statement of the NCAI follows:]

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

I. Introductory Comments

The National Congress of American Indians wishes to thank Chairman Dorgan for his interest in and leadership on Indian energy development, and in particular, for recognizing the need to overcome historic and present day inequities in tribes' ability to harness their vast energy potential for the benefit of all Americans. We hope that this effort will be part of the long and outstanding legacy that Senator Dorgan has secured championing legislation that meets the needs of Indian tribes.

We are grateful for the significant tribal outreach that Chairman Dorgan and Vice Chairman Barrasso have conducted. Since May of 2009, the Committee has developed a concept paper, hosted roundtable sessions to solicit tribal comments, and held hearings in first session of 111th Congress. We look forward to working with all members of the Committee to ensure passage of this important legislation.

This discussion draft of the Indian Energy Promotion and Parity Act (IEPPA) reflects the Committee's efforts. We believe it is a commendable effort to remove obstacles for tribally-driven energy development. As tribal lands are estimated to contain 10 percent of the nation's traditional and renewable energy resources, realizing this potential is critical to the nation's efforts to achieve energy independence, promote clean energy, and create jobs. Such efforts are especially needed in Indian Country, where unemployment rates are many times higher than the national average. Further, energy projects represent the most meaningful and sustainable economic development opportunities to ever arise for some tribes that have been mired in endemic poverty.

However, the challenges are massive. For example, the vast majority of large scale renewable energy projects on tribal lands, even those which have made it through the maze of federal bureaucratic processes, are stuck in the pre-development phase among other things, for lack of financing, transmission access, and unfavorable tax structures. Furthermore, states and counties are increasingly keen on taxing tribal energy projects, threatening their very viability and siphoning off revenue that should be going to tribal governments for needed programs and services. If the nation seeks energy independence, it must call upon, and support, Indian tribes in their energy development efforts.

a. Legislative Process

The number of legislative days remaining in the 111th Congress is few. We urge the Committee to move quickly to take action on a legislative proposal. We understand that a new climate bill, which contains energy provisions, is being drafted by Senators Kerry, Graham, and Lieberman, may be rolled out as early as next Monday. We look forward to working with the Committee, in collaboration with other Senate Committees, such as the Energy and Natural Resources Committee and the Finance Committee, to attach provisions from the IEPPA discussion draft into this and other suitable legislative vehicles as quickly as possible.

b. Tribal Process

NCAI has been working with tribal leaders, tribal representatives, and tribal energy resource development organizations, including the Council of Energy Resource Tribes, the Indian Country Renewable Energy Consortium, and the Intertribal Council on Utility Policy, to provide comments to Committee staff on the IEPPA discussion draft. Our outreach and collaboration in the tribal community is ongoing, and we look forward to continuing to provide input as the legislation develops.

The IEPPA discussion draft includes provisions to streamline and eradicate some of the 49 bureaucratic steps that tribes currently must go through to undertake energy development projects on tribal lands, and to ensure equitable access to the transmission grid, financing mechanisms, and federal programs for energy development and energy efficiency. It is important the Committee moves to remove these barriers to ensure that tribes are placed on a level playing field to facilitate the realization of their energy potential for the benefit not only of tribal governments and peoples, but the entire nation.

II. Comments on the IEPPA Discussion Draft

In this context, NCAI is pleased to provide general comments on issues not yet adequately addressed in the IEPPA discussion draft and 3 specific comments about Department of Energy (DOE) programs.

a. General Comments

i. Transmission

Opportunities for large scale energy development on tribal lands are moot if tribes do not have access to the transmission grid. While IEPPA calls for a study on tribal inclusion in infrastructure planning, more robust language is needed to ensure that tribal projects already in development, as well as those which may be developed in the future, have equitable and appropriate consideration in the transmission queue.

We believe that there should be a priority in the transmission queue for energy emanating from federal lands, including tribal lands, and look forward to working with the Committee to provide language to that effect.

ii. State Taxation

A critical issue not currently addressed in the IEPPA is state and county taxation of tribal renewable energy projects. The Campo Band of Kumeyaay Indians has perhaps the only large-scale renewable project in Indian Country. Yet for the first part of that project, the state and county received more revenue than the tribe, through the imposition of three kinds of taxes: (1) state sales tax, (2) county property tax, and (3) county possessory interest tax. Notably none of the taxes collected are shared with the tribe. This practice sets a dangerous precedent. The State of South Dakota has told the Rosebud Tribe that it intends to impose taxes on renewable energy projects located on tribal trust lands, reversing a position the State held several years prior. Other states are contemplating similar actions.

In the past, states and counties have justified this incursion into the Native tax base on the grounds that non-Indians engaging in commercial operations on Native lands are users of state services and, as such, should not get a "free ride" by working on tribal lands located within the state. But commercial scale wind energy brings very little impact to schools, law enforcement, roads, or other infrastructure. These taxes siphon revenue away from the tribes, prevent the tribe from enacting their own taxes, and, in the future, will place even more financial burdens upon projects. It is estimated that states can net approximately $65 million in state sales, property, and corporate income taxes from a 200 MW tribal project worth nearly half a billion dollars in construction costs. This is revenue rightfully due to the tribe, and for which the states and counties provide no reciprocal services. Therefore, we urge the Committee to develop legislation that will prevent states and counties from imposing taxes upon tribal energy projects.

iii. Leasing and Siting Provisions

Many of the IEPPA discussion draft provisions related to Department of the Interior processes, such as leasing and siting on tribal lands, address or have the potential to address the broader issues, such as the overall trust relationship between the federal government and the tribes, and economic development opportunities beyond energy. We look forward to working with the Committee to broaden and narrow the parameters of those provisions as appropriate.

iv. Appraisals

In general, we strongly support the appraisals provisions of the IEPPA discussion draft found in Section 106. Delays in BIA appraisals have been a severe detriment to many economic development projects. NCAI has long supported reforming the appraisals requirement to allow tribes to perform their own appraisals. We believe however, that the proposed 60-day Secretarial review and approval process of an already certified appraisal—conducted by the Secretary or by a tribe or through a third-party appraiser—is an unnecessary step that only adds further delay. In addition, we believe that the proposed options for conducting appraisals should extend to other transactions involving Indian land or Indian trust assets, and not just energy-related transactions. We urge the Committee to consider broader language involving land transactions.

v. Leases and Rights-of-Way

Section 201 of the IEPPA discussion draft would make helpful improvements in the area of leases and rights-of-way. However, with respect to leases by Section 17 Indian Reorganization Act corporations (subsection (d)), we are concerned that certain 99-year leases can amount to a *de facto* sale of tribal land (for example, non-Indian residential housing). Historic experience has shown that it is very difficult for a tribe to recover its property once a non-Indian residential community is established. A period of 50 years should suffice for energy projects—including wind energy—and we recommend that the Committee consider making those changes to the language of the bill prior to introduction.

In addition, we would ask that the Committee consider including in IEPPA provisions which would expand the Navajo Leasing Act to *all* tribes, similar to the provisions of H.R. 2523, the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act. This legislation would permit each tribe to lease surface properties without Secretarial approval under tribal regulations that are approved by the Secretary. This legislation is supported by NCAI Resolution PSP–09–016.

vi. Financing

Regarding the title on Energy Financing, Title III of the IEPPA discussion draft, Indian tribal governments have long supported and advocated for many of these provisions in other contexts, such as tribal assignability of production and investment tax credits. We look forward to working with this Committee and the Finance Committee to develop creative solutions for the implementation of a tax credit transfer program. At the same time, the Committee should pursue alternatives to offset the additional cost of money for tribal investments, such as providing grants, rebates, or payroll tax credits (which tribes can use) in lieu of income tax credits (which tribes cannot use). In addition, the Committee should encourage energy development by facilitating greater tribal access to the Renewable Energy Production Tax Incentive program. Such measures will help put tribal energy projects on an equal competitive footing with other energy projects.

vii. Definitions of "Indian Tribe" and "Indian Land"

We note that the IEPPA discussion draft contains different definitions of "Indian tribe" and "Indian land." It is important to ensure use of the most appropriate definition in the specific context. For example, the definition of Indian tribe as it relates to leasing will likely be different from that used in the context of a Weatherization program. We look forward to working with the Committee to ensure that these definitions are appropriate to the specific issues, underlying statutes, and programs.

b. Provisions Related to DOE Programs

We are pleased to provide comments on provisions related to federal programs, especially those at the Department of Energy, as they have not been fully addressed in previous forums.

The Department of Energy's (DOE) Tribal Energy Program provides tribes with an impressive degree of knowledge and professionalism, to the extent they are able given the modest resources provided. DOE's efforts to work with tribes, however, are hampered by outmoded laws, regulations, and programs that have resulted in tribal exclusion and dramatically inequitable levels of funding, compared to other governments. As the nation moves resolutely towards energy independence and reductions in greenhouse gas emissions, now is the time for DOE to partner more fully and meaningfully with tribes, especially as DOE possesses unique and unparalleled expertise to work in partnership with tribes to tap tribal energy potential.

We are pleased that the IEPPA discussion draft seeks significant changes to DOE's Weatherization Program, State Energy Conservation Plan Program, tribal loan guarantee program, and the Office of Indian Energy Policy and Programs, including the provision of funding directly to tribes and funding to build tribal institutional capacity to carry out energy development and energy efficiency programs. Tribes are sovereign nations with a direct nation-to-nation relationship with the federal government. Arrangements that exclude tribes, or compel tribes to work through the states in order to access federal programs are demonstrably unfair and obsolete.

i. Support for the Committee's Views and Estimates Regarding DOE's Tribal Budget

We support the Committee's sentiments related to DOE's budget request. The Committee has asked for $50 million more than the President's FY 2011 budget request for DOE's Tribal Energy Program, for a total of $61 million.

ii. State Energy Program

DOE's State Energy Program and DOE's Weatherization Program were created 35 years ago, providing financial and technical support directly to states for energy and home efficiency initiatives. Tribes cannot receive funding directly from DOE under these programs. In the case of the State Energy Program, tribes receive funding only at the state's discretion. The equivalent DOE Tribal Energy Program was only established in 2002. Not including the 35 years of disparate federal funding, the Recovery Act alone provided states through the State Energy Program with $3.1 billion, and the Tribal Energy Program $0. Tribal access to the State Energy Program will ensure consistent support for tribal energy and energy efficiency endeavors.

iii. Weatherization

Under the Weatherization Program (Wx), tribes cannot receive direct funding from DOE, unless they prove that to DOE that the state is failing to serve tribal members. Tribal homes in remote areas are often beyond the reach or awareness of state Wx programs. Direct state support of tribal needs varies by state. Even if a tribe does demonstrate the state's failure, the funding is often too paltry to justify the creation of a tribal program. DOE has helped state and local Wx networks and services for decades. In contrast, only the Navajo Nation and Northern Arapaho Tribe have tribal Wx Programs.

The impact of this awkward statutory and regulatory arrangement upon tribes is significant. The Recovery Act alone provided the states with nearly $5 billion through the Wx Program with no assurances that tribes could receive some of this funding directly. The IEPPA discussion draft provisions to make Wx funding directly available to tribal governments will help address decades of exclusion.

These historic program and funding inequities and omissions result in present day unpreparedness to undertake those programs. Therefore we are heartened by the IEPPA discussion draft provision to allow DOE's Office of Indian Energy Policy and Programs funding to help tribes build the institutional capacity undertake this programs.

We look forward to working with all Committee members to improve upon the IEPPA discussion draft, so that tribal governments can develop their energy resources for the benefit of their peoples and all Americans, and to ensure that tribes meaningful participants in national energy efficiency initiatives. We urge quick action to ensure that these important measures are adopted during this Congressional session. We are thankful that the Committee, through the IEPPA discussion draft, is working toward this goal.

Senator TESTER. Thank you, Mr. Garcia.

Chairman Box?

STATEMENT OF HON. MATTHEW J. BOX, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE

Mr. BOX. Good afternoon, Chairman Tester, Vice Chairman Barrasso, Members of the Senate Committee on Indian Affairs.

My name is Matthew Box. I am the Chairman of the Southern Ute Indian Tribe. I am honored to be here today. I appreciate that.

On Tuesday, my written testimony was submitted to the Committee, and it contains detailed responses to the March 12th discussion draft and the April 16th discussion draft of legislation addressing Indian energy development. The written testimony was prepared with the assistance of our legal counsel who communicates regularly with your legal counsel. And even though I appreciate attorneys, I do not intend to duplicate that written statement this afternoon.

Our tribe has a national reputation as a leading energy tribe. Our reservation in Southwestern Colorado contains significant natural gas resources. With the foresight of tribal leaders, we rely and have maintained our very core government and benefits for our tribal membership through that foresight. We have relied on this for our financial engine.

As outlined in our previous testimony, our oil and gas activities extend well beyond our reservation. We have overcome many institutional obstacles to get where we are today.

Your legislative efforts make our path easier and for all tribes who view energy development as a vehicle for improving economic conditions of their community and the future of their members.

I would like to focus on key provisions of this draft discussion. Perhaps the most important provision in the March 12 the discussion draft relates to tax matters addressed in Title III. Some of

these provisions relate to renewable energy projects, while others are more general in scope. We strongly support the provisions and we commit to have our lawyers work with your lawyers to help refine whatever language may be needed for formal legislation to be introduced.

I would like to describe why these provisions are so important. The first provision, Section 301, would encourage taxpaying partners to join with tribes in building and operating renewable energy facilities. Because most tribes do not have significant investment capital, financial partners are critical to the development of energy resources in Indian Country. Without good partners, we would not have taken the steps toward building our own energy businesses.

In most cases, what tribes have to offer are the right to use their lands. Unlike energy leasing of the past, most tribes today want to be directly involved with the ownership of the project, but also to share in the profits of a successful renewable energy project. Current tax laws create an economic disincentive for such partnerships with regard to renewable energy projects.

Production tax credits are a key economic component to developing renewable energy. If a taxpaying entity has an Indian tribe as a partner, those credits are lost in direct proportion to the tribe's ownership percentage. Sections 301 and 302 dealing with incentive tax credits would encourage effective partnerships by allowing tax credits associated with the tribe's ownership to be used by the taxpaying partner. We urge that this approach be extended to the accelerated depreciation provisions and be made permanent under Section 303 by removing huge financial penalties associated with keeping the tribes, the landowner, actively involved in ownership and operation of the business.

This proposed tax treatment will encourage taxpaying entities to join with tribes in developing energy on Indian lands. We anticipate that other Senate or Congressional committees will initially object to any measures that involve marketing or disproportionate allocation of tax credit deductions. However, the tax code was not written with the idea that tribes would be financial partners in developing their lands and their resources. Again, we hope that you will provide the leadership on these tax issues needed to change existing law.

Our written comments also support provisions that reduce the involvement of the Secretary of Interior when not necessary. We strongly support Section 103, which would allow installation of temporary energy testing facilities on tribal lands without secretarial approval. We also support Section 106, which would provide statutory relief from existing appraisal requirements for land use transactions in Indian Country.

My final comments are directed to the provisions of the April 16th draft that would improve Title V of the Energy Policy Act of 2005. The proposed provisions reduce the need for secretarial approval of transactions involving tribes with proven track records of land management. The proposed amendments to Title V also make it more likely that tribes will enter into agreements with the Secretary. We believe that the TERA options are the right approach in balancing self-determination and trust responsibility.

In conclusion, I thank you for this opportunity to be here and hope that these comments are helpful in your great effort.

Senator TESTER. They are.

[The prepared statement of Mr. Box follows:]

PREPARED STATEMENT OF HON. MATTHEW J. BOX, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE

I. Introduction

Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee on Indian Affairs, I am Matthew Box, the Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today to provide testimony regarding the discussion draft of the "Indian Energy Promotion and Parity Act of 2010," initially distributed to the public on March 12, 2010. The discussion draft is another step forward in our longstanding effort to level the playing field of opportunity when it comes to Indian energy development. We have also reviewed a second discussion draft of possible Amendments to the Energy Policy Act of 1992 dated April 16, 2010, which also contains some very positive suggestions. This statement presents our comments to each of those discussion drafts.

II. Background

The Southern Ute Indian Reservation ("Reservation") consists of approximately 700,000 acres of land in southwestern Colorado within the Four Corners area. Our Reservation, which is a checkerboard of land ownerships, is located in the northern San Juan Basin, a prolific natural gas producing region. We collect royalties and severance taxes from our leased lands; however, we also generate substantial revenues from our oil and gas operating company and our gas gathering and treating companies, which conduct activities both on and off the Reservation. We are also actively involved in renewable energy development both on and off the Reservation.

In October of last year, our testimony outlined the challenges that we have faced and overcome in developing our energy resources. We have worked closely with this Committee to identify institutional obstacles to the successful development of energy resources in Indian country. We appreciate your willingness to address these issues. As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours." Both of the discussion drafts reflect steps forward for energy development in Indian country.

III. General Comments to Discussion Draft of March 12, 2010

The following comments reflect our general reaction to each of the three titles set forth in the March 12th discussion draft. We also believe that it may be helpful to the Committee to understand the context for our reaction to different sections of the discussion draft.

A. Findings and Purpose

Initially, we agree with the findings and purposes set forth in Section 2 of the discussion draft. We agree that outdated laws and regulations have impeded the development of energy resources in Indian country. We also believe that the principal purposes of this legislation should be to remove those legislative and regulatory obstacles and to provide incentives for the development of renewable and non-renewable energy resources in Indian country.

B. Title 1—Energy Planning

With respect to Title 1 of the discussion draft, there are some provisions of this title that we believe are critical improvements, others that are interesting, and some that we would oppose in their current form. We strongly support and urge you to retain Title 1, Section 103 (Predevelopment Feasibility Activities). This section allows temporary facilities to be installed on Indian land for purposes of data collection, without approval of the Secretary of the Interior or the Secretary of Energy, so long as the facilities will be removed and the testing activities concluded within two years. Inclusion of this section responds directly to testimony at field hearings regarding the bottleneck in obtaining Federal approval for the installation of temporary facilities on Indian land needed to evaluate the feasibility of wind power facilities. We would, however, suggest that the duration of the testing period be subject to renewal if needed to complete feasibility studies.

We also strongly support Title 1, Section 106 (Appraisals), although we would expand its provisions. This section would eliminate the requirement for the Secretary

of the Interior to conduct appraisals of trust assets to be used in Indian energy development transactions if such appraisals are being conducted by a tribe pursuant to a contract under the Indian Self-Determination and Education Assistance Act ("638 Contract") or by a certified third party appraiser under a contract with the tribe. The issue addressed by this section relates to current Interior regulations that call for a federal appraisal for many real property transactions, including the granting of rights-of-way across Indian lands. From a staffing perspective, the scope of the task makes prompt compliance impossible, which causes inordinate delays in processing rights-of-way needed in the conduct of ordinary business.

Additionally, however, the federal appraisal standards are inflexible. For example, a number of years ago our Tribe consented to the grant of a right-of-way to a telecommunications company that paralleled a major public highway leading to our headquarters. Our compensation was to be the exclusive use of strands of high-speed, fiber optic cable for transmission of electronic information needed to serve our extensive governmental and commercial operations. Obviously, this form of compensation did not fit easily into standard Federal valuation methodologies. Only through extraordinary efforts were we able to convince the BIA to grant the right-of-way, and, even then, the BIA was extremely reluctant to proceed. Our use of those fiber optic cables, however, has been extensive. In order to avoid similar delays in the future, we urge the Committee to expand the instances in which Federal appraisals can be avoided to include situations in which the tribal government expressly waives an appraisal. Additionally, we believe that individual appraisals are unnecessary when a tribe has legislatively adopted compensation schedules for categories of land that correspond to area land values. Our Tribe generally uses surface damage compensation fees based on different land classifications, which the BIA now allows us to rely upon in lieu of actual appraisals. Statutory confirmation of the acceptability of this approach would be helpful.

We also support Title 1—Sections 105 (Department of Energy Indian Energy Education Planning and Management Assistance), 107 (Technical Assistance and National Laboratories), 108 (Preference for Hydroelectric Preliminary Permits), and 109 (Study on Inclusion of Indian tribes in National and Regional Electric Infrastructure Planning). Each of these sections would be useful measures for tribes seeking to expand energy resource development.

We question the need for Title 1—Section 101 (Indian Energy Development Offices), which would authorize the creation of up to three offices as one stop shops of multiple Department of the Interior agencies with administrative jurisdiction over aspects of Indian energy development, including the BIA, the BLM, that National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the MMS, and the Office of Special Trustee. The Indian Energy Development Offices would be set up in regions of significant Indian energy resource activity or potential, and, through centralized staffing, the Indian Energy Development Offices would presumably be better able to handle Indian energy development than current administrative structures. Although the establishment of Indian Energy Development Offices has been advocated by others in the Indian community, we seriously question the need for or the long-term viability of these multi-agency offices. All of the administrative agencies at the Department of the Interior share the federal trust responsibility. With the exception of the BIA, all of those offices also have responsibilities for activities on a variety of federal lands. Our experience indicates that when dealing with officials from non-BIA agencies, such as the BLM or the MMS, much can be accomplished through officials held in high regard and occupying positions of broad authority within their agencies, who have an awareness and sensitivity to Indian matters. We fear that, because of their value to their agencies for dealing with multiple issues, such officials would not be the ones selected to fill positions in Indian Energy Development Offices. With guidance from the Secretary, we believe that prioritization of Indian trust matters and inter-agency cooperation can be effectively addressed without the creation of Indian Energy Development Offices.

We are concerned that this legislation may not be the appropriate vehicle for considering matters addressed in Title 1—Section 102 (Indian Energy Program Integration Demonstration Projects). Section 102 establishes an elaborate process under which multiple federal agencies would be compelled to survey and report to the Secretary regarding Indian related programs within their departments. Following publication of these multiple programs, an Indian tribe could present a plan to the Secretary under which the tribe would propose to carry out those multiple programs in an integrated fashion with funding derived from the multiple agencies. In some respects, Section 102 appears to be an expansion of the 638 Contract process beyond the Department of the Interior with respect to community development and energy related matters. It is ambitious in scope and would clearly require greater inter-agency cooperation and coordination with respect to Indian-related programs. While

Section 102 reflects worthwhile objectives, we are concerned that this proposal will require the involvement of multiple congressional committees and, because of its scope, may result in delays in congressional approval of other provisions in this legislation that are long overdue with respect to Indian energy development.

Our greatest concern extends to Title 1—Section 104 (Comprehensive Energy Resource Planning). In our view Section 104 undermines the fundamental underpinnings of the Indian Tribal Energy Development and Self-Determination Act of 2005, particularly the amendments to the Title XXVI of the Energy Policy Act of 1992 now found at 25 U.S.C. § 3504. In order to understand our position on Title 1—Section 104 of the discussion draft, it is helpful to review what Congress and Indian tribes attempted to achieve in Title V of the Energy Policy Act of 2005.

Because Indian energy leases, business agreements, and rights-of-way generally require the approval of the Secretary, and because such approval constitutes Federal action, consideration of such a Federal action triggers compliance with the National Environmental Policy Act of 2005 ("NEPA"). NEPA is a procedural statute designed to ensure that Federal agencies evaluate alternatives to a proposed Federal action, taking into consideration the potential environmental and social impacts of the alternatives and the views of the public. Except for the United States Government, no owner of land in the United States, other than an Indian tribe or an Indian allottee, is subject to NEPA with respect to land use transactions. Unlike Indian lands, which are owned beneficially by Indian tribes or Indian individuals, other Federal and public lands are generally owned for the benefit of the public at large. Many tribal representatives have felt that application of NEPA to tribal land use decisions unfairly encroaches on tribal sovereignty. To be sure, Indian tribes are bound to substantive environmental protection laws of general application when Congress has indicated its intent to bind tribes. So long as a proposed energy lease, business agreement, or right-of-way was to be performed in compliance with those substantive laws, however, the evaluation of multiple alternatives to a tribal land use decision and inclusion of the public in second-guessing a tribe's decision were objectionable. Further, in the context of energy development, the NEPA process penalized tribes. Energy development on private lands adjoining tribal land does not require NEPA compliance. Thus, while Federal officials undertook detailed evaluation of alternatives to a tribal energy lease, for example, tribal oil and gas resources were being drained by their neighbors. Particularly for tribes, like the Southern Ute Indian Tribe, with sophisticated energy and environmental staffs and decades of proven success, the NEPA review process was frustrating and damaging.

After several years of legislative consideration, Congress offered tribes the alternative reflected in Section 2604 of the Energy Policy Act of 2005, through the vehicle known as a "Tribal Energy Resource Agreement" ("TERA"). A TERA is a master agreement which may be entered into between a tribe with demonstrated capacity and the Secretary. Upon entering into a TERA, an energy-related lease, business agreement, or right-of-way with a TERA-tribe no longer requires Secretarial approval, and, thus, no longer requires NEPA review. In place of NEPA, however, Congress required that a TERA-tribe establish a tribal environmental review process that allows for limited public participation. Under the statute, a TERA would also permit a Tribe to assume Federal administrative functions related to review and operation of energy development on tribal lands.

Inexplicably, Title 1—Section 104 appears to increase rather than decrease application of NEPA in Indian country. Section 104 establishes mechanisms, utilizing 638 Contracting, under which Indian tribes may undertake preparation of comprehensive programmatic environmental review documents related to energy resource development. These programmatic environmental review documents are themselves subject to NEPA review. Even if a tribe were to participate under Section 104, nothing in the discussion draft would eliminate Secretarial approval or subsequent NEPA review of an actual energy lease, business agreement, or right-of-way proposed in conformity with the programmatic NEPA planning document. Significantly, Section 104 would also re-write the prior TERA statute to now require that a tribal TERA environmental review process satisfy new Federal standards to be developed by the Office of Indian Energy and Economic Development. In our view, Section 104 is a step backwards, not a step forward.

In summary, with respect to Title 1 of the March 12th discussion draft our position is as follows:

Section 101 (Indian Energy Development Offices)—Seriously question.

Section 102 (Indian Energy Program Integration Demonstration Projects)—Seriously question.

Section 103 (Predevelopment feasibility activities)—Strongly support, but would allow for renewals.

Section 104 (Comprehensive energy resource planning)—Strongly oppose.

Section 105 (DOE Indian energy education planning)—Support.

Section 106 (Appraisals)—Strongly support, but would expand.

Section 107 (Technical assistance from DOE National Laboratories)—Support.

Section 108 (Preference for hydroelectric preliminary permits)—Support.

Section 109 (Study on inclusion in electrical infrastructure planning)—Support.

C. Title II—Energy Development and Energy Efficiency

Title II—Section 201(Leases and Rights-of-Way on Indian Land) proposes a number of statutory changes designed to address existing statutes affecting Indian mineral and non-mineral leasing and rights-of-way. The first issue addressed by Section 201(a) and (b) is to confirm that a mineral lease of allotted or tribal land may also include an associated right-of-way without the necessity of a separate right-of-way document. We generally support this proposal; however, we also believe that this provision requires a drafting change. Specifically, in addressing the contemporaneously issued right-of-way under the Allottee Mineral Leasing Act of March 3, 1909 (25 U.S.C. § 396), Section 201(a)(2)(B)(i) would eliminate the separate approval of "the applicable Indian tribe . . . pursuant to the Act of February 5, 1948 (25 U.S.C. 323 et seq.)." *See* page 34, lines 14–17 of the March 12th discussion draft. This provision should be changed to confirm that any proposed right-of-way crossing tribal land issued contemporaneously with an oil and gas lease of allotted land, must be separately approved by the applicable Indian tribe pursuant to the Act of February 5, 1948 (25 U.S.C. § 323 et seq.). Since passage of the Indian Reorganization Act of 1934 ("IRA"), Congress has consistently recognized that tribal consent is a pre-condition to the valid use of tribal land. That consistent treatment should not be altered in this provision.

The second issue, which is addressed in Section 201(c) and (d) of the March 12th discussion draft, is the duration of leases that may be issued by tribes under the Long-Term Leasing Act (25 U.S.C. § 415(a)) or by tribal corporations chartered under Section 17 of the IRA (25 U.S.C. § 477). Section 201(c) and (d) would expand the terms of those durational provisions, and, because they would increase the options available to tribes, we support those provisions.

Title II—Section 202 (Application for Permit to Drill Fees Not Applicable) of the March 12th discussion draft would confirm that increased fees imposed by the Bureau of Land Management for each application for a permit to drill ("APD") submitted to that agency would not apply to APDs submitted with respect to Indian lands. We support this change.

Title II—Section 203 (Distributed Energy and Community Transmission Demonstration Projects) of the March 12th discussion draft would authorize the Director of the Office of Indian Energy Policy and Programs for the Department of Energy to conduct not less than 5 demonstration projects to increase the availability of energy resources to Indian tribes and Alaskan Natives. We support this proposal.

Title II—Section 204 (Environmental Review) authorizes participating Indian tribes to undertake NEPA review for energy projects developed on tribal land that would otherwise be applicable to the Secretary of Energy if the Secretary of Energy were conducting that activity with respect to a Federal project. We do not clearly understand the context of this provision, but surmise that it is intended to address NEPA compliance that might arise in the context of a DOE loan or grant to an Indian tribe for an Indian energy project. We object to the purpose as stated to the extent that it suggests that NEPA should apply to "all energy projects developed on tribal land." *See* page 41, lines 5–12 of March 12th discussion draft. In that regard, if a tribe undertakes such activity directly without a lease or other instrument requiring Secretary of the Interior approval, then NEPA would not typically apply to the tribe's direct energy development activity, and we do not believe that the statement of purpose in Section 204 should conflict with existing law. A more accurate statement of purpose, consistent with existing law, would be to ensure that NEPA review for Indian energy projects is completed with respect to the Secretary of Energy's actions, when applicable. In addressing that substantive issue, we submit that the best approach would be to exempt NEPA review by the Secretary of Energy with respect to any such projects on tribal land that do not require NEPA review by the Secretary of the Interior and to also authorize the Secretary of Energy to rely upon and concur in NEPA review undertaken by the Secretary of the Interior when applicable under existing law. Notwithstanding the positive approach authorizing delegations to tribes to conduct NEPA review undertaken on behalf the Secretary of Energy, the current language of Section 204 implicitly doubles the NEPA review that must be undertaken in instances in which both the Secretary of the Interior and the Secretary of Energy have some involvement. We believe that the as-

sumptions underlying Section 204 should be more carefully examined and that a more constructive solution to non-duplication of NEPA review for actions involving multiple Federal agencies should be pursued.

We generally support Title II—Section 205 (Department of Energy Loan Guarantee Program), which would provide clarification and assist in implementation of loan guarantees by the DOE for Indian energy projects proposed by Indian tribes or tribal energy resource development organizations.

We also support Title II—Section 206 (Inclusion of Indian Tribes in State Energy Conservation Plan Program), which would expand tribal participation in energy conservation planning programs currently available to states.

Additionally, we support Title II—Section 207 (Home Weatherization Assistance) which would expand access for home weatherization assistance to tribes and would increase the administrative role of the Secretary of the Interior for such programs.

We also support Title II—Section 208 (Tribal Forest Assets Protection), which would provide for tribal demonstration projects related to use of woody biomass for electrical power generation and distribution.

In summary, with respect to Title II of the March 12th discussion draft our position is as follows:

Section 201 (Leases and rights-of-way on Indian land)—Support with drafting revision.

Section 202 (Application for permit to drill fees not applicable)—Strongly support.

Section 203 (Distributed energy demonstration projects)—Support.

Section 204 (Environmental Review)—Oppose unless substantially revised.

Section 205 (DOE loan guarantee program)—Support.

Section 206 (Inclusion of tribes in state conservation programs)—Support.

Section 207 (Home weatherization assistance)—Support.

Section 208 (Tribal forest assets protection)—Support.

D. Title III—Energy Financing

Title III—Section 301 (Transfer by Indian tribes of credit for electricity produced from renewable resources) creates a special rule allowing an Indian tribe's ownership interest in a renewable energy facility to be treated as that of a co-owner for purposes of allocating production tax credits under Section 45 of the Internal Revenue Code. We strongly support this provision; however, we also believe that additional provisions should be included in any final legislation to reflect the indirect participation of an Indian tribe. Currently, there is an economic disincentive for Indian tribes to acquire or retain ownership interests in renewable energy facilities because there is no way to monetize production tax credits associated with the tribe's ownership interest. Production tax credits are a critical component in the economics of renewable energy projects. Our tribe is the sole owner or member of an alternative energy limited liability company that has attempted to invest in major wind projects in the West. The absence of tax credits attributable to our ownership interests adversely affects the economic viability of those projects if we participate. Additionally, under existing law, tribal participation complicates the structure and the timing of our potential investments.

It is our understanding that the intended result of Section 301 would be to allow an Indian tribe to transfer the tax credits associated with power production from a renewable energy facility and attributable to the tribe's ownership interest to the taxpaying partner. Currently, the proposal addresses only the transfer of energy production, and we hope that final legislative language eliminates any ambiguity with respect to the assignable character of the production tax credits, while allowing the tribe to retain the sales revenue attributable to its ownership percentage.

With regard to such facilities, it is most likely that a taxpaying partner and an Indian tribe, or a business entity wholly owned by the tribe, would form a special purpose entity, such as a limited liability company, which would own the renewable energy facility. Tax liabilities would typically track ownership percentages in the limited liability company. Use of such special purpose entities is a common and accepted way to limit general (non-tax) liability for the participating partners beyond the value of the assets of the project. We urge the Committee to consider modifying the definition of "Indian tribe" for purpose of Section 45 of the Internal Revenue Code to also include a business entity wholly owned by an Indian tribe. *See* page 56, line 22 through page 57, line 8 of March 12th discussion draft. Modification of the definition would allow for the following structure: (i) owner of renewable energy facility is a limited liability company; (ii) owners or members of the limited liability company that owns the renewable energy facility, are (x) a wholly-tribally owned

business entity, and (y) a taxpaying entity. We urge the Committee to give Indian tribes the same business flexibility that other investors possess by allowing for the tribe's participation to be indirect rather than direct ownership of a portion of the facility.

We also strongly support Title III—Section 302 (Investment Tax Credits), which we understand would allow investment tax credits attributable to an Indian tribe's ownership interest in an energy property to be monetized. This provision would clearly provide increased tax incentives for energy investment in Indian country, while also encouraging ownership retention by an Indian tribe in such projects. Again, for the same reasons discussed with respect to Title III—Section 301, above, we would urge the Committee to consider language that would allow the contemplated allocation of basis to flow from an Indian tribe's wholly-owned business entity to the other investor so that tribes would have the option of holding ownership of an energy property indirectly rather than only directly through the tribal government. This treatment would, for example, be consistent with the use of tribal corporations under Section 17 of the IRA.

Title III—Section 303 (Permanent Extension of Depreciation Rules for Property on Indian Reservations) is another provision of Title III that we strongly support. Use of accelerated depreciation under Section 168(j) of the Internal Revenue Code has encouraged investment in Indian country, and tribal leaders have repeatedly requested that the accelerated depreciation rules be made permanent with respect to on-reservation investments. Again, with respect to utility scale investments, accelerated depreciation is a key factor in economic feasibility. As with Section 301 and Section 302 above, we would urge the Committee to incorporate language permitting a disproportionate allocation of depreciation to a taxpaying partner of an Indian tribe or a business entity wholly owned by the tribe.

We also support Title III—Section 304 (Permanent Extension of Indian Employment Credit). Permanent extension of the Indian employment credit under Section 45A of the Internal Revenue Code would continue to encourage employers in Indian country to hire Indians.

Finally, we also support the statutory changes reflected in Title III—Section 305 (Extension of Grants for Specified Energy Property in Lieu of Tax Credits). These proposed changes would extend the time periods during which investors in qualified renewable energy equipment could make such investments and request grants in lieu of tax credits under Section 1603 of division B of the American Recovery and Reinvestment Act of 2009. Additionally, this section would make Indian tribes eligible for such grants. Currently, tribes are not eligible for this favorable tax treatment, yet they are looked to by their communities for leadership with respect to such investments.

In summary, with respect to Title III of the March 12th discussion draft our position is as follows:

Section 301 (Transfer by Indian tribes of renewable energy production tax credits)—Strongly support, but also urge modification to include wholly-owned business entities of tribes.

Section 302 (Investment tax credits)—Strongly support, but also urge modification to include wholly-owned business entities of tribes.

Section 303 (Permanent extension of depreciation rules)—Strongly support but also urge modification to include assignments of depreciation from Indian tribes or wholly-owned business entities of tribes.

Section 304 (Permanent extension of Indian employment credit)—Support.

Section 305 (Extension of grants under 1603 of ARRA)—Support.

E. Title IV—Amendments to Indian Energy Policy Laws

Title IV—Section 401(Amendments of Indian Energy Policy Laws) proposes a number of clarifying changes to the Energy Policy Act of 2005, some of which would help implement changes addressed in previous sections of the March 12th discussion draft. We have no objections to those changes; however, our previous comments regarding Section 101 (Indian Energy Development Offices) should be considered with respect to Section 401(b) of the discussion draft.

IV. General Comments to Discussion Draft of April 16, 2010

The April 16th discussion draft addresses two principal matters: (i) Amendments to the Indian Land Consolidation Act (25 U.S.C. §§2201 et seq.) and (ii) Amendments to the Energy Policy Act of 1992 (25 U.S.C. §§3501 et seq.). Our remarks are limited to the proposed amendments to the Energy Policy Act. As our previous comments have indicated, our Tribe was a vigorous supporter of Title V of the Energy Policy Act of 2005, including the provisions allowing for a TERA between the

Secretary and a qualified Indian tribe. Our support for the TERA provisions was driven not only by frustrations in obtaining prompt NEPA review for energy related transactions requiring Secretarial approval, but was also motivated by our belief that our internal capabilities in evaluating such transactions exceeded those of the BIA. Since the mid-1970s, we have taken a hands-on approach to management and development of our energy resources. Our extensive staff includes geologists, engineers, land specialists, environmental specialists, information technology experts, and lawyers. Our successful operations in energy development have not been limited to on-Reservation activities, but have also included exploration and production activities in more than 10 states and the Gulf of Mexico. For us, the costs associated with delays in obtaining Secretarial approval were not offset by added value arising from Secretarial review.

Notwithstanding our support for the TERA provisions contained in 25 U.S.C. § 3504, neither our Tribe nor any other tribe has yet entered into a TERA. There are a number of reasons why no TERA has yet been completed. First, the process of adoption of implementing regulations took several years. Second, the regulations once promulgated withheld from tribes the opportunity to assume "inherently Federal functions" related to their lands. This term was not mentioned as a limitation in the statute and remains undefined in the regulations. The regulations also left unanswered how the Secretary would measure tribal capacity. Third, tribes remain reluctant to include the public in a tribal environmental review process. Fourth, the financial expense of taking over Federal administrative duties is imposing and TERAs provided no funding mechanism. And fifth, TERAs are viewed by some tribal leaders as relieving the Federal Government of its trust duties, primarily because of the Federal Government's poor performance of those duties.

The April 16th discussion draft proposes statutory changes that address some of the factors mentioned above, and we generally support the proposed modifications. The remaining comments address specific provisions contained in the April 16th discussion draft.

A. Definitions (25 U.S.C. § 3501)

The April 16th draft would supplement the definition of "tribal energy resource development organization," which is an organization of two or more entities, at least one of which is an Indian tribe, to allow such an organization to enter into a lease or business agreement, or acquire a right-of-way from an Indian tribe under specific circumstances subsequently addressed in the statute. It should be noted that one of the suggestions contained in Section 401 of the March 12th discussion draft would amend the term "sequestration" set forth in 25 U.S.C. § 3501(10). We are supportive of both of those definitional changes.

B. Amendments to 25 U.S.C. § 3504(a)(2) and 3504(b)

The proposed amendments to 25 U.S.C. §§ 3504(a)(2) and 3504(b) would significantly and beneficially expand the instances in which energy leases, business agreement, and rights-of-way involving tribal land could be entered into without Secretarial approval. So long as the Indian tribe retained majority control of the energy lease, business agreement or right-of-way throughout the duration of the instrument, and provided that a tribe had successfully carried out its responsibilities over a 7-year period under a land use-related 638 Contract, Secretarial approval would not be required. We strongly support this approach. First, it substantially eliminates the uncertainty associated with measuring tribal capacity under the TERA mechanism. Second, it eliminates the Secretarial approval process when the affected, qualified tribe retains ownership and control over the activities being conducted on tribal land.

C. Amendments to 25 U.S.C. § 3504(e) (TERA Requirements)

The changes to 25 U.S.C. § 3504(e) found on pages 17, 18, and 19 of the April 16 discussion draft are largely clarifying measures, which we support. We also support the additions of 25 U.S.C. § 3504(e)(2)(F) and (G), which add certainty to the TERA disapproval process and tribal capacity determinations for tribes with track records of positive performance under the 638 Contract or self-governance programs of the Indian Self Determination and Education Assistance Act. The changes to 25 U.S.C. § 3504(e)(6) maintain the basic concept of retained Federal trust responsibility reflected in the existing statute, but affirmatively restate the circumstances under which Federal liability for breach of those duties will exist. We believe that this clarification will provide meaningful assurance to Indian tribes considering the TERA option.

D. Proposed 25 U.S.C. § 3504(g)

This proposed addition would include a funding component to TERAs that is lacking under existing law, by incorporating the 638 Contracting and self-governance mechanisms and applying them to TERAs. Addressing the administrative cost issue associated with TERAs is a significant positive development.

E. New Provisions Related to APD Fees

Unlike the discussion draft of March 12th, the fee provisions of April 16th would allow APD fees associated with Indian lands to continue to be collected; however, the use of those fees by the BLM would be required to address permitting and inspection costs associated with development of Indian lands. While we support the discussion draft provisions of March 12th, the provisions of the April 16th draft are a significant improvement over existing BLM practices.

Conclusion

The two discussion drafts addressing Indian energy issues are responsive to concerns raised by tribes in testimony already presented to this Committee. We have been honored by your interest and by our inclusion in the process. We hope that our comments are useful to the Committee in refining and formally introducing legislation on these matters in the near future.

Senator TESTER. We certainly appreciate your comments and everyone's comments on the witness panel today.

Michael Marchand?

STATEMENT OF HON. MICHAEL MARCHAND, CHAIRMAN, ECONOMIC DEVELOPMENT COMMITTEE; ENERGY COMMITTEE MEMBER, AFFILIATED TRIBES OF NORTHWEST INDIANS; COUNCILMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Mr. MARCHAND. Thank you, Members of the Committee, and thanks for inviting the Affiliated Tribes of Northwest Indians to speak today. I am speaking on behalf of President Cladoosby who was not able to make it today.

My name is Michael Marchand. I am a Councilman at the Colville Tribes. Also, I am teaching at my college. I am a doctoral student in bioenergy at the University of Washington, so a Husky.

The ATNI organization in the Pacific Northwest is 57 tribes and they have been around for 50 years. For 15 years, ATNI has had an active energy program, working with our membership on these issues and trying to promote their needs and develop this area.

ATNI member tribes are very interested in this because it is a key to economic development on many of our reservations, many of which are impoverished and our unemployment rates are very high.

ATNI member tribes appreciate the efforts of this Committee and the staff who seek the advise of tribes and organizations prior to the drafting of this bill. Our representatives attended roundtables regarding the concerns on energy development in Indian Country. We are pleased to see many of our suggestions for improving opportunities for energy development in the bill, including the amendments to the Tribal Forest Protection Act, which enhances our capabilities to coordinate with our Federal neighbors both on and off reservations. We have additional suggestions for improving the bill as follows.

First, a number of the directives and authorities described in the bill are for the Director of the Office of Indian Energy Policy and Programs of the Department of Energy. This petition remains va-

cant at this time. We strongly urge Congress to request that the President make the appointment to this important position as soon as possible. Apparently, funding designated for use in this office is being diverted to other offices within DOE pending the appointment.

We would like you to consider an option that would allow tribal leadership to be more involved in this appointment by establishing a timely process for tribal leaders to make nominations and then requiring an appointment from the list of nominees within a reasonable time frame upon the change of any Administration.

Secondly, because many of our tribes have treaties that cover the ocean and they are currently heavily dependent upon ocean health, we request that a provision be added to give Indian tribes participation on any federally funded group that is studying or otherwise making recommendations related to the Outer Continental Shelf. In addition, to the extent that States have rights to share in royalties in energy development on the Outer Continental Shelf, coastal and ocean treaty tribes should also have the same right.

Third, we also support the amendments disseminated earlier this week by Vice Chairman Barrasso, specifically those that would amend that the Indian Land Consolidation Act to provide tribes with more flexibility and additional funding for consolidating fractionated lands.

Fourth, ATNI member tribes have strong recommendations for improving the use of Federal funds for energy efficiency and conservation in Indian Country. Most energy conservation programs were designed with States and cities in mind and could be improved for areas with substandard housing and old and even dangerous government buildings such as many reservations have.

For example, we have found that the term "weatherization" has too narrow a definition when applied to funding sources. Many buildings in Indian Country are substandard, even dangerous. Weatherizing them does not make any sense. We request a new provision that authorizes the use of fund for repair or replacement of existing substandard buildings where there would be overall cost and energy savings.

Another issue is that on many reservations, a large percentage of housing is old mobile homes. Mobile homes built prior to 1976 were not subject to building standards and are therefore not energy efficient. We request that weatherization programs be broadened to allow tribes the flexibility to assist the community in the replacement of these older mobile homes with newer, more efficient homes.

Thank you for this opportunity.

[The prepared statement of Mr. Cladoosby follows:]

PREPARED STATEMENT OF HON. BRIAN CLADOOSBY, CHAIRMAN, SWINOMISH TRIBE; PRESIDENT OF THE EXECUTIVE BOARD, AFFILIATED TRIBES OF NORTHWEST INDIANS

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and Members of the Committee. Thank you for inviting the Affiliated Tribes of Northwest Indians to provide testimony regarding the Indian Energy Promotion and Parity Act of 2010. I am Brian Cladoosby, the Chairman of the Swinomish Tribe in Washington State and President of the Executive Board of the Affiliated Tribes of Northwest Indians (ATNI). ATNI is an organization of Indian Tribes that has celebrated over 50 years representing tribes from Alaska, California, Nevada, Washington, Oregon, Montana

and Idaho on issues of concern to our people. For fifteen years, ATNI has had an active energy program that has advised our membership on policy issues and has provided technical assistance and training to tribes, and has assisted federal agencies in better serving our members.

The ATNI member tribes are very interested in this subject matter because it is a key to economic development on our reservations, many of which are impoverished and have unemployment rates that are much higher than other areas of the country. Our member tribes include:

- The Blackfeet Tribe, who has oil and gas issues, and also the best wind energy opportunity in the United States, but also lacks transmission access;
- The Colville, Warm Springs, Coquille, Spokane, Salish & Kootenai and Yakama Nations who all have excellent biomass opportunities but are struggling to complete the development of their projects;
- At least ten Coastal tribes, and many other tribes with treaties that protect salmon, all of whom are extremely interested in energy development and protection in the Outer Continental Shelf;
- Numerous tribes developing vast potentials of wind, solar, geothermal, and hydroelectric power;
- Tribes who wish to address the impacts of renewable energy endeavourers on and off the reservation by increased capacity in the areas of legal, science and policy to ensure the protection of their treaty and subsistence resources.
- All our members are interested in energy conservation, and who wish to make weatherization and low income programs more useful to Indian tribes;
- Many members, such as the Swinomish Tribe who has completed a climate change adaptation and mitigation plan and who are concerned about the effects of climate change in ocean, rain and snowfall, and changes in fish and wildlife, and in our culture;
- Tribes who are developing traditional generation, wind, biomass, hydroelectric, and transmission projects such as Tulalip, Shoshone-Bannock, Crow, Umatilla, and Slitez that will be able to move their projects forward and create many new jobs by using the tax credits, accelerated depreciation, grants, and employment credits provided for in this bill.
- Many Tribes who will benefit from strong legal and policy capacity building and coordination with neighboring industries to address the challenges of converting the renewable energy opportunities to profit.

ATNI and our member tribes appreciate the efforts of this Committee and your excellent staff in seeking the advice of Indian tribes and organizations prior to drafting this bill. Our representatives attended the Roundtables held regarding the concerns of energy development in Indian Country. We are pleased to see many of our suggestions for improving the opportunities for energy development in Indian Country in the bill. For example, our member tribes have emphasized the importance of coordinating with neighboring federal and other government entities, and with industry. We also emphasized building tribal internal capacity to ensure the immediate and long term success of energy projects. Many of the provisions in the bill reflect these suggestions and others that were requesteded by ATNI member tribes (along with other tribes and tribal organizations); including Sections:

103 (Predevelopment Feasibility)

105 (Including intertribal organizations as potential recipients of energy assistance)

106 (Improving the land appraisal process)

108 (Hydroelectric Permits Preference to include Tribes)

109 (Including Tribes in Transmission Planning Studies)

201 (Coordinating leases and right of ways)

204 (Streamlining NEPA requirements during preliminary study phases)

206 (Include Tribes in State Weatherization Plan Programs)

207 (Home Weatherization)

208 (Tribal Forest Protection)

301 (Production Tax Credit transferability)

302 (Extend Investment Tax Credits)

303 (Extend Accelerated Depreciation)

304 (Extend Employment Credit)

305 (Extend Grants for Energy in Lieu of Tax Credits)

401 (Agricultural practices are added to sequestration; intertribal organizations added as potential recipients of energy assistance, adding weatherization to energy department priorities)

Some additional suggestions we would like to provide include:

A number of the directives and authorities described in the bill are for the Director of Office of Indian Energy Policy and Programs of the Department of Energy. This position remains vacant at this time. We strongly urge Congress to request that the President make the appointment to this important position as soon as possible. Currently funds designated for use in that office are being diverted to other offices within DOE pending the appointment. We would like you to consider an option that would allow tribal leadership to be more involved in this appointment, by requiring a timely process for tribal leaders to make nominations, and then requiring an appointment from the list of nominees within a reasonable time frame upon the change of any administration.

Because many of our tribes have treaties that cover the ocean, and/or currently heavily depend on ocean health, we request that a provision be added to give Indian Tribes participation on any federally funded group that is studying or otherwise making recommendations related to the Outer Continental Shelf. In addition, to the extent that states have rights to share in royalties from energy development on the Outer Continental Shelf, coastal and ocean treaty tribes should also have the same right.

We also support the amendments disseminated earlier this week by Vice-Chairman Barrasso, specifically those that would amend the Indian Land Consolidation Act to provide tribes with more flexibility and additional funding for consolidating fractionated lands. ATNI has previously expressed support for these and other initiatives, such as the Indian Trust Asset Demonstration Project in S. 1439 (as introduced in the 109th Congress), that would improve the federal government's administration of the trust and encourage economic development. ATNI urges the Committee to continue to address these issues both in the discussion draft and in other contexts.

Some of the Bill's provisions that can be improved include:

Section 102 authorizes various federal agencies to coordinate on Integrated Demonstration Projects. A provision authorizes the agencies to waive certain regulations in order to implement an approved plan. We believe that the authority to waive regulations would be strengthened in the event of a court challenge if criteria for a waiver were included in law. Potential criteria could include that a finding by the Secretary be made that the waiver would not likely significantly impair human health, cultural resources, or the environment, or that alternative measures were in place to address these issues.

Section 203 directs the Director of Office of Indian Energy Policy and Programs of the Department of Energy to conduct not less than five distributed energy demonstration projects. These projects are excellent ways in which we can immediately and cost effectively improve energy use at the local level. This section would be improved by providing a time limit, or by requiring a certain number of such projects "per year".

We had strong recommendations for improving the use of federal funds for energy efficiency and conservation in Indian Country. Most energy conservation programs were designed with states and cities in mind, and could be improved for areas with substandard housing, and old and even dangerous government buildings such as many reservations.

For example, we have found that "Weatherization" has too narrow of a definition when applied to funding sources. Because many buildings in Indian Country are substandard and even dangerous, "weatherizing" them does not make sense. For example, the bill prioritizes the use of "weatherization" funds for windows, doors, repair of floors walls, ceilings and secondarily for heating and cooling. These priorities ignore problems with building roofs, needed structural repairs, mobile home upgrades, water conservation measures, and many other conservation programs that would be very beneficial in substandard housing or buildings.

We also recommend adding a provision that authorizes energy efficiency and conservation funds use for leveraging the replacement of existing substandard buildings where there would be overall cost and energy savings. On many reservations a large percentage of housing is mobile homes. Mobile homes built prior to 1976 were not subject to building standards and are therefore not energy efficient. We request that "weatherization" programs be broadened to allow tribes the flexibility to assist their

community in the replacement of these older mobile homes with new energy efficient mobile homes.

We support your efforts to improve energy development opportunities in Indian Country. We also support this Committee's efforts to improve the federal government's trust reform issues as they related to energy policy. We encourage you to consider energy related changes and clarifications to the Indian Land Consolidation Act by providing tribes with more flexibility and additional processes for working with fractionated lands and improving the flexibility for using income from these lands.

We would be happy to answer any questions.

Senator TESTER. I want to thank you for your testimony.

Before we hear from you, Mr. Andersen, I want to kick it over to Senator Murkowski for a proper introduction.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate the opportunity to introduce to the Committee a gentleman, a friend from Alaska and a true leader within our State. Ralph Andersen is the CEO of Bristol Bay Native Association. He hails originally from Clark's Point, which is outside of Dillingham.

He is the Co-Chair of the Alaska Federation of Natives Human Resources Committee and has been a leader on so many issues. He has had an opportunity to appear before the Committee on numerous issues, but we look to him on guidance in so many areas as they relate to the health and well being of our Alaska Natives.

So Ralph, it is good to have you before the Committee again.

Mr. ANDERSEN. Thank you.

Senator TESTER. Mr. Andersen?

STATEMENT OF RALPH ANDERSEN, CEO, BRISTOL BAY NATIVE ASSOCIATION; CO–CHAIR, ALASKA FEDERATION OF NATIVES HUMAN RESOURCES COMMITTEE

Mr. ANDERSEN. Thank you, Senator.

Mr. Chairman, Members of the Committee, ladies and gentlemen, thank you for the invitation to provide testimony today. It is quite an honor for me to be here.

As introduced, my name is Ralph Andersen. I am the CEO of the Bristol Bay Native Association and Co-Chair of AFN's Human Resources Committee composed of the Chief Executives of the 12 regional nonprofit tribal consortiums in Alaska.

I also serve as Chairman of AFN's Energy Working Group and as Chairman of the Bristol Bay Partnership, our leadership group composed of the Chief Executives of the five regional organizations in Bristol Bay.

BBNA is a nonprofit tribal consortium of 31 federally recognized tribes in Southwest Alaska. Our region covers about 40,000 square miles and is about the size of the State of Ohio. BBNA provides a wide range of social, economic, cultural and educational services to benefit the tribes and the native people of Bristol Bay.

A common goal of all these organizations that I chair or I am involved with is to help find answers to lowering the high cost of energy in rural Alaska. Rural Alaska faces unique energy challenges that are hard for most to imagine. We pay the highest per capita for electric power and fuel in the United States.

The summer of 2008 was painful for us in rural Alaska. That is when the price of crude went to nearly $200 a barrel and the prices we pay for gas, diesel and heating fuel doubled or tripled. The high crude prices added millions to the State's revenues, but emptied the bank accounts of us living in rural Alaska.

In the summer of 2008, a study by the University of Alaska's Institute of Social and Economic Research showed that rural Alaskans pay 41 percent of our monthly incomes on energy, while urban residents pay four percent. Last winter, our hearts went out to village people who have to choose between paying the heating or fuel bill or buying food for their families.

During the past two years, we have seen more friends, more families, more neighbors move out of our villages and out of our regions because of the high cost of living. The high price of fuel is the biggest factor raising our cost of living, discouraging economic and business investments. It affects every part of our lives.

Costs for groceries, fresh milk, a dozen eggs, airline tickets, toothpaste, medicine, baby diapers, clothes, lumber and building materials, car and truck parts, everything has gone up. Rural Alaskans are experiencing an energy crisis and we continue to feel its impacts. Despite the drop of crude price, we continue to pay high costs. Retail prices for heating fuel ranges from $2.88 a gallon to $10 a gallon. Retail prices for gasoline ranges from $2.96 to $10 a gallon.

Delivering fuel to rural Alaska is complicated and expensive. There is no comparable delivery model anywhere else in the world. Fuel is transported thousands of miles from either Anchorage or Seattle. Delivery windows are narrow and often complicated by inclement weather or inhospitable conditions such as low water levels needed for barges to reach tribal communities along rivers and deltas. Fuel delivery arrangements are often made several months in advance, requiring significant financial commitments and the inability to participate in the market fluctuations fully and to appreciate low prices when they are available.

One way to reduce these costs for economic development is to develop our power resources locally, become more energy efficient, and practice conservation. We are strong supporters of the development of alternative energy sources and many rural Alaskan communities are actively working toward that goal.

I offer the following comments and recommendations on sections of the discussion draft now before you. The draft has been available to us for only a short time and I respectfully request the Committee to give us some additional time for comments and suggestions.

My remarks are today focused on sections in Title I and Title II.

Title I, we are encouraged by the provisions in the section, but believe it can be improved and strengthened by requiring tribes to be consulted in the appointment of directors to head the Indian Energy Development Offices. This section should also include provisions for tribes or tribal consortia to provide IEDO services under self-determination compact or contract agreements.

Our experiences with existing DOI or BIA Indian energy programs have not been as beneficial as we would like. We are not sure how the energy funds are appropriated, how they are being

spent, because we don't see any solicitations or notices in the Federal Register.

We are encouraged by the language in this section supporting tribal energy resource development organizations. BBNA and other tribal consortia in Alaska have established tribal energy programs, but we lack funding to get them into full operation or to fully develop their potential. The scope of our program is limited by the amount of BIA compact funding and funding my Administration is able to dedicate every year.

Soon after this Committee's energy oversight hearing in Bethel two years ago, led by Senator Murkowski, we sent a funding proposal at least twice to BIA, the Department of Interior's Tribal Energy Program. We finally received a response about a month ago that was not very encouraging.

Funding to establish and maintain tribal energy programs should be provided for in this section, establishing three to five-year power projects will help to improve their effectiveness.

Title II, Section 203, we have offered in the past to be part of a national demonstration project to help reduce energy costs. We are encouraged by language in Title II, Section 203 calling for at least five distributed energy demonstration projects for Indian tribes and Alaska Natives. We suggest the number of demonstrations should be at least doubled to 10, with a specific dollar amount of funds allocated over the pilot project years based upon accomplishment of certain milestones, and the funds be distributed through Public Law 93–638 contract agreements.

Rural Alaska is comprised of small, isolated transmission grids within each community. Many of our villages are not connected to each other or to a larger energy grid where economies of scale could keep prices down. There are a few communities closely situated that are connected by an electric intertie and others close enough together where interties would be a natural.

I don't want to take up a lot of time. I want to encourage that pilot demonstration projects under this section be provided for.

Under Title II, Section 206, there are no programs funded that support tribal energy efficiency and conservation efforts. The Energy Efficiency and Conservation Block Grants established by the Energy Independence and Security Act of 2007 wasn't funded until ARRA, the American Recovery and Reinvestment Act of 2009. This block grant calls for direct funding to local, State and tribal governments to develop and implement projects to improve energy efficiency, reduce energy use and fossil fuel emissions.

Regardless of the future prospects of funding for EECBG, we support the inclusion of a five percent tribal setaside of the State Energy Conservation Plan Program, a more established funding opportunity within the Department of Energy.

Title II, Section 207, the Department of Energy's Home Weatherization Program is minimally funded compared to the vast need in our Nation and in our region. Alaska is fortunate that DOE funds have historically been used by the five recognized contractors for the State for housing in our villages. In addition, the Alaska Legislature has funded a program mirrored on the Federal program, with funds allocated to the five recognized contractors receiving

DOE funds, but also to 14 Native Tribal Housing Authorities in our State.

Even with these new resources reaching our tribes, the need far exceeds available resources. In Bristol Bay, approximately 1,300 of 2,500 homes in the region are classified as low income according to the income guidelines. The need for weatherization on low income homes exceeds $50 million. Of the 1,300 homes that are classified as low income, with a mix of State and Federal funding, we are able to weatherize 100 homes per year. If we relied strictly on Federal funds, we would be able to weatherize only 20 homes per year.

Current available resources will fund 10 percent of the $50 million needed, leaving a 90 percent gap. It is this gap that must be filled.

That concludes my formal testimony. Again, I request that we be allowed additional time to submit comments and recommendations.

I will be happy to answer any questions. Thank you.

[The prepared statement of Mr. Andersen follows:]

PREPARED STATEMENT OF RALPH ANDERSEN, CEO, BRISTOL BAY NATIVE ASSOCIATION; CO-CHAIR, ALASKA FEDERATION OF NATIVES HUMAN RESOURCES COMMITTEE

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

Thank you for the invitation to provide testimony today on the Discussion Draft of the Indian Energy Promotion and Parity Act of 2010. I am honored to be here today.

My name is Ralph Andersen. I am the Chief Executive Officer of the Bristol Bay Native Association (BBNA); and co-chair of AFN's Human Resources Committee composed of the Chief Executives of the 12 regional non-profit consortiums in Alaska.

I also serve as chairman of the Alaska Federation of Natives' Energy Working Group, and as chairman of the Bristol Bay Partnership, our leadership organization composed of the chief executives of the 5 regional organizations in the Bristol Bay region of Alaska.

BBNA is a non-profit tribal consortium of 31 Federally-recognized Tribes located in Southwest Alaska. Our region covers about 40,000 square miles and is about the size as the State of Ohio. BBNA provides a wide range of social, economic, cultural, and educational services to benefit of the Tribes and the Native people of Bristol Bay.

A common goal of all these organizations that I chair or I am involved with is to help find answers to lowering the high cost of energy in Rural Alaska.

Alaska Natives – as a result of the Alaska Native Claims Settlement Act -- are the largest private landowners in our State. We have resources that can be developed – both renewable and nonrenewable – and we are committed to working with state and federal governments and the private sector to help meet the energy needs of our people.

Our federally recognized Tribes, our regional housing authorities and our regional Tribal consortia all have a strong interest in being part of finding affordable energy and finding solutions to the high cost of energy.

Rural Alaska faces unique energy challenges that are hard for most to imagine. We pay the highest per capita for power and fuel in the United States.

The summer of 2008 was painful for us in rural Alaska. That's when we first felt the pinch of high fuel costs. The price of crude oil went to nearly 200 dollars a barrel and the prices we pay for gas, diesel and heating fuel doubled. The high crude prices added millions to the state's revenues, but emptied the bank accounts of us living in rural Alaska.

In the summer of 2008, a study by the University of Alaska's Institute of Social and Economic Research showed that rural Alaskans pay 41 percent of our monthly incomes on energy, while urban residents pay only 4 percent.

Last winter our hearts went out to our village people who had to choose between paying the heating oil or electricity bill or buying food for their families.

Some could not afford gas for their boats or snow machines for subsistence hunting – hunting wild game -- to feed their families. We saw emergency food drops by humanitarian groups in villages across the State to keep families and children from going hungry.

During the past 2 years, we've seen more friends, more families, and more neighbors move out of our villages and out of our regions because of the high cost of living. The high price of fuel is the biggest factor raising our cost of living, discouraging economic and business investments, and affects every part of our lives.

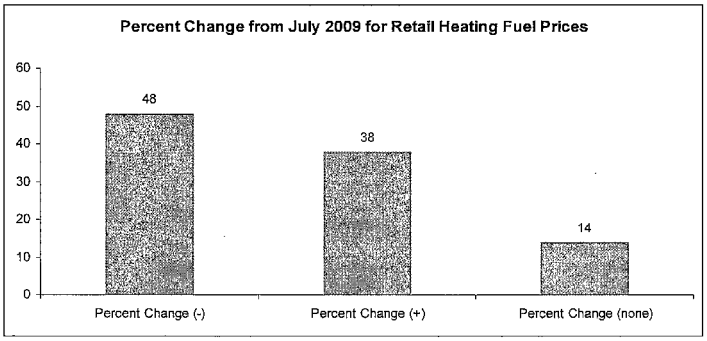
We are completely dependent on air and sea transportation for supplies, groceries and fuels - the fuels we use and need for transportation, heating and electricity needs. The rising cost and dependence on fossil fuels threatens our way of life and economies as we know them. It threatens the economic survival of Rural Alaska and the well-being of our people.

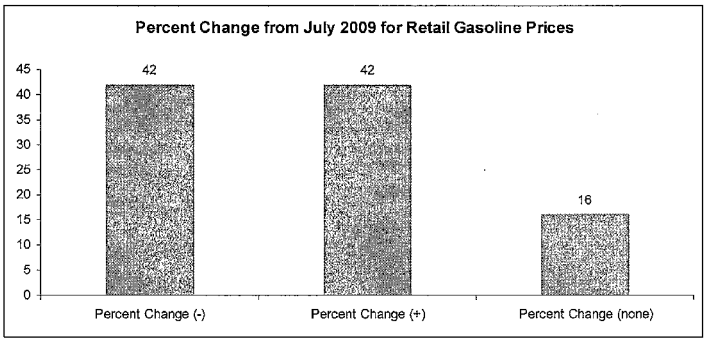
Increases in gasoline and aviation fuel prices caused rippling consequences on all aspects of our life. While Rural Alaskans may own fewer cars and trucks per capita than other Americans, we have to travel by air within and outside of our regions and we are heavily reliant on ATVs, snow machines, and boats for transportation, subsistence hunting and fishing, commercial fishing, and other activities.

Costs for groceries, fresh milk, a dozen eggs, airline tickets, toothpaste, medicine, baby diapers, clothes, lumber and building materials, car and truck parts – ***EVERYTHING*** – have all gone up.

Rural Alaskans are experiencing an energy crisis and we continue to feel its impacts. Despite the drop in the price of crude oil we continue to pay high prices. Retail prices for heating fuel range from $2.88 to $10.00 a gallon. Retail prices for gasoline range from $2.96 to $10.00 a gallon.

Prices have gone down a few dollars in some communities as the price of crude dropped, but this is not true for all of Rural Alaska. A survey of 100 communities last summer by the Alaska Department of Commerce, Community and Economic Development, shows that 48 communities have experienced a decrease in retail price for heating fuel; 38 have experienced an increase and 14 have experienced no change at all. The same survey indicates that 42 communities have experienced both a decrease and increase in retail prices for gasoline, while 16 communities have experienced no change at all.





(Source: "Current Community Conditions: Fuel Prices across Alaska, January 2010 Update.")

Delivering fuel to Rural Alaska is complicated and expensive. There is no comparable delivery model anywhere else in the world. Fuel is transported thousands of miles from either Anchorage or Seattle. Delivery windows are narrow and often complicated by inclement weather or inhospitable conditions such as low water levels needed for barges to reach Tribal communities along rivers and deltas. Fuel delivery arrangements are often made several months in advance requiring significant financial commitments, and the inability to participate in the market fluctuations fully and to appreciate lower prices when available.

One way to reduce these costs and spur economic development is to develop our power resources locally, become more energy efficient, and practice conservation. We are strong supporters of the development of alternative energy resources, and many Rural Alaska communities are actively working towards that goal.

Rural Alaska is rich in geothermal, wind, biomass, tidal and hydro but help is needed to develop them. Our state is so large and diverse that one alternative resource may not be available elsewhere. There is no "one-size-fits-all" answer making solutions more specific and expensive. We could serve as a proving ground to show how Alaska Native people and their institutions have the experience, capacity, and relationships necessary to implement workable solutions for the future.

I offer the following comments and recommendations on sections of the discussion draft now before you. The draft has been available to us for only a short period of time. We would like to provide the committee with additional comments and suggestions as the legislation is developed. My remarks today are focused on sections in Title I and Title II.

Title I – Energy Planning

We are encouraged by the provisions in this section but believe it can be improved and strengthened by requiring tribes be consulted in the appointment of directors to head the Indian Energy Development Offices. This section should also include provisions for tribes or tribal consortia to provide the IEDO services under self-determination compact or contract agreements. Our experiences with existing BIA or DOI Indian Energy Programs have not been as beneficial as we would like. We are not sure how the energy funds they are appropriated are being spent because we do not see any solicitations or notices in the Federal Register or any other publication.

We are also encouraged by the language in this section supporting the Tribal Energy Resource Development Organizations. BBNA and other regional tribal consortia in Alaska have established Tribal Energy Programs, but we lack funding to get them into full operation or develop their full potential. BBNA's Tribal Energy Program is charged assisting and providing information to tribes on energy projects, initiatives and opportunities. The scope of our program is limited by limitations of our BIA compact, and funding my administration is able to dedicate each year. We desperately need additional funds for full program operation on a regional basis. Full funding for BBNA's Tribal Energy Program is about $750,000 per year.

Soon after this Committee's energy oversight hearing in Bethel 2 years ago led by Senator Murkowski, we sent a funding proposal at least twice to DOI's Tribal Energy Program. We finally

received a response about a month ago that was not very encouraging. Funding to establish and maintain Tribal Energy Programs should be provided for in this section. Establishing 3 to 5 year pilot projects will help to prove their effectiveness.

Title II, Section 203, Distributed Energy and Community Transmission Demonstration Projects

We have offered in the past to be a part of a national demonstration project to help reduce energy costs. We are encouraged by language in Title II, Section 203 calling for at least 5 distributed energy demonstration projects for Indian Tribes and Alaska Natives. We suggest the number of demonstrations should be at least doubled to 10 with a specific dollar amount of allocated over the pilot period based upon the accomplishment of certain milestones, and the funds be distributed through P.L. 93-638 compact or contract agreements.

Rural Alaska is comprised of small, isolated transmission grids within each community. Many of our villages are not connected to each other or to a larger "energy grid" where economies of scale can help keep prices down. There are a few communities closely situated that are connected by an electric intertie, and others close enough together where interties would be natural.

In 2006 – before the energy crisis hit us -- the Bristol Bay Partnership sponsored an Economic Action Summit. The intent was to bring people together to find ways to create more jobs and business opportunities in our villages and in our region. The summit participants unanimously declared high energy costs as Public Enemy #1 and the single largest inhibitor to job and business development.

In April 2009, a few months before the fuel crisis hit us, the Bristol Bay Partners adopted our first Energy Policy and Crisis Recovery Plan. The Recovery Plan is focused on ways of reducing the costs of electricity, with recommendations to create interties between our villages.

Economies of scale tells us that it's cheaper to have one power plant generating enough electricity for 2 or 3 villages than it is to have smaller power plants in each of those villages.

Studies by the Denali Commission, an independent federal agency, have shown that interties promote efficiency by sharing available capacity, increase the reliability of electrical power, and help reduce the cost of electricity through the use of more efficient fuels or renewable resources. Specific to Rural Alaska, interties improve the quality of life by reducing utility bills and providing for greater discretionary income to spend locally.

There are no existing federal programs to provide Alaska Native tribes the direct assistance needed to help us develop alternative forms of energy generation and transmission. We have often in the past few years called for the establishment of an *Alaska Native Energy Program* in the Department of Interior or Department of Energy to provide the necessary financial and technical assistance tailored to meet the needs of Rural Alaska.

We know and live with the problems. Because of our motivation and desire for self-determination, we want to be directly involved in developing solutions that fit our needs. We are encouraged by the language in this section, but ask that the number of demonstrations be expanded, a fair and equitable dollar amount be identified and appropriated, and a priority be established for projects that also includes the "current price of energy." Otherwise, Alaska Natives will again be disadvantaged and may not be able to participate in such a demonstration project.

We successfully demonstrated our abilities and the effectiveness of operating BIA programs under P.L. 93-638 compact agreements. We successfully demonstrated our abilities and the effectiveness of operating programs under P.L. 102-477 through our 638 compacts. I am very confident that we can successfully demonstrate operating programs under the legislation now before you.

Title II, Section 206, Inclusion of Indian Tribes in State Energy Conservation Plan Program

In general, there are no programs funded that support Tribal energy efficiency and conservation efforts. The Energy Efficiency and Conservation Block Grant established in the Energy Independence and Security Act of 2007 was left unfunded until the American Recovery and Reinvestment Act of 2009. This block grant calls for direct funding to local, state and *Tribal* governments to develop and implement projects to improve energy efficiency, reduce energy use and fossil fuel emissions. This same Act authorized $2 billion in annual appropriations over a five-year period, and was not intended to supplant other federal funding dedicated to efficiency, conservation and weatherization.

Regardless of the future prospects and funding of the EECBG, we support the inclusion of a 5 percent Tribal set-aside of the State Energy Conservation Plan Program, and a more established funding opportunity within the Department of Energy.

In accordance with a Tribal set-aside, we request Tribal representation on the State Energy Advisory Board. This board develops recommendations for the Department of Energy and the Congress regarding initiation, design, implementation, and evaluation of federal energy efficiency and renewable energy programs. We request being involved in these processes and be directly involved in decisions affecting our lives.

I believe strongly that in these modern times of the 21st century, the days of decisions being made out of our view, in far away places, by people we don't know and never see, and without our involvement, are long passed.

Title II, Section 207, Home Weatherization Assistance

The Department of Energy's Home Weatherization Assistance Program is minimally funded compared to the vast need in our nation. Alaska is fortunate in that the DOE funds have historically been used by the five recognized contractors for the State for housing in our villages. In addition, the Alaska Legislature has funded a program mirrored on the Federal Program, with funds allocated to the five recognized contractors receiving Federal DOE funds, but also to 14 Native Tribal Housing Authorities in the State.

Even with these new resources reaching our tribes, the need far exceeds available resources. In Bristol Bay, approximately 1300 of 2500 homes in the region are classified as low income according to the income guidelines. The need for weatherization on low-income homes exceeds $50 million. Of the 1300 homes, with a mix of state and federal funding – we are able to weatherize 100 homes per year. If we relied strictly federal funds, we would be able to weatherize and repair only 20 homes per year.

Current available resources will fund 10% of the $50 million needed, leaving a 90% gap. It is this gap that must be filled.

That concludes my formal testimony. Because the bill before you is a discussion draft at this point, I respectfully request that Alaska Native tribes and tribal consortia are allowed to submit written comments and recommendations. We request to be involved in the process as this important legislation moves forward.

I will be happy to answer any questions you may have.

Thank you.

Attachments have been retained in Committee files.

Current Community Conditions: Fuel Prices Across Alaska—January 2010 Update.

Bristol Bay Energy Policy and Energy Crisis Recovery Plan: Phase 1 and 2.

These attachments can be found at:

*www.commerce.state.ak.us/dca/pub/Fuel*_Report_Jan_2010_final.pdf
*www.bbna.com/Energy/3*_ImplementationStrategies_5-6-08.pdf
*www.bbna.com/BBEPECRP*_Apr15_gg_RA_5-7-08.pdf

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

The CHAIRMAN. [Presiding]. Mr. Andersen, thank you very much.

Let me before I call on the last witness apologize to my colleagues and to the witnesses for my absence. I was involved in the debate on the Floor of the Senate and I was determined to get the last word and it took me some while.

[Laughter.]

The CHAIRMAN. So thanks to Senator Tester and thanks to my colleagues, and I will recognize them first for questions when our next witness completes.

The next witness is Peter Stricker, Vice President of Strategic Asset Development at Clipper Windpower, Inc., at Carpinteria, California.

Mr. Stricker?

Mr. STRICKER. Yes, thank you.

The CHAIRMAN. Thank you very much. You may proceed.

STATEMENT OF PETER STRICKER, VICE PRESIDENT, STRATEGIC ASSET DEVELOPMENT, CLIPPER WINDPOWER, INC.

Mr. STRICKER. Clipper Windpower and I would like to share with you, Senator Dorgan and the entire Committee, our appreciation and support for this Committee's commitment to explore new ways to meet the challenges of tribal clean energy and infrastructure development.

The discussion draft of the Indian Energy Promotion and Parity Act is an encouraging step forward in addressing the challenges and opportunities to finally create a sensible development environment for the vast amounts of world class renewable energy that is located in Indian Country.

We are encouraged by this Committee's recognition that unlocking the renewable energy potential on tribal lands is a key to meeting this Country's goals of energy independence and reducing carbon emissions. Today, we are pleased to share with the Committee our perspective as a U.S. wind development and turbine manufacturing company that is partnered with and are in mature stage discussions with numerous Indian tribes.

First, I would like to introduce you to Clipper Windpower. Clipper began as a startup company in 2000, and now is the developer of an 8,500 megawatt project portfolio and manufacturer of one of the premier utility scale wind turbines in the U.S. Well-placed DOE funding was key to creating our turbine technology company, which now directly employs over 700 people and several times that indirectly in our supply chain.

We contend that similarly placed Federal incentives can fundamentally help bring renewable energy development on tribal lands into the windpower market.

Now, to the question of existing tribal wind projects. We, no doubt like many others in this room, at some point have asked ourselves: Why is there now only one commercial wind project in Indian Country? It is an interesting question. Without getting into great detail, I would like to list the key issues as we see them.

One, project development costs. Given lack of existing infrastructure on remote reservation lands and higher project return requirements associated with higher development risk, elevated costs are inevitable.

Two, regional siting competition. Additional permitting and approvals are required on tribal land unless certainty as to the associated process make tribal projects less desirable to develop than adjacent non-tribal projects.

Three, transmission access and infrastructure. Access to transmission is a substantial benefit for many tribal projects primarily due to the scarcity of infrastructure and lack of available capacity on existing lines.

Four, unworkable financial incentives for tribes as project participants. Tribes have a keen interest in participating in project

ownership, but are fundamentally handicapped by their inability to use tax-based incentives.

From Clipper's perspective, despite our commitment to tribal projects, those projects must be weighed against others in our portfolio as we wrestle with risk and budget considerations.

Okay, so now let's talk about incentives, specific tribal incentives. As an established member of the U.S. wind industry, we recognize that tribal projects are disadvantaged and that the provisions in this Act will move them in the direction of being more competitive. In our mind, that is a reasonable direction to take for tribal projects.

We also recognize that in addition to the broad benefit of producing clean, renewable energy for the U.S., the benefits to tribes are significant: sustainable and diversified tribal economies, infrastructure development and professional training of tribal members, to name a few.

Tailored financial incentives. This proposed legislation would encourage private and tribal ownership of projects with very limited impact on taxpayers. These targeted financial incentives will help make tribal projects competitive, and importantly, would only be granted to viable, successfully completed projects.

Transmission planning and incentives. As currently contemplated, the proposal for a large scale transmission study in Indian Country is a positive step. But actually enhancing access and building transmission infrastructure is what is needed to make tribal projects go forward. For example, we are well aware of limitations to move power out of the Dakotas, which is home to many of the windiest tribal lands in the U.S. Studies are plentiful, but very little transmission has been built.

Now, I would like to mention the importance of a national renewable energy standard. Finally, when considering tribal incentives, it is important to note that the bottom line for all renewable energy projects is the electric power markets. Projects are driven by their ability to sell power, and renewable energy standards drive markets.

To get meaningfully beyond wind energy's current installed capacity of two percent of the U.S. power market, the piecemeal approach of State renewable standards must be stepped up to a Federal level with a national renewable energy standard. I cannot emphasize enough the importance of a renewable standard to the success of tribal and non-tribal projects to capture this clean, inexhaustible energy resource for the long-term benefit of the Country.

Without a capital commitment to projects and transmission, infrastructure will be severely constrained and our industry will never realize its potential. All other incentives, including those proposed for tribes, will be less effective if not in concert with a national renewable standard.

In closing, I would like to mention the interesting twist of fate that has placed reservation lands in some of the sunniest and windiest areas of the Nation. In addition, critical transmission corridor siting has often occurred on tribal lands. These two factors now present unparalleled opportunities to tribes and their partners to finally develop these world class wind and solar resources on a

scale which can fundamentally shift how we generate electric power in the U.S.

We thank the Committee for asking us to share our perspective with you today, and look forward to the final Indian Energy Promotion and Parity Act.

Thank you.

[The prepared statement of Mr. Stricker follows:]

PREPARED STATEMENT OF PETER STRICKER, VICE PRESIDENT, STRATEGIC ASSET DEVELOPMENT, CLIPPER WINDPOWER, INC.

Introduction

Clipper Windpower and I would like to share with you, Senator Dorgan, and the entire Committee, our appreciation and our support for this Committee's commitment to explore new ways to meet the challenges of Tribal clean energy and infrastructure development.

The discussion draft of the Indian Energy Promotion and Parity Act is an encouraging step forward in addressing the challenges and opportunities to, finally, create a sensible development environment of the vast amounts of world class renewable energy that is located in Indian Country. We are encouraged by this Committee's recognition that unlocking the renewable energy potential on tribal lands is a key to meeting this Country's goals of energy independence and reducing carbon emissions.

Today we are pleased to share with the Committee our perspective as a U.S. wind development and turbine manufacturing company that has partnered with and are in mature stage discussions with numerous Indian Tribes. We are excited at the opportunities that lie ahead, but will share with you today the particular vantage point that we have regarding some of the complex obstacles facing the future of Indian Country and prospects for any significant clean energy development into the future.

Clipper Windpower

Clipper Windpower Development Company, Inc. manages over 8,500 MW of wind resource development assets, and provides a full range of wind energy project development capabilities focused on the sale of these projects and the deployment of Clipper wind turbines.

Clipper Windpower has its origins as a start-up company in 2000 which received critical Department of Energy funding in its early years to develop what is now one of the premier utility-scale turbines in the United States. We employ over 700 people today and are proud that this initial federal incentive allowed Clipper to realize its potential as a U.S. company and to now advance our wind turbine technology in the world market.

We share this particular company background today to illustrate the power of well-placed Federal investments and incentives in clean energy. We contend that similar combinations of incentives and Federal leadership can make a significant difference for Indian Tribes seeking a more balanced and competitive position with non-tribal projects, in the form of Federal streamlining initiatives as well as appropriate incentives for renewable and infrastructure investments in Indian Country.

The Challenge of Developing Tribal Resources: Why Is There Now Only One Commercial Wind Project on Tribal Lands?

We, no doubt like many in this room, prior to entering into negotiations with several Indian Tribes on commercial wind projects, asked ourselves initially why there is now only one commercial wind project in Indian Country? What are the reasons for this lack of progress when, clearly, there is plentiful world class wind resource in Indian Country?

Although Clipper Windpower has made and is making commitments with tribes, we remain concerned about key development challenges–which I will note–are often further hampered by the larger market and infrastructure challenges we as industry face on a broader level. That being said, the fundamental obstacles have been and largely remain:

1. Project Development Costs. Reservation sites are often further from grid and markets, placing an upfront cost burden on the project in areas and often in incumbent utility markets that have low-cost federal hydro and/or coal-fired power supply. Keeping this in mind, the added risk of regulatory uncertainty,

creates an inverse need for higher rates of return to compensate for probable regulatory delays.

2. Regional Siting Competition. Frankly, many Tribes are competing with surrounding private property, as well as state and federal lands, all of which have clarified and streamlined and eased leasing and permitting processes. As a developer and partner, it is far from clear what the processes are to lease and permit tribal trust and allotted lands. There is a lack of established protocols or even a pro forma renewable and transmission leasing and permitting process for tribal lands, making it more attractive to invest precious capital on lands and jurisdictions which can provide both a clear path and level of regulatory certainty so we as developers can stick to development schedules.

3. Transmission Access and Infrastructure. A critical component that is substantively missing in this discussion draft bill is any incentives or initiatives related to transmission. We cannot realistically talk about generation development without discussing transmission development.

4. Unworkable Financial Incentives for Tribes as Project Participants. We have seen in negotiations that Tribes have a strong interest in ownership participation in wind projects but realize that the opportunity to do so is constrained by their inability to utilize tax-based incentives for wind For instance, we have had prolonged discussions with Tribes in the Dakotas as we have struggled together to identify ways in which the Tribe could access equity or other capital, or structure partnerships, to participate more actively in the development and ownership of the projects. In the meanwhile, investments and project development moves forward around them.

Certainly there are other hurdles to be overcome, but I will leave it to other witnesses today to cover some of those. So let us circle back again to the initial question and maybe we simply conclude that the fact that there is only one commercial wind project in operation, speaks for itself. Clearly something needs to be done to confront the embedded challenges of developing on tribal land if there is going to be any progress towards accessing the vast wind resources that exist there.

Speaking from our experience, and although Clipper has made development commitments in Indian Country, none of our prospective tribal projects have yet reached the full leasing and permitting stage. In making those commitments, we are looking to advance these projects but are already faced with lack of clarity in the leasing and permitting process, constrained transmission access and lack of certainty on how tribal ownership may be structured—all of which is, frankly, slowing us down. In the project development business, time is money, and those projects which have built-in delays will be far less competitive. In reviewing the projects in our development portfolio, those on tribal lands must be weighed against others as we assess risk and budget constraints.

The Need for Tribal Renewable Energy and Transmission Incentives

Specific Tribal Incentives Needed to Overcome Challenges of Developing Projects on Reservations. We need tailored and specific incentives because it is a fact that tribal reservation lands are unique and pose unique challenges and opportunities. As a member of the wind industry, we recognize that tribal projects are disadvantaged coming out of the starting gate so that special consideration and support is needed to make them viable. Unlocking tribal wind resources will provide the U.S. a substantial source of renewable energy which will not only reinforce our energy security but will also help to keep that energy competitively priced for consumers. And the benefits to tribes are significant: sustainable and diversified tribal economies, infrastructure development and professional training for tribal members.

Tailored Financial Incentives. And this proposed legislation, as it is currently contemplated, would encourage private and tribal ownership of projects with very limited impact on tax payers. It includes some of the most significant elements to achieving financeable projects on tribal lands: loan guarantees, assignability of tax credits, grants-in-lieu-of-tax-credits, extension of the tribal accelerated depreciation and employment tax credit provisions. Targeted financial incentives, like these that are proposed, will help make tribal based projects competitive with non-tribal projects and allow them to be financed, and importantly would only be granted to successful projects.

Transmission Planning and Incentives. As you are probably well aware transmission is critically needed to support the expansion of U.S. wind energy. As currently contemplated, the proposal for a large-scale transmission study in Indian Country is a positive step forward. But this is one of the biggest conundrums facing tribal renewable development: transmission—access to it and expansions of it in Indian Country. From a tribal perspective, although a sizeable federal hydropower and

transmission footprint runs through Indian Country, ironically, tribal renewable projects experience great difficulty in securing access to the transmission infrastructure on their lands. Clipper Windpower is deeply involved in transmission issues across the U.S. and has particular experience with transmission development from the Upper Midwest to Eastern load centers. We have observed the opportunity for tribes in the Dakotas to interconnect with the Western Area Power Administration, but are also keenly aware to the need to deliver beyond WAPA's system to urban load. Like most non-tribal wind development across the country, expansion of transmission is a key element of tribal wind development.

The opportunity for renewable energy based transmission expansion is that it can benefit tribal and non-tribal projects alike. Transmission is a collaborative process requiring multiple stakeholders to complete. Utilities, private developers, state regulators, the Federal Government—and in some cases tribes—must all jump into the ring and push for transmission expansion. In the case of tribal projects, more Federal leadership will be required to overcome the inherent challenges transmission projects, including encouragement of public-private partnerships or tailored financial incentives for siting transmission on tribal lands or providing for a more streamlined interconnection process for tribal projects.

Secondary benefits of these efforts to expand renewable energy transmission/collection systems would be creating a sustainable infrastructure as well as bringing electricity to areas of reservations presently not connected with the grid. The Tribes, the states, the regions and the country will benefit from a more secure and robust transmission infrastructure.

Setting the Stage for Tribal Renewable Energy Success: The Importance of a National Renewable Energy Standard ("RES") and Consistent Energy Policy

Again, it is critical to place this historic tribal opportunity in context of the power markets in which they will operate and the viability of those markets. It is a fact, with a few exceptions, that renewable projects are currently being built at rates that track requirements of state renewable energy standards, the current underlying driver for *all* renewable energy development in U.S. This piecemeal state-by-state approach so far has resulted in barely 2 percent of national electricity demand being met by wind energy—for renewable energy to make any sort of meaningful dent in the U.S. energy portfolio, a Federal Renewable Energy Standard, or "RES" will be needed.

All other incentives less effective if not in concert with a national RES—above all, we must have a market to buy renewable energy. Consistent and long-term energy policy will not just help tribal projects, it will create a stable foundation for the renewable energy industry as a whole. We have already experienced the development lags when disrupted tax credit extensions have made it more difficult to attract investment for longer lead-time projects, especially hurting tribal projects.

As energy legislation moves this month and next, these tribal provisions, which are wholly congruent, are important piece of the puzzle and needs to be included in whatever legislation that moves forward. Clarifying and streamlining tribal-federal processes as well as leveling the playing field for Tribes are critical tools to be used in concert to help tribal projects play catch up. However, after these tribal-specific incentives and provisions are put into place, what would tip the scale would be the creation of stable marketplaces through a national RES.

An interesting twist of fate has placed reservation lands in some of the sunniest and windiest areas in the nation. In addition, critical transmission corridor siting has often occurred on tribal lands. These two factors now present unparalleled opportunities to Tribes and their partners to finally develop world class wind and solar resources not just for the benefit of tribal communities but for the country.

We thank the Committee for asking us to share our perspective with you today and look forward to the final Indian Energy Promotion and Parity Act.

Peter Stricker, Vice President—Strategic Asset Development

Peter Stricker has been with Clipper since its beginning and initially joined Clipper as Director of Project Engineering in August 2000. After serving within a number of senior positions at Clipper, including leading project development, in September 2008, he was named Vice President, Strategic Asset Development. An engineer by training, Mr. Stricker came to Clipper from Enron Wind Corp. where he served as Manager of Service Engineering. At Enron, he and his team of engineers and data analysts provided comprehensive technical support and warranty failure analysis for a fleet of 763 wind turbines installed worldwide. In early 2001, Mr. Stricker led the development of CWD's project portfolio to upwards of 6,500 MW dis-

tributed across the U.S. and in Latin America, and directed commercial engagement and delivery of transactions involving over 2,500 MW of project assets.

In addition to cultivating a team skilled in the acquisition and development of finance-ready project assets, Mr. Stricker formalized origination and transaction functions to support full market entry and transactional capability within CWD. Mr. Stricker earned his Bachelors and Masters in Mechanical Engineering degrees from the University of Washington in Seattle, where he specialized in control system engineering.

The CHAIRMAN. Mr. Stricker, thank you very much for that perspective. We appreciate that.

Let me call on my colleague, Vice Chairman Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Chairman Box, if I could visit with you. You are down in that kind of four corners area, Southwestern Colorado, and you have had phenomenal success, in my opinion, in the things that you have been able to accomplish. You have achieved incredible success in developing oil resources, gas resources, and by and large, I think you have done it through your own efforts, rather than reliance on the Bureau of Indian Affairs.

And I am wondering if you could share with the Committee, tell your story, if you would, about how your tribe really assumed greater control over energy development on the reservation. When did that happen? What steps did you take? Because this really is incredible success.

Mr. BOX. In the 1970s, our leaders, as I spoke earlier in the testimony, basically because of the chipping away of sovereignty or the way the Bureau of Indian Affairs was handling the leases, recognized that they could develop the core capacities to do, if not a better job, with more care for the membership and control their own destiny with those resources.

So they did, with a small amount of finances at that time, invest in gathering those leases together and managing those leases. Through those leases, they were able to get into the gathering not only the development of the resource of natural gas, but the gathering and the treatment of it through Red Cedar Gathering Plant. And then from there, we were able to take off.

There are probably some very key component things to recognize in that. The way our tribal government was structured, the Tribal Council was able to take those steps, recognizing that for a period of time the membership were unable to receive some of those benefits that normally would have been available, although they were very minor at that time. They took a sacrifice as a whole, as a membership, in going into that direction.

So it was quite difficult, and I applaud the efforts of those tribal leaders at that time that were able to take that direction, knowing that in the future better planning through financial planning, what we call the financial plan, which developed the growth fund, the permanent fund in these entities in which we were able to secure a protected government from liability, so to speak, and allow for those entities under their own management to make those decisions and move forward.

And so it is quite complex in regards to how the structure was developed and then where it took off from there.

Senator BARRASSO. If I could ask, I know you have been a strong supporter of Title V of the Energy Policy Act of 2005, including the

provisions related to the Tribal Energy Resource Agreements. But as you explain, some of the provisions in Title V and the implementing regulations have discouraged your tribe from entering into that. I have had some provisions that I have been drafting and working on to try to improve it.

Do you have some additional ideas, things we ought to be considering when we are preparing amendments for Title V?

Mr. BOX. I believe what is put forth initially in the beginning did have concerns of many tribes in regards to the definition of the inherent Federal trust responsibility. I think that some of the things that have been provided in this discussion draft meet those expectations for our tribe, at the least, in regards to those directions.

But also, more importantly, is the ability for tribes to build that core capacity. As you know, in the 2005 title, Title V, there were monies for that. And so that was another key component in regards to those TERA regulations.

So I believe that we are very supportive of the work that has been done on it to date.

Senator BARRASSO. Thank you.

Mr. Marchand, if I could please, it is my understanding your organization supports efforts, including the provisions in some of the things that I have been working on, to address the problem of fractionation. So having had an opportunity to review some of this, can you talk a little bit about what your thoughts are when we are preparing amendments to the Indian Land Consolidation Act?

Mr. MARCHAND. I would just say in general, realty and land is always the first stumbling block involved in any development. Our Bureau of Indian Affairs people, many of them are tribal members and I think they do their best, but they are just really understaffed and the systems are really not working really well. And the tribe is usually able to get its bigger projects through, but it is almost impossible for the small business sector to get through the system.

Fractionation is just a very difficult problem to deal with, and I hope we can solve it.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Tester?

Senator TESTER. Yes, thank you, Mr. Chairman.

I want to touch a little bit on the Tribal Energy Resource Agreements. I will start with you, Joe.

The information I have in front of me says that in the four and a half years since the Energy Policy Act of 2005 was adopted, and these Tribal Energy Resource Agreements were a part of that, that no tribe has applied for TERA. Does that mean no tribe has filled out the application and the application has not been approved? Or does that mean that no tribe has applied for TERA? And could you shed some light on why that is the case and what can be done to fix it?

Mr. GARCIA. Senator Tester, I believe part of the issues stem from an understanding of what the entire process is for applying for any grant or any program or any funding. Sometimes the tribes are under the impression than unless a project is ready to go, it is hard to apply for anything.

That is part of the problem, but I think part of the other issues have to stem from the bureaucracy that the tribes face. And it is a matter of, I call it "historical trauma." They have been accustomed to dealing with any funding, and the red tape that we had to deal with in going forward.

So that may be part of the issue, but as far as I know, New Mexico tribes have not applied for any of that.

Senator TESTER. Okay.

Chairman Box, do you see it the same way?

Mr. BOX. I would like to add on that, too, in regards to my statement with the TERA regulations. But there was also the formula, I guess, that would be for secretarial use to determine what core capacity really is and what that capacity is. And so I believe what has been developed in regards to proven track records of land management certainly provide more incentive for tribes to take on that direction.

Senator TESTER. Okay.

Mr. Stricker, I want to talk to you a little bit. You had talked about incentives and some that work, some that don't work very well. But in the end of your presentation, you talked about the RPS and the need for an RPS.

Just to boil it right down to its basics, if we don't set an RPS up, are we wasting our time with the incentives?

Mr. STRICKER. I would say not. I think the incentives are important elements of moving tribal projects forward and making them more competitive with non-tribal projects. But I think that the big picture is that the industry as a whole is certainly confronted with what seems to be a strong desire for this type of energy to be produced. But there is a declining electricity market, and so the RPS is needed in order to continue the replacement of fossil-burning generation with wind.

So the problem the tribes are facing, just like the rest of us who are developing non-tribal projects, is that there is a large market that we all are selling into and the stronger the market, the more chance there is for success.

Senator TESTER. Okay. And you are working with the tribes in, well, just tell me. Which tribes are you working with to set up some wind development?

Mr. STRICKER. We are working with Colville. We have a study going on with Colville. We are negotiating an MOU with another tribe who I won't mention at this point.

Senator TESTER. That is fine.

Are these the first tribes you have been in contact with to develop wind?

Mr. STRICKER. No. We have actually spent considerable time working with tribes along the Missouri River in the Dakotas. We haven't signed agreements with them, but we have worked a long way down the path towards understanding their issues and they understand ours better as well.

Senator TESTER. If this bill was passed, would it expedite your ability to sign agreements to get your projects going?

Mr. STRICKER. Yes, it would. Absolutely, yes.

Senator TESTER. Okay. Last question. I will make it real quick, and there are some other ones.

But Ralph, you talked about weatherization. You said if it was Federal dollars, it would only be 20 houses, and with the State dollars combined with the Federal, you can do 100. Can you tell me why the money isn't flowing to the ground for weatherization?

Mr. ANDERSEN. Well, the money is flowing, I guess was my point.

Senator TESTER. Well, 20 is not many.

Mr. ANDERSEN. Well, that is strictly with Federal funds, but we are able to use a mix of State and Federal. And I think a lot of it has to do, Mr. Tester, with a number of things. One is income guidelines, because the cost of living is so high in Alaska that many households that are actually barely making it, that the household income would disqualify them from participating in the program.

I had a long discussion with the CEO for our Housing Authority before coming down here, and I asked him that question as well. There are a whole mix of problems that are involved in trying to increase the amount or use of Federal funds in Alaska. The number one, or probably one of the top issues that is involved is basically the income guidelines that might work in America, but don't work in Alaska.

Senator TESTER. Got you. Okay. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Andersen, I will go ahead and follow on to Senator Tester's comments because I think your testimony was very important to put into the record today.

I think it is difficult for people who have not been out to some of our villages, been out to rural Alaska and had an opportunity to appreciate the difficulties that are faced with just the day to day living and the expenses that are associated with being in a very remote area that is not accessible by road.

So much of what you receive out in your area in Bristol Bay comes to you by barge or it is flown in. People say, well, you have barges coming up and down your river all the time. Well, we don't. We have two barges that come in. Sometimes you only have one barge a year. And to any one of you sitting out there, I challenge you, plan your whole business for a year, your whole family food sources for a year. You are the village store. You have to think about what your community is going to need because you have one barge.

Hopefully, in the bigger communities, you are going to have access to two barges coming in a year. And otherwise, you are stuck flying in your fuel, which happens in too many of our villages because they misjudged. They are not able to pay for the fuel up front as is required.

When I have an opportunity to bring folks from the Lower 48 up and go out into the villages, we look at the water and sewer. We go into the schools, but we also go to the grocery store. We look at the price of a box of clothes detergent, Tide, and then you realize that you are paying close to $45 for a box of Tide. Go and price the diapers. Go and price milk, if you can find milk. In most of the villages, the smaller villages, you won't have fresh milk.

It is a fact of what we deal with, and your testimony this morning was very important in trying to convey some of the challenges that you face. People cannot understand how you could live in an area where 40 percent to 45 percent of your income is spent on meeting your basic energy needs, when in the rest of the Country you may be looking to, you say, four percent. In some parts, it may be as high as six, seven, eight percent. But we are talking close to 50 percent of your income. So it is very important that you place that into the record.

I wanted to ask you a question about the access to transmission and recognizing that we can do more with our energy efficiencies if we have the ability to intertie, to hook in with others. In some parts of the State, it is very difficult because of the geography, because of the distances that we deal with.

We are looking to some opportunities to tie in. I know up in the Naknek area we are hopeful that we are going to do better with the geothermal resource and then be able to tie in as many as 11 villages to rely on that.

From a Federal perspective, and I appreciate your role within AFN and your position as leadership on the Energy Committee there, what more can we be doing at the Federal level in partnering with the State to enhance and build out not only some of our renewable energy projects, but how we deal with the transmission side of it?

Mr. ANDERSEN. Thank you, Senator.

There are a number of ways that assistance can be provided. First, I want to explain to the Committee and to the people listening here that I grew up in a small village. The population is now 20. When I was a child, the population was 125 people, Clark's Point. I grew up without running water. I grew up without electricity. I grew up in very what are considered now primitive conditions. That was a way of life. And in some cases the way in some of our villages throughout rural Alaska, those conditions still exist.

How can we help or how can our Federal Government help to deal with transmission issues? Well, one of the things that the Bristol Bay Partnership did is we developed the Bristol Bay Energy Policy and Crisis Recovery Plan. We did this a year before a year before the big crunch hit us. We saw what was coming down the pike and the partners, my counterparts in the organizations agreed that the most we could do, the best we could do now at this point is figure out a way or try to find ways to deal with the most immediate problems, the most immediate problem being the price of electricity.

Our energy policy and plan focuses on developing interties. Like I mentioned in my testimony, there are some communities that are very closely situated where interties are a real natural. There are some where interties are now in place, such as Newhalen and Iliamna. There is an intertie at Naknek, South Naknek, and King Salmon. They are all intertied there.

There is more than one issue involved here, Senator, because there is a definite connection between certain activities. And a lot of our communities, my hometown of Clark's Point of 20 people, we don't have the capacity there to develop proposals to pursue fund-

ing agreements, to develop complicated and technical programs and plans and things like that.

One of the ways that we can use help on is really funding our Tribal Energy Programs, because each of the regions in Alaska, each of the rural areas in Alaska, this same need exists, except we don't have the capital or funding to cover costs for capacity-building, for plan development to pursue grants.

The transmission issue, again we lay out a number of scenarios in our recommendations in the Bristol Bay Energy Policy and Plan, but we don't have the capital to develop any of them, to put them in place.

In addition to that, there are multiple utility owners. I will give you an example. In Dillingham, we have a local resident who went and purchased wind generators for his own home. The problem is that the utility company was very reluctant to do any net metering so that he would be able to sell back the excess power so that he can lower his electric rates.

The same kind of issue is mirrored on a much larger scale up at Nome, the Bering Straits region, where the Bering Straits Regional Corporation installed an array of wind generators and spent a lot of time negotiating the net metering with Nome utilities.

So while there are some ways, again, that I believe we can use a lot of help on, but then the issues become more and more complicated as we try to develop some of those areas.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Udall?

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you, Chairman Dorgan.

And I first just want to thank you and your staff for all the hard work you have put into the Indian Energy Promotion and Parity Act of 2010. I think it is a very important piece of legislation.

And once again, and I know you serve on the Energy Committee also in the Senate. In order to put ourselves as a Country on a path to energy independence, it is very important to get the tribes to play a role in that.

And I would like to just put my opening statement in the record and proceed directly to questions.

The CHAIRMAN. Without objection.

Senator UDALL. Thank you.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

I first would like to thank Chairman Dorgan and his staff for the hard work they have put into the Indian Energy Promotion and Parity Act of 2010, and for holding today's hearing on this important piece of legislation. There has been an impressive amount of outreach to tribes on this piece of legislation—including hearings, letters, and roundtable discussions on draft legislation.

I would also like to thank all of the witnesses for joining us today, especially my good friend Joe Garcia from Ohkay Owingeh Pueblo in New Mexico. Joe is president of the All Indian Pueblo Council, and former president of the National Congress of American Indians. He has done much to benefit native communities across the country, and I applaud his work to promote energy development on tribal lands.

Approximately 5 percent of the nation's land base is tribal land that contains approximately 10 percent of the nation's energy resources. Development of these resources means jobs for native communities, electricity in rural areas, the national security that comes with domestic production, and a great potential for development and expansion into the renewable energy sector.

Native American Communities have long been hindered in energy development efforts by bureaucratic delays and complications, difficulty securing financing and tax credits, and a lack of access to the grid. Chairman Dorgan's bill that under consideration today addresses these longstanding problems.

In these times of economic difficulty and international turmoil, it is more important than ever to remove the longstanding roadblocks to energy development on tribal lands. I look forward to hearing testimony today and to working with my colleagues on this Committee to push this bill forward through the legislative process.

Senator UDALL. A question for my good friend Joe Garcia from New Mexico, from the Ohkay-Owingeh Pueblo. I don't quite know what to call him. He has been President of the NCAI. He has been Chairman. He has extensive experience and he has done such a good job of working with native communities across the Country, and I applaud his work in promoting energy development.

Everybody should also know he is a lead singer in a band. That is one of the best performances that shows up at many of the parades across New Mexico.

Chairman Garcia, we have a provision in our draft bill to direct more assistance from our national laboratories to Indian tribes in developing their energy resources. It is my understanding that New Mexico labs, Los Alamos and Sandia, are involved in this kind of outreach, but they only do it on an ad hoc basis and a limited basis.

Do you have any experience or knowledge of the labs' work in this area? And what could our national labs do to help develop tribal energy resources? Do you see a key role they could play there?

Mr. GARCIA. Thank you, Senator, for the introduction and acknowledgment. My opening statement also includes an invite to Chairman Dorgan, that when I first met him, we were going to get together and play some guitar and sing.

[Laughter.]

Mr. GARCIA. And maybe when you leave and your retirement party or whatever, we can do so. That would be nice.

The CHAIRMAN. Maybe on "American Idol."

[Laughter.]

The CHAIRMAN. It would be the only and first duet on "American Idol."

Senator UDALL. That would be a good combination.

Mr. GARCIA. Yes.

Well, first off, Senator, I think one of the issues that hinders progress in Indian Country is that there are these partnership opportunities with such places as the national laboratories, but it is not out in the plans, and they do do it ad hoc and only when tribes ask for assistance in a specific area.

And so I think in terms of energy development, that is why it is important for expertise coming from places like the Department of Energy, and the partnership between tribes and the Department of Energy means a lot more and makes more sense so that we can directly work on projects that directly work on the development of a long-term plan, not just a piece here and a piece there because that randomizes everything.

And I think, as you know, projects don't work well when you do it that way. And so a long-term effort would be to include the interactions and the partnerships of tribes directly with the Department of Energy, not just on weatherization, but on full scale development of energy.

What we also need to do is not look at just energy development in the community. That is a different level, a different scale versus the energy development in Indian Country for commercial purposes. I think the big hard thing right now is the transmission. There is not an easy way to get that energy that developed from tribal lands out onto the grid for transmission for internal use as a community or, in the bigger case, export. And as you see the stumbling blocks already off the bench that we can't sell it to the companies, although it is part of Federal law that the companies have to buy energy that is there available.

But the way to get it onto the grid was in my testimony that if the grid is not ready, then there is no way we are going to get the energy to distribution. And I think that is a lot of work that we need to do on the grid building and the improvement of the grid, but as well on the commercialization. A lot of the technology that the laboratories possess and the laboratories are not an expert in commercializing a lot of the new technology that they build.

So we have to partner up with the tribes in identifying what it is that we need to commercialize, and the tribes can be sort of the grounds by which we can do the development with both Sandia and the National Lab Los Alamos, but as well throughout the others in the Country like Argonne, Hanford and other places.

Senator UDALL. Thank you very much.

I know you make a very important point on transmission. Senator Murkowski said that. I know Chairman Dorgan feels that ways, too. In order to access on a commercial basis, we have to make sure when we do our transmission development we include Indian tribes.

So thank you for that. Thank you for being here.

Thank you, Chairman Dorgan.

The CHAIRMAN. Senator Udall, thank you very much as well.

Let me ask, if I might, Mr. Stricker you talked about the urgency of transmission. There is a great deal of potential for wind energy development on Indian reservations across the Country. In fact, many reservations are located where the sun shines a lot and the wind blows a lot. To collect energy from both of those sources is pretty easy to do these days with new technology, but to collect it and not be able to send it to a load center where it is needed is largely irrelevant.

So is it your impression that if we can address the transmission piece of this, we will have addressed the most important piece for Indian reservations?

Mr. STRICKER. I think so. As you just said, there is the wind resource itself, and the reservations in the Upper Midwest is one area. Some of the best wind in the Country, and in fact some of the best in the world exists on Indian reservations in this Country.

And so certainly the ability to get that power out to a market is fundamental. And I would say if you solve the transmission problem, you probably can treat the other problem, and the other prob-

lem is the market. You need to have a place to sell it. And in fact if could export from the Dakotas to Chicago, for instance, I think you are a long way to getting the power to a functional market.

However, as you go through the different layers of trying to plan strategic deliveries of wind projects, you start to realize that in Illinois they are also wanting to build wind, and so there is some resistance to imported wind from the Dakotas because they want economic development in-State. And so you start to have more State by State issues that have to be resolved along with transmission.

But I think that transmission is a fundamental and key piece that if there was let's say a substantial trunkline built from the Dakotas to Illinois, you would suddenly have companies buying, purchasers gravitating to that from the eastern side. You would have potentially tribal projects and perhaps other projects working together to get the transmission built.

So you have the opportunity to do some great development around a transmission solution that in fact would really move the ball significantly down the field.

The CHAIRMAN. Thank you.

Mr. Garcia, first of all, thanks for all of your work. It is a pleasure to work with you on these issues and has been for a long while.

You, in your testimony, described with interesting language, you say the impact of this awkward statutory and regulatory arrangement upon tribes is significant when you were talking about weatherization, the delivery of a substantial body of money to the States of $5 billion, with no assurance that the tribe was going to get the funding.

Give me your best assessment of the experience so far with respect to weatherization?

Mr. GARCIA. Thank you, Mr. Chairman.

I think it is a variety of levels of functionality, if you will. And certainly New Mexico is different than a lot of the other States because the tribal-State relationship in New Mexico is a lot better than, say, another State. And so we have a lot of partnerships within the State of New Mexico working with the local counties in terms of weatherization.

But if you sum it up in the bigger picture is that the funds actually do go to the State and it is almost at the mercy of the State that you have to apply for weatherization funds. And that ought not to be the case. And I think Alaska is a demonstration that if the relationship between the tribes and the villages and the State are not very good, then you are almost already hitting the wall from the word get-go and you don't get access to those funds. And it is the same with a lot of other programs, not just the Department of Energy funds. That has been the dilemma.

And I think if we overcome that, the way to overcome that is to provide direct funding to the tribes directly from the Department of Energy, but also to have working relationships with the Department versus having to go a roundabout way of getting to those funds.

That is the only efficient way that we can do it because you talk about the need, you talk about the priorities, you talk about what you can address with the current funding, and the dollars, you might say the middleman is out of the picture. And so you have

directly efficiency in the way you implement the funding to meet the needs of the people.

The CHAIRMAN. Let me also say, I should have at the start, that Senator Barrasso has recommended in a draft some improvements that I think are a fine addition to what we are trying to do here. I appreciate his work in those areas and they are also incorporated in the discussions today.

Mr. Box, I was looking at your testimony. You have, it is safe to say, mixed feelings about this legislation. Some parts of it you have concerns with, and I think it is helpful to us to understand your concerns.

You have a 700,000-acre reservation. Is that correct?

Mr. BOX. Yes.

The CHAIRMAN. Give us again a description of the energy that you produce. As Senator Barrasso said, you have been very successful.

Mr. BOX. The main energy that we produce is natural gas from the Northern San Juan Basin. Like most tribes, the area where we were situated didn't seem to be worth very much, but in fact it did hold that large resource. And that, in fact, is partly to our success is to have that resource.

The CHAIRMAN. Have you had difficulty in accessing it, permitting, anything of that sort?

Mr. BOX. Secretarial approval, signatures, mostly during the BIA modernization era, I like to call it, millions of dollars because of those delays. And so these are important in regards to approval processes.

The CHAIRMAN. Yes. I asked the question because of our experience with the Three Affiliated Tribes in North Dakota. The most significant oil play in America is occurring there now. It is called the Bakken Shale.

Mr. BOX. Yes.

The CHAIRMAN. It is the largest assessed amount of recoverable oil using today's technology that has ever been assessed in the Lower 48 States, up to 4.3 barrels recoverable.

What our experience was is that the Bakken extends throughout the Three Affiliated Tribes Reservation land and that there was substantial oil development north of the reservation; substantial development west of the reservation; a lot of development south of the reservation; and virtually none, virtually no wells being dug on the reservation, or drilled, I should say.

And what we discovered was the Interior Department had four separate agencies that had to weigh in on a drilling permit request and there was, I believe, a 49-step process. Well, it was just like walking through thick glue to get through it and most of the development by oil developers, independents, they said: You know what? We will just go north and west and south. We don't need to put up with all of this. On State-owned land, you get a permit like that. On private-owned land, just like that. And if you decide you want to drill a well on the reservation, you are going to be waiting forever.

So we put together a virtual one stop shop. It is not perfect, but I am proud to tell you I think we have 37 producing wells right now on the reservation. And I think, and I may be wrong, but

about 17 drilling rigs that are drilling a new well every 30 days. So there is a lot of activity going on just because we unlocked the bureaucratic glue that existed that prevented full access and development.

That is why I asked you the question of what your experience had been.

Mr. BOX. If I may as well, I understand the question, too, in regard to the one stop shop. But along with secretarial delays and those of our agencies signatures that need to be taken care of, it is also the NEPA compliance. And that is an important part of all of this.

It is not that we are totally against a one stop shop. What we are concerned about is that agencies' expertise that exist in these agencies that are necessary to handle approval processes exist and oftentimes aren't very far from each other. And now it is going down further into other areas, and we are not sure that that expertise will carry on.

That is not all where we are concerned. It is just that it is a great idea. We just want to be ensured that expertise will also be included at those levels.

The CHAIRMAN. Yes, I understand your point. There are a lot of good ideas that don't quite work out because they are not implemented the right way. I take your point.

I do think in this case the ability to streamline, if in fact when it is implemented is indeed streamlining, is very important to unlock the full opportunity of energy development on Indian lands.

Mr. Marchand, you made a point about one of the recommendations of the Vice Chairman, which I strongly support, and that is the funding for the consolidation of fractionated lands. It has been my impression that fractionation is also an impediment to development in many cases.

Can you describe that impediment?

Mr. MARCHAND. One example might be where a casino is located. We have a casino located on an allotment called MA–8, and there is about 60 landowners on the property. In that property are also subleases to the master lease, and it has been property that has been under development long before there were casinos. It is on a tourist-based lake and there is some leases for an RV park, for example.

And then trying to re-plan the area and redevelop it to take advantage of a casino and resort development, we have had to deal with these master leases and different groups. It has just been a nightmare to kind of keep this all coordinated. We have spent a lot of money on litigation. We were in court, and nobody really wants to be there, but that is where we are at on this particular piece.

And that is kind of how, you know, for top of the line development for the Colville has been, but it is just a real difficult problem everywhere you go.

The CHAIRMAN. Let me just say Mr. Garcia needs to leave for the airport, so we will excuse you. Thank you for being with us, Joe. Thanks for all of your work. You have been a great friend to this committee and to Indian people all across the Country.

Mr. GARCIA. Thank you for the opportunity. We need to discuss one other item, but I think we can do that over the phone. It has to do with storage of energy that is developed.

The CHAIRMAN. All right. We will plan to do that.

Mr. GARCIA. Thank you.

The CHAIRMAN. Sorry for interrupting you, Mr. Marchand.

But I think your description, the point you have raised is probably a pretty apt description of the problem of fractionation. And it seems to me that we ought to, as the Vice Chairman says, we ought to try to more aggressively address that because if that impedes development, full development of the energy potential, it means we are losing jobs, losing revenue opportunities in areas of the Country that most desperately need the revenue.

This is important to me, and I know to Senator Barrasso as well, for a very important reason. Number one, our Country needs additional energy. We need additional production here of all kinds of energy to make us less dependent on foreign oil and to make us more energy secure.

But even as we look at that, when we understand that a substantial portion of energy is available to be produced on Indian lands, and that is where we most need economic development and the creation of new jobs and new income streams, it just seems to us there is an urgency to connect the two.

And so what we are trying to do with legislation is to remove impediments and to create incentives, both.

Now, some of these issues are much, much bigger than just one hearing of this Committee. For example, building an interstate highway of transmission capability that is modern, that will deliver energy from where you can produce it to the load centers where it is needed to be used, that all sounds good. I can say that in one sentence. But it is the case that it is very, very hard to do.

We have produced 11,000 miles of natural gas pipeline in the last nine years in this Country, 11,000 miles. We have produced 660 miles of high voltage interstate transmission lines. Why? Can't do it. It is very hard. You have more jurisdictions out there who can say no and do and will than you can count.

And so we have a lot of work to do to put together a national plan. And by the way, this is an advertisement just a bit. The Energy Committee bill that we reported out included a lot of work I and many others did, that sets up a planning process, a siting process and a pricing process. You have to do all three, planning, siting and pricing, in order to build new transmission.

And we set that up, and we involved everybody in the local planning, but we also, and I strongly pushed this, we also have backstop authority for proceeding with FERC. Ultimately, if you can't get it done, you have to have backstop authority for somebody to say here's what America is going to do. Because our transmission system is largely created around what used to exist: a big power plant and then a bunch of wires in a circle around the power plant that extends out 50 miles or 100 miles or whatever it is.

And so that is the kind of transmission that was built in this Country. And then what we did is we put some patches like you put a patch on an inner tube between a couple of our little spider webs of wires in order to see if we could connect the systems. But

that is not the same as having an interstate highway system of modern transmission capability.

So I am determined to try to make that happen, which will unlock substantial amounts of opportunity to produce electricity on Indian lands all across the Country. These are, in many cases, some more remote areas that really need the opportunity to tie into a modern transmission grid system.

So let me thank all of you for contributing to this. And let me also say that we are going to keep the record open for two weeks. We would invite you, your tribes or others interested in this to submit comments for the official record on what you see as the merit and value of both the discussion draft we put out earlier, as well as the discussion draft and points that Senator Barrasso included in this hearing. And I think that will give us the basis and the capability on which to move forward.

Let me thank all of you, and again my apologies for being a bit tardy today, but this is a very important hearing for this Committee.

The Committee is adjourned.

[Whereupon, at 3:49 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. DAVID WU, U.S. REPRESENTATIVE FROM OREGON

Mr. Chairman, I thank the committee for convening this hearing to discuss your legislation on tribal energy and for inviting me to offer comments. I especially appreciate that the committee held a listening session Portland, Oregon, last October, which gave my community the chance to highlight itself as a leader in renewable energy.

As the United States continues to diversify our energy portfolio and address climate change, there is tremendous opportunity for tribes to not only be part of our national efforts, but help lead the way.

Tribes have made the Pacific Northwest home for countless generations and are actively participating in the national discussion on the future of our energy policy and the appropriate, responsible development of our resources. Given the established natural resources we have in the Pacific Northwest, energy development provides tribes in the region with tremendous opportunity to further tribal and national sustainability goals. Moreover, renewable energy presents tribes with economic and educational opportunities, including job creation and workforce training.

The tribes in Oregon and the Pacific Northwest seek to be leaders in Indian Country in developing renewable energy sources such as wind, solar, wave, biomass, and geothermal technologies. Because of the government-to-government relationship between Indian tribes and the United States, and because of the leadership that northwest tribes have demonstrated in this area, over the past year I've convened a series of tribal energy roundtables. The roundtables focused on learning more about the opportunities and challenges that exist for tribes to develop renewable energy sources and implement energy efficiency measures.

During those meetings, I heard that while there is great potential for tribal energy, there are still issues that need to be addressed. I believe any tribal energy bill should promote the appropriate and responsible development of energy generation, provide incentives for energy efficiency and conservation, and ensure that tribes are able to actively participate in national efforts to achieve energy independence and fight global climate change.

Issues for Pacific Northwest Tribes

Finance

At the roundtables I've hosted, tribes repeatedly raised concerns about their lack of access to capital and further noted that this is not only due to the current credit crisis, but has been an ongoing concern. Numerous tribal projects go undeveloped because the funding is not available or the margins are too slim. Any legislative proposal should seek to provide federal funding opportunities for resource development and establish private-sector incentives to reduce barriers to financing. There are several policy options that could potentially mitigate this challenge:

- Because the current payment in lieu of a tax credit for renewable energy projects does not apply to Indian tribes, they haven't been able to take advantage of this incentive. If tribes were able to monetize the tax credit and market it to entities with a tax liability, they could benefit from the incentive while maintaining sole ownership of the project.

- Biomass is an energy source currently being considered by several tribes in the Pacific Northwest. However, biomass currently gets only half of the tax credit made available to other renewable energy sources such as wind and solar. If biomass were defined as "renewable," tribes would be better able to use renewable energy tax credit incentives.

- Currently, tribal governments are not fully able to issue tax-exempt governmental bonds, such as those issued by state governments. If the Internal Revenue Code were clarified to provide for equal treatment with respect to bonding authority, tribes would be better able to fund renewable energy projects.

Transmission

Another challenge that faces tribes in the Northwest is the need for greater access to transmission. The Bonneville Power Administration and other utilities are currently expanding regional transmission infrastructure, providing an opportunity to use the Northwest as a test bed to bring energy online in innovative ways. Building the infrastructure to bring new renewable energy sources online will be a challenge that extends beyond tribes to regional, state, and federal agencies. As we build out new transmission capabilities and smart grid technologies, the Bonneville Power Administration, Western Area Power Administration, and other utilities should consult and coordinate with tribes on the purchase of renewable energy and strategic transmission siting.

Efficiency and Conservation

Tribes can also meet their challenges by using diverse, complementary energy sources. For example, biomass production can help balance the variability of wind energy being brought onto the grid. Additionally, tribes can implement energy efficiency measures to

reduce energy demand. The Burns-Paiute Tribe, for example, now uses energy-efficient products throughout its tribal housing projects. Similar efforts by other tribes will further reduce demand and have a profound impact on our overall energy consumption. Thus, any tribal energy legislation should include support for energy efficiency measures and ensure that relevant agencies (i.e., HUD, DoE, DoI) coordinate to properly administer programs that meet this goal.

Senate Committee on Indian Affairs Indian Energy Promotion and Parity Act

I commend your committee for putting forward this valuable piece of legislation. As America continues to emphasize investment in renewable energy projects, job training, and research and development, we need to think about how to appropriately involve tribal communities.

In the previous section of my comments, I highlighted to some issues of particular concern to tribes in the Pacific Northwest. In specific regards to the Indian Energy Promotion and Parity Act, I'd like to highlight some of the proposals that I support.

I support streamlining federal assistance for Indian energy development by expanding regional energy development offices to support demonstration projects in a one-stop shop format. As described in your bill, these offices are intended to streamline processing and build staff and expertise within Indian Country. This investment in the community also will provide for employment opportunities, which are sorely needed.

I further believe this legislation should establish specific criteria for selecting the location of those projects. Ideally, criteria would include: 1) the ability to coordinate with other government agencies to address specific issues, such as transmission and renewable energy, 2) the ability to collaborate with institutions of higher education on research and workforce training, and 3) a demonstrated interest among tribes in the region to implement renewable energy and energy efficiency projects.

I applaud the legislation's focus on supporting strategic long-range planning for tribal energy development. Your commitment to helping tribes establish long-term, resource-wide energy plans will help tribes be better able to take advantage of emerging opportunities and adapt to the changing nature of renewable energy development and innovative technologies. Inventory mechanisms like the one proposed here help communities realize what is in their potential for development and establish priorities that are both economically feasible and beneficial to the community. The expansion of the Indian Energy Education Planning and Management Assistance Program to include "intertribal organizations" as eligible organizations will allow a single organization to help lead coordinated efforts of a region in order to use limited funding in a more efficient manner.

I believe that while the expansion of the Department of Energy's loan guarantee is vitally important, I also think that provisions like Sec. 301—Transfer by Indian Tribes of Credit for Electricity Produced from Renewable Energy, are creative solutions to the problem.

This type of arrangement has been used extensively in Oregon to support renewable energy and efficiency investment as the Business Energy Tax Credit. I have introduced a bill targeted at buildings, H.R. 3659, in order to broaden the use of this arrangement.

While federal support for tribal energy development is certainly important, I also believe a legislative proposal should include provisions that promote or enhance private-sector investments. Such incentives could include tax provisions that allow a tribe to pass their tax credit benefit to private companies or a mechanism that promotes investment in tribal energy by private financiers such as venture capitalists. Ensuring that tribes have access to private capital will help stimulate renewable energy development in Indian country.

Weatherization of existing infrastructure and other energy efficiency measures that reduce energy demand are some of the easiest and most productive ways to increase our overall energy supply, and to create jobs. I applaud your streamlining of the funding mechanisms; it is imperative that tribes have access to the same weatherization and energy efficiency funds that states do and are not required to receive funding through state programs.

I would also like to mention my support for Sec. 208—Tribal Forest Assets Protection. In the Energy Security and Independence Act of 2007, I had authored a provision, Sec. 234—University Based Research and Development Grant Program, aimed at funding research at universities that are researching renewable energy technologies in conjunction with rural and economically depressed tribes. Your provision is the next step and would help tribes secure resources for sustainable sources of energy and good-paying jobs.

Closing

Again, thank you for allowing me to provide comments to the committee. It is my hope that this hearing will provide helpful suggestions as the legislative process moves forward. Northwest tribes have made substantial efforts to grow their renewable energy capacity, and it is our job in Congress to provide the tools and framework that will help them succeed. By joining efforts with those who have already engaged in energy investments, we can support tribal plans to develop energy resources and become full partners in the implementation of our national energy policy.

I look forward to being an ally of this effort in the House of Representatives.

PREPARED STATEMENT OF THE BLACKFEET TRIBE

The Blackfeet Tribe is pleased to submit the following comments on the draft "Indian Energy Promotion and Parity Act of 2010". This draft was the subject of a hearing before the Senate Indian Affairs Committee on April 22, 2010.

The Blackfeet Tribe would first like to extend its thanks to the Senate Indian Affairs Committee and its staff for the hard work that has gone into the draft bill. We commend the Committee on its leadership in these important matters.

The Blackfeet Reservation consists of over 1.5 million acres of land. Oil and gas activity has occurred on the reservation since the 1930s. The Tribe also has significant potential for wind energy and hydropower development, and also has significant timber reserves. The Tribe therefore has a great interest in the draft bill and its potential for removing the obstacles and disincentives to tribal energy development that has been created by current laws. Our specific comments are set out below.

Title I—Energy Planning

Section 101—Indian Energy Development Office

As a general matter, the Blackfeet Tribe supports much greater coordination among the various federal agencies in the development of Indian energy resources. We have supported the idea of one-stop offices, and we do support the designation of a person within a Regional Office to coordinate and insure the timely processing of Indian energy material. However, we are concerned that the establishment of only three such Indian Energy Development Offices throughout Indian country will make the process more difficult, not less difficult for the Tribe. Unless such an office is established nearby, we would be concerned that the Tribe will have less access to the relevant agencies.

We believe that the issues of how to best coordinate the activities of the various federal agencies may need some additional consideration given the varying circumstances among the tribes as to location, size and significance of resources, and the particular expertise of officials within the various agencies.

Section 102—Indian Energy Program Integration Demonstration Projects

We are not clear what Indian energy issue or problem this section is intended to address. The section appears to establish a very complicated process, but the benefits of the process for Indian energy development are not entirely apparent. We do support a process by which regulations can be waived where appropriate.

Section 103—Pre-Development Feasibility Activities

The Blackfeet Tribe fully supports this section which allows for certain activities to be carried out without Secretarial approval to determine the feasibility of, or in preparation, for development of a renewable energy project, including the construction of temporary facilities. This provision will greatly facilitate the decision making process on tribal energy projects.

Section 104—Comprehensive Energy Resource Planning

The Blackfeet Tribe strongly believes that the manner in which the National Environmental Policy Act (NEPA) is applied to Indian lands needs full review and reconsideration. While the development of programmatic documents under NEPA is helpful to streamline the NEPA process as applied to tribal energy development, as this section provides, it does not get at the heart of the problem—that Indian lands are not public lands and should not be treated as if they are. While the federal government is required to protect the public interest in development that occurs on public lands, there is no similar public interest in the development that occurs on Indian lands. Such development is strictly a matter for tribes, in their sovereign capacities, to determine. The NEPA process puts tribes at a very significant disadvantage in terms of time and cost compared to development on private lands where NEPA does not apply. This larger issue is what needs to be addressed.

It is also not clear how this section is intended to work with or coordinate with the TERA process. A comprehensive energy resource plan is itself subject to NEPA and appears to require a more significant public process than might be required under a TERA.

Section 106—Appraisals

The Tribe supports this section which allows for alternatives for the conduct of appraisals, including tribal appraisals through 638 contracts or other arrangements and third party appraisers. Appraisals are required in order to obtain federal approval for a variety of activities, and this section will allow alternatives that will facilitate such approvals, given the significant delays in BIA appraisals. This provision will also allow for alternatives in conducting appraisals where BIA does not necessarily have the necessary expertise.

Section 108—Preference for Hydroelectric Preliminary Permits

The Tribe strongly supports this provision which provides a preference for tribes in the issuance of preliminary permits for hydroelectric development under the Federal Power Act in the same manner as States and municipalities currently have preference. At the present time, states and municipal governments have preference to develop tribal water resources for hydro purposes on reservations, but the Tribe, itself, has no similar preference. We agree that situation needs to be remedied, and this provision is long overdue.

Section 109—Study on Inclusion of Indian Tribes in National and Regional Electrical Infrastructure Planning

The Blackfeet Tribe has significant potential for development of both wind power and hydropower. However the feasibility of such projects is greatly impacted by the

lack of transmission facilities. Therefore, the Tribe fully supports this section which will identify alternatives to address the lack of access to critical transmission facilities.

The Blackfeet Tribe also supports Section 105 (Department of Energy Indian Energy Education and Planning Management Assistance) and Section 107 (Technical Assistance and National Laboratories of the Department of Energy).

Title II—Energy Development and Energy Efficiency

Section 201—Lease and Rights of Way on Indian Lands

The Tribe supports this section which allows for approval of all necessary rights of way as part of a lease. In general, the Tribe also supports the increase of lease terms and rights of way to 99 years which will allow tribes more flexibility in entering into lease arrangements.

Section 202—Application for Permit to Drill Fees Not Application

The Tribe fully supports this provision which will significantly level the field in tribal development.

Section 204—Environmental Review

The Tribe fully supports this section which allows tribes to conduct environmental reviews associated with Department of Energy projects. Again, however, the Tribe believes that the more fundamental issue of whether and how NEPA will apply on Indian lands must be addressed.

The Tribe also supports the other sections of this Title, including Distributed Energy and Community Transmission Demonstration Projects, Department of Energy Loan Guarantee Program, Inclusion of Tribes in State Energy Conservation Plan Program, Home Weatherization Assistance, and Tribal Forest Assets Protection.

Title III—Energy Financing

Tribes have been unable to take advantage of tax credits and other accounting provisions in the law that are intended to encourage energy development. The Blackfeet Tribe therefore fully supports the provisions in Title III that will allow tribes to benefit from these tax credits and accounting provisions. Without such benefits, Indian energy development in some cases may not otherwise be feasible.

Title IV—Amendment to Indian Energy Policy Laws

The Blackfeet Tribe further supports the proposed amendments to Indian energy policies.

Again, we appreciate the opportunity to comment on the draft Indian Energy Promotion and Parity Act of 2010, and thank the committee for making these important issues a priority within the Committee.

PREPARED STATEMENT OF CURTIS R. CESSPOOCH, CHAIRMAN, UTE INDIAN TRIBE BUSINESS COMMITTEE, UINTAH AND OURAY RESERVATION

INTRODUCTION

My name is Curtis R. Cesspooch, and I am the Business Committee Chairman of the Ute Indian Tribe of the Uintah and Ouray Reservation ("Reservation") located in northeastern Utah, and I appreciate the opportunity to present to the Senate Committee on Indian Affairs the Ute Indian Tribe's support of the "Indian Energy Promotion and Parity Act of 2009," Discussion Draft (Draft) legislation designed to promote and streamline Indian energy development and enhance programs to support the development and efficiency of tribal energy projects.

Before commenting on the Draft, I want to thank Senator Dorgan for his long service to the nation and his leadership as Chairman of this Committee which, most recently, resulted in the permanent reauthorization of the *Indian Health Care Improvement Act.*

The Committee should be commended for its commitment to identifying the challenges and comparative disadvantages Indian tribes encounter as we develop our renewable and non-renewable energy resources. As this Committee has long recognized, with unemployment in tribal communities hovering near 40%, it is very important to develop policies that foster

economic growth and job creation. For many Indian tribes, energy resource development can hold the key to achieving Indian self-determination and economic self sufficiency.

As you are aware, Indian tribes own a substantial amount of untapped energy resources. Energy production from tribal lands equals ten percent of the total federal onshore production of energy minerals.[1] Indian-owned energy resources are still largely undeveloped: 1.81 million acres are being explored or in production, but about 15 million more acres of energy resources are undeveloped.[2]

There are over 90 tribes that own significant energy resources – both non- renewable and renewable in this country, and it is the goal of all of these tribes to fully develop these resources. Unfortunately, these tribes have quite often not been able to fully realize this goal, and a substantial amount of these energy resources has not been developed because of bureaucratic red tape, physical access limits to pipelines, transmission grids and the financial capital that would allow tribes to be equal partners in the development of their natural resources.

Given the disparate impact these issues have had on reservation economies, the Ute Indian Tribe is encouraged to see that Congress has made it a priority to assist tribes in the development of their energy resources, and I feel that this is a necessary role and function of Congress under principles of self-determination and tribal sovereignty. Notwithstanding Congress's efforts, many obstacles remain that limit or prevent the full realization of this policy.

BACKGROUND OF THE UTE INDIAN TRIBE

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[1] Tribal Energy Self Sufficiency Act and Native American Energy and Self Determination Act: Hearing on S. 424 and S. 522 Before the S. Comm. On Indian Affairs, 108 Cong. App. at 93 (2003) (Statement of Theresa Rosier, Counselor to the Assistant Secretary-Indian Affairs, U.S. Dep't of the Interior).

[2] *See id.* (Statement of Sen. Ben Nighthorse Campbell, Chairman, S. Comm. on Indian Affairs).

The Ute Indian Tribe (Tribe) has 3,157 tribal members living on one of the largest Indian reservations in the United States with more than 4.5 million acres. The Tribe consists of three Ute Bands; the Uintah, the Whiteriver and the Uncompahgre Band. The Business Committee, has six members, two representatives from each of the three Bands --- each of whom serves a four year term. With great sadness, we report that we lost one member of the Council, Uncompahgre Representative Steven B. Cesspooch, due to health reasons. There is an election every two years for three of the six members of the Committee.

The Tribe's mineral estate is comprised of a fractionated, checkerboard system of ownership which makes the regulation and development of the Tribe's natural resources much more difficult, containing Ute Indian Tribe, Ute Indian Allotted, Ute Distribution Corporation Jointly Managed Indian Trust minerals, along with privately owned fee and federal minerals. Indian Trust lands comprise approximately 1.2 million surface acres, and 400,000 mineral acres within the 4.5 million acre reservation boundary. This lack of unity between the mineral and surface estates is an ongoing challenge for the Tribe in developing its mineral resources.

The tribal government is an effective provider of services, managing 60 separate tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The primary source of revenue for these tribal departments and agencies is revenue derived from oil and gas development, making the need to economically extract oil and gas resources on the reservation in an efficient manner of critical importance to the Tribe and its membership.

As settlers migrated west and began to populate the Ute Indian Tribe's aboriginal areas, the Federal government created the Uintah Valley Reservation in 1861 and removed the Ute

Indian bands from their homelands in Colorado to what were thought to be barren lands in the Uintah Basin. But Oil was discovered in the Basin and within the Reservation.

The early production of oil and gas on the Reservation began in the late 1940's, and further development increased in the 1960's, with increased expansion taking place in the 1970's, 1980's and again today. A significant amount of conventional oil and gas deposits have been explored and developed, with multiple oil and gas operating companies are proposing to continue development of oil and natural gas resources across the Reservation over the next 15 years.

Oil and gas development is important to the Tribe for many reasons, not least of which is because the State of Utah completely prohibits gaming of any kind, and tribes in Utah do not have the gaming-as-development option. As a result, the Tribe's primary source of income is from oil and gas.

The measured economic success of the Tribe has been directly attributable to the development of the Tribe's oil and gas resources. The Tribe has approximately 2,500 wells that include 300 gas wells. Ute tribal lands produce an average of 1,000 barrels of oil per day and we are in the process of opening up an additional 150,000 acres of mineral leases on the reservation with an $80 million investment dedicated to exploration. In June 2008, the Tribe teamed with the Anadarko Petroleum Corporation to jointly own a new gas processing and delivery hub in the Uintah Basin. With these developments, the Tribe clearly represents the most representative example of how a Tribe has been able to use energy development to lift itself out of poverty and improve the lives and well-being of its members through the revenues generated from such development. In a recent review of the Tribe's financial audits from 2000-2008, it was revealed

that the Tribe's total income had increased by as much as 45% per year as a direct result of increased oil and gas development on the reservation.

This added revenue helps fund many tribal governmental programs that are of vital importance to the Tribe's membership, such as the Tribe's Painted Horse Diabetes Program, which provides education, information and activities relating to diabetes and diabetes prevention to the members of the Tribe.

Using revenues from energy development, the Tribe has become a major employer and engine for economic growth in northeastern Utah with a diverse array of tribal businesses including a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water Services LLC, and Ute Energy LLC, an oil and gas development company. Our governmental programs and tribal enterprises employ 450 people, 75% of whom are tribal members. In addition, each year the Tribe generates tens of millions of dollars in economic activity to surrounding towns and communities.

However, this economic growth has been curtailed by problems inherent in the existing regulatory system, problems that would be addressed and resolved by the "Indian Energy Promotion and Parity Act of 2009." The Tribe has the benefit of having significant natural resources that provide revenues to fund vital tribal government programs, but which also facilitate economic development on the reservation. The tribal government, by and through its Energy & Minerals Department, evaluates oil and gas development potential on the Reservation and secures agreements with oil and gas operating companies which allow for the Tribe to develop its resources. However, development of oil and gas is limited by existing regulatory obstacles and other associated problems that serve to limit energy development on the reservation. These obstacles stand in the way of allowing the Tribe to achieve the level of

governmental efficiency and effectiveness necessary to allow the Tribe to fully benefit economically from its resources.

With the regulatory changes provided in the Draft, such as the creation of additional "one-stop shops" to expedite the processing of energy-related documents, many of these obstacles will be eliminated, and the Tribe will no longer be deprived of the full-benefit that could potentially be realized from the complete development of its natural resources.

The Tribe's ability to successfully carry out essential governmental activities and functions is directly and adversely affected whenever the Tribe's access to energy related revenue sources, such as severance taxes is limited or curtailed by these types of regulatory obstacles. This year for instance, the Tribe's Energy & Minerals Department budget was cut-back by over $1 million dollars because the Tribe's oil and gas severance taxes were reduced as a result of limited production of oil and gas resources. Because these sources of revenue are so critical to tribal government, the provisions of the Draft that encourage Tribes to maximize the value of revenue generated from energy resources will also directly enhance and improve existing governmental and business structures, allowing the Tribe to achieve much greater levels of economic development on the reservation.

The enhancement of the tribal government's capacity to carry out these key government functions will enable the Tribe to achieve greater degrees of economic development and, in doing so, will strengthen the Tribe's sovereignty and improve the well-being of the Tribe's members.

The "Indian Energy Promotion and Parity Act of 2009"

The Draft proposed by the Committee proposes broad categories of reforms in Indian energy planning; energy development and efficiency; and energy project financing. At the

outset, I urge the Committee to carefully review the use and context of terms of art such as "Indian tribe," "Indian land," "tribal land," and others because they are not interchangeable and, depending on the statute referred to, can have different meanings.

The proposed "Indian Energy Development Offices" (Section 101) will help ensure the timely processing of important energy-related documents such as permits, leases, licenses and others which can cause development opportunities to be lost to Indian tribes. But does this add another layer of management? Will there be sufficient funding for these offices? In which BIA Region will the offices be within? Will there be two offices within one area?

Likewise, another valuable tool in disciplining federal programs and activities is the proposed "Indian Energy Program Integration Demonstration Projects" (Section 102). The fact is that federal energy program assistance for Indian tribes is scattered across the federal spectrum and each agency has its own rules for accessing that assistance. Authorizing tribes to reach across the federal spectrum and integrate the assistance in a single plan will be enormously helpful.

The proposed "Comprehensive Energy Planning" program envisioned in Section 104 can be helpful to those tribes that may have a number of energy projects planned and need to review their project development and project management plans. As proposed in the Draft Act, this planning --- in the form of "Indian Energy Resource Management Plans" --- can be expensive, will require the review and approval of the Secretary of Interior, and will be subject to the National Environmental Policy Act ("NEPA").

Because of these three factors, I urge the Committee to amend Section 104 to provide that once an Indian tribe has an approved Indian Energy Resource Management Plan, any leases,

business agreements, or rights-of-way entered into pursuant to the Plan require neither secretarial approval nor review under the NEPA.

Just as the "Indian Energy Development Offices" would seek to expedite federal reviews and processing energy-related documents, the proposed reforms to the appraisal process (Section 106) are very important. Many Indian tribes have the internal capacity to conduct such appraisals themselves and where that is not the case, can certainly contract with certified third-party appraisers. At the end of the day, and no matter who conducts the appraisals, the Secretary will insist on a second, time consuming layer of review as the Department has concluded that such review is an "inherently Federal function," incapable of being performed by any other entity.

The proposed reforms to the various Indian land leasing statute (Section 201) are welcome and will help tribes attract outside business partners and encourage long-term investment streams for purposes of energy development. Current laws set artificial and uneconomic term limits on leases of Indian land and often serve to discourage energy and other forms of development on Indian lands.

I would call the Committee's attention to the language of section 201(b) (2) (B), under which allotted Indian land could be leased for energy purposes, including a "necessary and reasonable" right-of-way over tribal land, without the consent of the applicable Indian tribe. I urge the Committee to revisit this language because eliminating tribal consent over the uses of tribal land is an unnecessary encroachment on the sovereign powers of tribes and is not something that should be endorsed, especially by this Committee. Although a tribe may consider a 99 year lease, I feel that this is not in the best economical interest of a tribe.

As a major oil and gas resource producing Tribe, the Ute Indian Tribe and its private energy partners are being unduly burdened with the fees assessed for Applications for Permits to Drill ("APDs") on federal and tribal lands first authorized in the FY2008 Interior Appropriations Act. In addition to the many other disincentives that face would-be energy producers on Indian land, levying $6,500 for each new APD is not a positive development and results in much foregone exploration and development on federal lands and certainly on tribal lands. The Tribe strongly supports the elimination of these fees as proposed by Section 202. The APD fee has been driving development away from tribal lands in favor of state and private lands with vastly lower associated fees. Instead, the Tribe supports a reasonable assessment, up to an amount of $3,500 per APD, on tribal and trust lands for funding to BIA and the Tribe to provide the necessary additional personnel to accomplish efficiently the review and approval of APD's so that their approval can be accomplished in accordance with the needs of the oil and gas producers and as necessary to protect the interest of the Tribal mineral owner,.

The "Environmental Review" process (Section 204) authorizes the Secretary to delegate to Indian tribes the Secretary's responsibilities under the NEPA.

The Tribe supports this section, as the Tribe is a prime candidate for self-regulation under NEPA. Currently, the Tribe has undertaken the funding of a reservation wide Environmental Impact Statement (EIS) under NEPA to address the environmental impacts of oil and gas development on the natural resources and the health and welfare of the Reservation and its residents. The Reservation-wide EIS will provide the Tribe with a management framework for administering future oil and gas development by ensuring long-term sustainability in the development of the Tribe's resources and by identifying sound and effective mitigation measures to be used in such development. Therefore it would be foolish for the Tribe not to support such

an opportunity to ensure the safety of the Reservation and to protect the health of our tribal membership so that we may continue to live in harmony with the land as we develop the resources of our Reservation.

The importance of supporting tribal self-regulation is exemplified in the ongoing litigation between one of Questar Corporation's affiliate companies, Questar Gas Management ("QGM") and the United States, in which the Tribe has recently intervened. *U.S. v. Questar Gas Management Co.*, No. 2:08-CV-00167, U.S. District Court for the District of Utah. QGM is attempting to avoid compliance with the Clean Air Act ("CAA"), 42 U.S.C. § 7601 *et seq.* by, among other things, attempting to argue that the Environmental Protection Agency does not have regulatory authority over QGM because its offending compressor stations are located on a portion of the Reservation—the Uncompahgre Reservation—that has been disestablished or diminished; that is, QGM is seeking to legitimize its violation of federal law at the expense of the Tribe by seeking a judicial ruling that a large portion of the Tribe's Reservation no longer exists.

The issue of "minor source" permitting underlying the *Questar* case is one of the most pressing issues involved in energy development in Indian Country today, yet the Draft proposed by the Committee includes no provision that attempts to address or resolve this issue. Because the Environmental Protection Agency ("EPA") has no Minor Source Permitting Program within Indian Country, gas compressor stations and other facilities related to energy development that would normally qualify as a "minor source" under state law are subject to much costlier and more stringent regulations, as all minor emitting sources must be treated and regulated as "major sources" for purpose of air emission regulation. This results in regulatory scheme that is not only fundamentally unfair and inequitable, but which detracts from future energy development in

Indian Country, where operators would prefer to locate their energy production facilities on state lands, where such facilities are regulated as "minor source" emitters not major source emitters.

In the *Questar* case, Questar has argued that its compressor stations are not subject to EPA regulation to avoid the consequences of federal "major source" regulation, and has sought to challenge Federal and Tribal jurisdiction because the cost of the controls necessary to comply with major source permitting are prohibitively expensive. I strongly urge this Committee to include a provision in the Draft that would require EPA to finalize and enact a minor source permitting rule within six months of the date of enactment of the Draft legislation. This would encourage additional energy production on Tribal Reservations by essentially leveling the playing field for energy development, instituting a comparable system of environmental regulation under federal law that is equal to state environmental regulatory systems. In addition to allowing for more efficient and productive environmental regulation of the air shed in Indian Country, the implementation of a "minor source" rule would have the added benefit of dissuading would-be polluters such as Questar from engaging in a race to the bottom by altering their operations and challenging Federal and Tribal jurisdiction in an effort to avoid the more costly and arbitrary "major source" requirements that exist under Federal environmental regulations today.

Making Indian tribes eligible for the Department of Energy's state conservation and weatherization programs is also an important and equitable proposal and is supported by the Tribe. The Ute Indian Tribe also supports the inclusion of the following provisions in the Draft Act that enhance economic development in Indian Country:

1. To make permanent the "Indian Wage and Health Care Credit" and the "Accelerated Depreciation Allowance" that were first enacted in 1993 for a ten-year period.

2. The Indian employment credit which provides a wage and health care credit to potential employers.

3. Production tax credits which allow for Tribes to both obtain tax credits for projects on Indian lands and to market these credits to non-Indian partners in energy development projects.

BIA ONE STOP SHOPS

The Tribe supports the provisions of the Draft which propose to establish "one-stop shops" in Regional and Agency offices of the Bureau of Indian Affairs ("BIA"), each with additional resources to expedite permitting, provide technical assistance, and enhance tribal development and management of resources by coordinating among the BIA, the Bureau of Land Management ("BLM"), the U.S. Fish and Wildlife Service, and other federal agencies.

The Tribe has experienced significant delay in the approval of APDs. See attached list, Exhibit A. Some of these APDs have been pending for more than five years, at great cost to the Tribe. As these APDs languish, the Environmental Assessments that accompanies them become outdated, which results in additional costs to the Tribe.

These delays directly affect the revenue of the Tribe because when oil or gas companies bring in rigs and no permit has yet been approved, those rigs are relocated to other federal, state and private lands. The BIA needs to be more diligent in getting APDs approved. The Tribe has been made aware that BLM has 90 employees working on APD-related issues, including federal and Indian lands, and approves twice as much APDs as the BIA. The BIA has only four people working on this issue at the Uintah and Ouray Agency. As a result, the BIA has not been able to approve the Tribe's APDs in a timely fashion. The Tribe needs at least 450 permits approved each year to fully develop its oil and gas resources. Currently, the BIA approves only 4 APDs

per month, which equates to only 10% of the permits the Tribe needs to meet the needs of industry to optimize development of tribal lands with energy operators. The Uintah Basin is a very prolific basin for oil and gas development and the Tribe needs the assistance of the Department of the Interior to resolve these backlogs and to fulfill its trust responsibility by getting the necessary personnel to assist in the APD approval process by the BIA.

Therefore, the Tribe would be a prime candidate for establishing a "one stop shop" to resolve these issues concerning the approval of APDs, provided that sufficient personnel and funding is authorized and appropriated on a continued basis as necessary to accomplish this effort. The Tribe has a need for the approval of 450 permits per year according to the information provided by our operators. Consequently, the BIA would need as many as thirty-six additional staff members to process the 40 plus permits per month to meet our needs. In coming years, the need for greater regulatory efficiency in the permitting process will become even more urgent. Based on a survey of the Tribe's operating oil and gas partners conducted as part of the development of the Tribe's Reservation-wide EIS, it is estimated that over 5,000 new wells will be drilled on the Reservation over the next 15 years, involving over 4,600 different proposed surface locations.

The creation of a "one-stop shop" and the implementation of other regulatory changes in the Draft designed to improve and streamline the permitting process would greatly benefit the Tribe by allowing for more efficient and effective future management of the Tribe's oil and gas resources.

ENERGY FINANCING

The Tribe supports all financial assistance to finance Indian Energy programs in the Draft. Oil and gas development is expensive and risky, and the Tribe is in the process of

developing its energy development arm, Ute Indian Energy, LLC (Company), into a full fledged oil and gas operating company. The Company's operating expenses are going to increase from tens of millions of dollars to hundreds of millions of dollars if the Company is to fully participate in the development of oil and gas resources on Ute lands. Although the existing tax credits and loan guarantees currently made available to tribes are good, the Tribe would like to see more Tribal Economic Development Bonds ("TEDB") that are similar to the TEDBs provided under the American Recovery and Reinvestment Act of 2009. Although $2 billion was authorized, the Tribe was not allocated the full amount it needs to develop its energy resources. The Tribe requested $100 million in TEDBs, but received only $30 million, which is only 30% of the total needed by the Tribe. The Tribe therefore urges the Committee to propose an additional allocation of TEDBs in the amount of $10 billion to assist tribes in energy development. Energy projects are very costly and the financing of such projects is very difficult. Therefore, Indian tribes need all the help they can get from the federal government in the form of grants, loans, loan guarantees, and TEDBs.

The Tribe recommends amending energy laws so that, notwithstanding any other federal law, energy which is developed on and marketed from "Indian land," as defined in the Indian Energy amendments to the Energy Policy Act of 1992, 25 U.S.C. § 3501(2), should be treated identically to federal power, which in 16 U.S.C. § 838d is implicitly defined as power which is "generated or acquired by the United States." The purpose of this amendment is to increase Indian tribes' access to the energy transmission grid by giving an access and transmission priority to power developed on Indian land which is identical to that given to federal power.

This proposal would provide an opportunity to achieve both green energy development and tribal self-determination. By utilizing power delivered from each of the reservations onto

the federally-operated electricity grid, cleaner energy resources will be available to the public at large and this will also produce the added benefit of creating economic development on the reservations. It would therefore be tremendously beneficial to tribes for them to gain control of their own sustainable economic development opportunities by getting reservation-based energy production on the grid.

By working further on these issues, we are confident that we can develop a workable solution that will improve tribal energy and economic development by streamlining bureaucracy, promoting energy independence among Indian tribes, and promoting financial assistance for tribal energy projects.

In summary, the Ute Indian Tribe supports the inclusion of the following provisions in the Draft Act that enhance economic development in Indian Country:

1. To make permanent the "Indian Wage and Health Care Credit" and the "Accelerated Depreciation Allowance" that were first enacted in 1993 for a ten-year period.
2. The Indian employment credit which provides a wage and health care credit to potential employers.
3. Production tax credits which allow for Tribes to both obtain tax credits for projects on Indian lands and to market these credits to non-Indian partners in energy development projects.

CONCLUSION

Thank you for the opportunity to speak with you, I trust you will give the issues I have raised your utmost consideration. The Ute Indian Tribe is one example of how an Indian tribe can use its natural resource base to generate revenues to sustain its government and its people. Dozens of other Indian tribes possess significant energy resources but need technical assistance, capital, and help eliminating outdated and uneconomic laws and regulations to improve the standards of living of their people and bring about greater economic independence for their communities.

I encourage the Committee to expedite its consideration of the Draft and enact the many reforms contained in it so that other Indian tribes can develop their energy resources and in the process bring jobs, revenues, and hope to their communities. Thank you.

Attachments

Pending APD's Waiting on BIA Concurrence

	WELL_ID	WELL_NA	WELL_NO	OPERATOR	APD_RECD	TRS_SHL	QTR_SHL	COMMENTS
1	1306	UTE TRIBAL	8-27D-55	BERRY PETROLEUM COMPANY	8/7/2008	05S-05W-27	SWNE	Need BIA Concurrence
2	1382	IC TRIBAL	5-24-45	BERRY PETROLEUM COMPANY	9/5/2008	04S-05W-24	SWNW	Need BIA Concurrence Possible endangered LEBA
3		UTE TRIBAL	9-16D-55	BERRY PETROLEUM COMPANY	8/31/2007	05S-05W-16	NWSE	need BIA concurrence
4		UTE TRIBAL	15-16D-55	BERRY PETROLEUM COMPANY	8/31/2007	05S-05W-16	NWSE	need BIA concurrence
5		UTE TRIBAL	3-28D-55	BERRY PETROLEUM COMPANY	10/12/2007	05S-05W-28	NENW	need BIA concurrence
6		UTE TRIBAL	5-28D-55	BERRY PETROLEUM COMPANY	10/12/2007	05S-05W-28	NWNW	need BIA concurrence
7		UTE TRIBAL	9-29D-55	BERRY PETROLEUM COMPANY	11/30/2007	05S-05W-29	SESE	need BIA concurrence
8		UTE TRIBAL	11-29D-55	BERRY PETROLEUM COMPANY	11/30/2007	05S-05W-29	SENW	need BIA concurrence
9		UTE TRIBAL	15-29D-55	BERRY PETROLEUM COMPANY	11/30/2007	05S-05W-29	NWSE	need BIA concurrence
10		UTE TRIBAL	6-21D-55	BERRY PETROLEUM COMPANY	12/14/2007	05S-05W-6	NENW	need BIA concurrence
11	1163		7-19-46 DLB	BILL BARRETT CORPORATION	6/23/2008	04S-06W-19	SWNE	Need BIA Concurrence
12	1212		5-25-47 DLB	BILL BARRETT CORPORATION	7/7/2008	04S-07W-25	SWNE	Need BIA Concurrence
13	1213		15-23-47 DLB	BILL BARRETT CORPORATION	7/7/2008	04S-07W-23	SWSE	Need BIA Concurrence
14	1214		14-26-47 DLB	BILL BARRETT CORPORATION	7/7/2008	04S-07W-26	SESW	Need BIA Concurrence
15	1215		7-26-47 DLB	BILL BARRETT CORPORATION	7/7/2008	04S-07W-26	SWNE	Need BIA Concurrence
16	1465		7-16-45 BTR	BILL BARRETT CORPORATION	9/24/2008	04S-05W-16	SWNE	Need BIA Concurrence
17	1489		6-29-46 DLB	BILL BARRETT CORPORATION	9/25/2008	04S-06W-29	SENW	Need BIA Concurrence
18	1510		16-7-45 BTR	BILL BARRETT CORPORATION	10/14/2008	04S-05W-07	SESE	Need BIA Concurrence
19	1560		16-30-36 BTR	BILL BARRETT CORPORATION	11/10/2008	03S-06W-30	SESE	Need BIA Concurrence
20	1561		1-30-36 BTR	BILL BARRETT CORPORATION	11/10/2008	03S-06W-30	NENE	Need BIA Concurrence
21	1562		7-16-36 BTR	BILL BARRETT CORPORATION	11/10/2008	03S-06W-18	SWNE	Need BIA Concurrence
22	1563		16-26-36 BTR	BILL BARRETT CORPORATION	11/13/2008	03S-06W-26	SESE	Need BIA Concurrence
23	1564		16-21-36 BTR	BILL BARRETT CORPORATION	11/13/2008	03S-06W-21	SESE	Need BIA Concurrence
24	1565		14-21-36 BTR	BILL BARRETT CORPORATION	11/13/2008	03S-06W-21	NESW	Need BIA Concurrence
25	1581		4-26-36 BTR	BILL BARRETT CORPORATION	11/17/2008	03S-06W-26	NWNW	Need BIA Concurrence
26	1582		16-16-36 BTR	BILL BARRETT CORPORATION	11/17/2008	03S-06W-16	SESE	Need BIA Concurrence
27	1583		3-23-36 BTR	BILL BARRETT CORPORATION	11/17/2008	03S-06W-23	NWNE	Need BIA Concurrence
28	1584		1-23-36 BTR	BILL BARRETT CORPORATION	11/17/2008	03S-06W-23	NENE	Need BIA Concurrence
29	194	CHOKECHERRY	1-5	EOG RESOURCES INC	12/15/2005	07S-04W-05	NWSW	Need BIA Concurrence
30	203	CWU	1032-9	EOG RESOURCES INC	4/14/2005	09S-22E-09	SWNE	Need BIA Concurrence
31	752	NBU	540-24E	EOG RESOURCES INC	8/17/2005	09S-21E-24	SESE	Need BIA Concurrence
32	834	NORTH CHAPITA	223-28	EOG RESOURCES INC	9/12/2005	08S-22E-28	SWNE	Need BIA Concurrence
33	835	NORTH CHAPITA	227-4	EOG RESOURCES INC	10/14/2005	09S-22E-04	SWNW	Need BIA Concurrence
34	836	NORTH CHAPITA	267-5	EOG RESOURCES INC	10/12/2005	09S-22E-05	SESW	Need BIA Concurrence
35	837	NORTH CHAPITA	271-5	EOG RESOURCES INC	10/27/2005	09S-22E-05	SESE	Need BIA Concurrence
36	838	NORTH CHAPITA	288-5	EOG RESOURCES INC	4/14/2005	09S-22E-05	NESE	Need BIA Concurrence
37	839	NORTH CHAPITA	289-5	EOG RESOURCES INC	4/14/2005	09S-22E-05	SENW	Need BIA Concurrence
38	840	NORTH CHAPITA	290-28	EOG RESOURCES INC	9/12/2005	08S-22E-28	NENW	Need BIA Concurrence
39	841	NORTH CHAPITA	291-28	EOG RESOURCES INC	4/14/2005	08S-22E-28	NENE	Need BIA Concurrence
40	842	NORTH CHAPITA	293-28	EOG RESOURCES INC	9/12/2005	08S-22E-28	SENE	Need BIA Concurrence
41	843	NORTH CHAPITA	295-28	EOG RESOURCES INC	9/13/2005	08S-22E-28	NWSE	Need BIA Concurrence
42	844	NORTH CHAPITA	296-33	EOG RESOURCES INC	9/13/2005	09S-22E-33	NENW	Need BIA Concurrence
43	845	NORTH CHAPITA	297-28	EOG RESOURCES INC	9/13/2005	08S-22E-28	NWSW	Need BIA Concurrence
44	846	NORTH CHAPITA	298-28	EOG RESOURCES INC	9/13/2005	08S-22E-28	NESE	Need BIA Concurrence
45	847	NORTH CHAPITA	299-33	EOG RESOURCES INC	9/1/2005	08S-22E-33	NWNW	Need BIA Concurrence
46	848	NORTH DUCK CREEK	261-26	EOG RESOURCES INC	3/29/2005	08S-21E-26	SWSW	Need BIA Concurrence
47	849	NORTH DUCK CREEK	262-26	EOG RESOURCES INC	3/29/2005	08S-21E-26	NWSW	Need BIA Concurrence
48	850	NORTH DUCK CREEK	263-26	EOG RESOURCES INC	4/14/2005	08S-21E-26	NESW	Need BIA Concurrence
49	851	NORTH DUCK CREEK	264-26	EOG RESOURCES INC	5/27/2005	08S-21E-26	NWSE	Need BIA Concurrence
50	852	NORTH DUCK CREEK	265-26	EOG RESOURCES INC	9/13/2005	08S-21E-26	SWNW	Need BIA Concurrence
51	853	NORTH DUCK CREEK	266-26	EOG RESOURCES INC	4/14/2005	08S-21E-26	SENW	Need BIA Concurrence
52	854	NORTH DUCK CREEK	273-25	EOG RESOURCES INC	3/29/2005	08S-21E-25	SWSW	Need BIA Concurrence
53	855	NORTH DUCK CREEK	274-25	EOG RESOURCES INC	4/14/2005	08S-21E-25	NESW	Need BIA Concurrence
54	856	NORTH DUCK CREEK	275-25	EOG RESOURCES INC	3/29/2005	08S-21E-25	NWNE	Need BIA Concurrence
55	857	NORTH DUCK CREEK	276-25	EOG RESOURCES INC	9/13/2005	08S-21E-25	NENE	Need BIA Concurrence
56	858	NORTH DUCK CREEK	277-24	EOG RESOURCES INC	9/13/2005	08S-21E-24	SWSE	Need BIA Concurrence
57	1063	WILD HORSE FEDERAL	113-28	EOG RESOURCES INC	9/12/2005	10S-19E-28	NENE	Need BIA Concurrence
58		Ute Tribal	4-13-56	FIML	7/28/2006	05S-06W-13	NWNW	need BIA concurrence
59		Ute Tribal	12-13-56	FIML	7/28/2006	05S-06W-13	NWSW	need BIA concurrence
60		Ute Tribal	5-13-56	FIML	7/28/2006	05S-06W-13	SWNW	need BIA concurrence

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61		Ute Tribal	12-25-56	FIML	8/31/2006	05S-06W-25	NWSW	need BIA concurrence
62		Ute Tribal	1-25-56	FIML	8/31/2006	05S-06W-25	NENE	need BIA concurrence
63		Ute Tribal	2-25-56	FIML	8/31/2006	05S-06W-25	NWNE	need BIA concurrence
64		Ute Tribal	4-25-56	FIML	8/31/2006	05S-06W-25	NVNW	need BIA concurrence
65		Ute Tribal	5-25-56	FIML	8/31/2006	05S-06W-25	SENW	need BIA concurrence
66		Ute Tribal	2-24-56	FIML	9/19/2006	05S-06W-24	NWNE	need BIA concurrence
67		Ute Tribal	3-24-56	FIML	9/19/2006	05S-06W-24	NENW	need BIA concurrence
68		Ute Tribal	5-24-56	FIML	9/19/2006	05S-06W-24	SWNW	need BIA concurrence
69		Ute Tribal	10-24-56	FIML	9/19/2006	05S-06W-24	NWSE	need BIA concurrence
70		Ute Tribal	12-24-56	FIML	9/19/2006	05S-06W-24	NWSW	need BIA concurrence
71		Ute Tribal	13-24-56	FIML	9/19/2006	05S-06W-24	SWSW	need BIA concurrence
72		Ute Tribal	14-12-56	FIML	9/20/2006	05S-06W-12	SESW	need BIA concurrence
73		Ute Tribal	4-31-55	FIML	1/18/2007	05S-05W-31	Lot 1 (NWNW	need BIA concurrence
74		Ute Tribal	3-31-55	FIML	1/19/2007	05S-05W-31	NENW	need BIA concurrence
75		Ute Tribal	5-31-55	FIML	1/18/2007	05S-05W-31	Lot 2 (SWNW	need BIA concurrence
76		Ute Tribal	7-31-55	FIML	1/19/2007	05S-05W-31	SWNE	need BIA concurrence
77		Ute Tribal	11-31-55	FIML	1/19/2007	05S-05W-31	NESW	need BIA concurrence
78		Ute Tribal	12-31-55	FIML	1/19/2007	05S-05W-31	Lot 3 (NWSW	need BIA concurrence
79		Ute Tribal	6-31-55	FIML	1/19/2007	05S-05W-31	SENW	need BIA concurrence
80		Ute Tribal	14-13-56	FIML	2/27/2007	5S-6W-13	SESW	need BIA concurrence
81		Ute Tribal	9-35-56	FIML	3/4/2008	05S-06W-35	NESE	need BIA concurrence
82	451	FEDERAL	920-24G	KERR MCGEE OIL & GAS ONSHORE LP	2/9/2006	09S-20E-24	SWNE	Need BIA Concurrence
83	452	FEDERAL	920-24H	KERR MCGEE OIL & GAS ONSHORE LP	2/9/2006	09S-20E-24	SENE	Need BIA Concurrence
84	794	NBU	920-12C	KERR MCGEE OIL & GAS ONSHORE LP	4/20/2007	09S-20E-12	NENW	Need BIA Concurrence
85	796	NBU	920-21E	KERR MCGEE OIL & GAS ONSHORE LP	3/22/2006	09S-20E-21	SWSW	Need BIA Concurrence
86	800	NBU	921-15L	KERR MCGEE OIL & GAS ONSHORE LP	4/19/2007	09S-21E-15	NWSW	Need BIA Concurrence
87	801	NBU	921-16P	KERR MCGEE OIL & GAS ONSHORE LP	4/19/2007	09S-21E-16	SESE	Need BIA Concurrence
88	806	NBU	922-18I2CS	KERR MCGEE OIL & GAS ONSHORE LP	11/7/2007	09S-22E-18	NWSW	Need BIA Concurrence
89	818	NBU	922-18I	KERR MCGEE OIL & GAS ONSHORE LP	6/5/2007	09S-22E-18	NESE	Need BIA Concurrence
90	822	NBU	922-18KE3BS	KERR MCGEE OIL & GAS ONSHORE LP	11/7/2007	09S-22E-18	NESW	Need BIA Concurrence
91	824	NBU	922-18O	KERR MCGEE OIL & GAS ONSHORE LP	6/5/2007	09S-22E-18	SWSE	Need BIA Concurrence
92	826	NBU	922-20E	KERR MCGEE OIL & GAS ONSHORE LP	6/5/2007	09S-22E-20	SWNW	Need BIA Concurrence
93	1422	NBU	920-13I	KERR MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-13	NESE	Need BIA Concurrence
94	1141	WRSIUP	920-36PT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	08S-20E-36	SESE	Need BIA Concurrence
95	1142	NBU	921-03BT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	09S-21E-03	NWNE	Need BIA Concurrence
96	1143	NBU	921-20IT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	09S-21E-20	NESE	Need BIA Concurrence
97	1144	NBU	920-15FT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	09S-20E-15	SENW	Need BIA Concurrence
98	1145	NBU	921-15MT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	09S-21E-15	SWSW	Need BIA Concurrence
99	1146	FEDERAL	821-33MT	KERR-MCGEE OIL & GAS ONSHORE LP	6/9/2008	08S-21E-33	SWSW	Need BIA Concurrence
100	1225	NBU	921-15C4T	KERR-MCGEE OIL & GAS ONSHORE LP	7/16/2008	09S-21E-15	NENW	Need BIA Concurrence
101	1226	NBU	921-15G2S	KERR-MCGEE OIL & GAS ONSHORE LP	7/16/2008	09S-21E-15	NWNE	Need BIA Concurrence
102	1227	NBU	921-15D1S	KERR-MCGEE OIL & GAS ONSHORE LP	7/16/2008	09S-21E-15	NENW	Need BIA Concurrence
103	1228	NBU	921-15F2S	KERR-MCGEE OIL & GAS ONSHORE LP	7/16/2008	09S-21E-15	NENW	Need BIA Concurrence
104	1247	NBU	921-30FT	KERR-MCGEE OIL & GAS ONSHORE LP	7/16/2008	09S-21E-30	SENW	Need BIA Concurrence
105	1290	NBU	921-11BT	KERR-MCGEE OIL & GAS ONSHORE LP	8/4/2008	09S-21E-11	NWNE	Need BIA Concurrence
106	1301	NBU	921-11C2S	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2008	09S-21E-11	NWNE	Need BIA Concurrence
107	1302	NBU	921-11B3S	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2008	09S-21E-11	NWNE	Need BIA Concurrence
108	1303	NBU	921-11D4S	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2008	09S-21E-11	NWNE	Need BIA Concurrence
109	1311	NBU	921-16E4S	KERR-MCGEE OIL & GAS ONSHORE LP	8/12/2008	09S-21E-16	NWSW	Need BIA Concurrence
110	1312	NBU	921-16F3S	KERR-MCGEE OIL & GAS ONSHORE LP	8/12/2008	09S-21E-16	NWSW	Need BIA Concurrence
111	1341	NBU	921-14M3S	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2008	09S-21E-14	SWSE	Need BIA Concurrence
112	1346	NBU	921-15O3T	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2008	09S-21E-15	SWSE	Need BIA Concurrence
113	1347	NBU	921-15N1S	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2008	09S-21E-15	SWSE	Need BIA Concurrence
114	1348	NBU	921-22A1S	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2008	09S-21E-15	SWSE	Need BIA Concurrence
115	1421	NBU	920-13J	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-13	NWSE	Need BIA Concurrence
116	1423	NBU	920-13H	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-13	SENE	Need BIA Concurrence
117	1424	NBU	920-13B	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-13	NWNE	Need BIA Concurrence
118	1425	NBU	920-12K	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-12	NESW	Need BIA Concurrence
119	1426	NBU	920-14D	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-14	NWNW	Need BIA Concurrence
120	1427	NBU	920-24B	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-24	NWNE	Need BIA Concurrence
121	1428	NBU	920-13G	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-13	SWNE	Need BIA Concurrence

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122	1429	NBU	920-24P	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-24	SESE	Need BIA Concurrence
123	1430	NBU	920-24L	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-24	NWSW	Need BIA Concurrence
124	1431	NBU	920-24I	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-20E-24	NESE	Need BIA Concurrence
125	1432	NBU	921-12AT	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-21E-12	NENE	Need BIA Concurrence
126	1433	NBU	921-12DT	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-21E-12	NWNW	Need BIA Concurrence
127	1434	NBU	921-21E1S	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-21E-21	SWNW	Need BIA Concurrence
128	1435	NBU	921-21L1S	KERR-MCGEE OIL & GAS ONSHORE LP	9/16/2008	09S-21E-21	SWNW	Need BIA Concurrence
129	1464	NBU	920-12J	KERR-MCGEE OIL & GAS ONSHORE LP	9/19/2008	09S-20E-12	NWSE	Need BIA Concurrence
130	1465	NBU	920-12N	KERR-MCGEE OIL & GAS ONSHORE LP	9/19/2008	09S-20E-12	SESW	Need BIA Concurrence
131	1466	NBU	920-12I	KERR-MCGEE OIL & GAS ONSHORE LP	9/19/2008	09S-20E-12	NESE	Need BIA Concurrence
132	1468	NBU	920-12B	KERR-MCGEE OIL & GAS ONSHORE LP	9/19/2008	09S-20E-12	NWNE	Need BIA Concurrence
133	1471	NBU	920-12P	KERR-MCGEE OIL & GAS ONSHORE LP	9/19/2008	09S-20E-12	SESE	Need BIA Concurrence
134	1503	FEDERAL	920-24N	KERR-MCGEE OIL & GAS ONSHORE LP	10/8/2008	09S-20E-24	SESW	Need BIA Concurrence
135	1504	FEDERAL	920-24JT	KERR-MCGEE OIL & GAS ONSHORE LP	10/8/2008	09S-20E-24	NWSE	Need BIA Concurrence
136	1505	NBU	920-24AT	KERR-MCGEE OIL & GAS ONSHORE LP	10/8/2008	09S-20E-24	NENE	Need BIA Concurrence
137	1524	NBU	920-12LT	KERR-MCGEE OIL & GAS ONSHORE LP	10/16/2008	09S-20E-12	NWSW	Need BIA Concurrence
138	1526	NBU	920-13D	KERR-MCGEE OIL & GAS ONSHORE LP	10/16/2008	09S-20E-13	NWNW	Need BIA Concurrence
139	1527	NBU	920-13F	KERR-MCGEE OIL & GAS ONSHORE LP	10/16/2008	09S-20E-13	SENW	Need BIA Concurrence
140	1528	NBU	920-13A	KERR-MCGEE OIL & GAS ONSHORE LP	10/16/2008	09S-20E-13	NENE	Need BIA Concurrence
141	1553	NBU	920-29F	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	SENW	Need BIA Concurrence
142	1554	NBU	920-29E	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	SWNW	Need BIA Concurrence
143	1555	NBU	920-29A	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	NENE	Need BIA Concurrence
144	1556	NBU	920-29C	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29		Need BIA Concurrence
145	1557	NBU	920-29D	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	NWNW	Need BIA Concurrence
146	1558	NBU	920-29G	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	SWNE	Need BIA Concurrence
147	1559	NBU	920-29H	KERR-MCGEE OIL & GAS ONSHORE LP	10/29/2008	09S-20E-29	SENE	Need BIA Concurrence
148	1600	NBU	921-10CT	KERR-MCGEE OIL & GAS ONSHORE LP	12/2/2008	09S-21E-10	NENW	Need BIA Concurrence
149	1601	NBU	921-10D2S	KERR-MCGEE OIL & GAS ONSHORE LP	12/2/2008	09S-21E-10	NENW	Need BIA Concurrence
150	1602	NBU	921-10B4S	KERR-MCGEE OIL & GAS ONSHORE LP	12/2/2008	09S-21E-10	NENW	Need BIA Concurrence
151	1603	NBU	921-10G2S	KERR-MCGEE OIL & GAS ONSHORE LP	12/2/2008	09S-21E-10	NENW	Need BIA Concurrence
152	1608	NBU	921-10E3S	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-10	SENW	Need BIA Concurrence
153	1609	NBU	921-10F3T	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-10	SENW	Need BIA Concurrence
154	1610	NBU	921-10F2S	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-10	SENW	Need BIA Concurrence
155	1611	NBU	921-13D4S	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-13	NENW	Need BIA Concurrence
156	1612	NBU	921-13CT	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-13	NENW	Need BIA Concurrence
157	1613	NBU	921-13B2S	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-13	NENW	Need BIA Concurrence
158	1614	NBU	921-13G2S	KERR-MCGEE OIL & GAS ONSHORE LP	12/3/2008	09S-21E-13	NENW	Need BIA Concurrence
159	1698	NBU	921-10G4S	KERR-MCGEE OIL & GAS ONSHORE LP	1/12/2009	09S-21E-10	SENW	Need BIA Concurrence
160	1779	NBU	920-29J	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	NWSE	Need BIA Concurrence
161	1780	NBU	920-29K	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	NESW	Need BIA Concurrence
162	1781	NBU	920-29I	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	NESE	Need BIA Concurrence
163	1782	NBU	920-29L	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	NWSW	Need BIA Concurrence
164	1783	NBU	920-29N	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	SESW	Need BIA Concurrence
165	1784	NBU	920-29M	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	SWSW	Need BIA Concurrence
166	1785	NBU	920-20B	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-20	NWNE	Need BIA Concurrence
167	1786	NBU	920-20E	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-20	SWNW	Need BIA Concurrence
168	1791	NBU	920-23P	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-23	SESE	Need BIA Concurrence
169	1792	FEDERAL	920-27N	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	SESW	Need BIA Concurrence
170	1793	FEDERAL	920-27J	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	NWSE	Need BIA Concurrence
171	1794	FEDERAL	920-27L	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	NWSW	Need BIA Concurrence
172	1795	FEDERAL	920-27O	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	SWSE	Need BIA Concurrence
173	1796	NBU	920-27K	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	NESW	Need BIA Concurrence
174	1797	FEDERAL	920-27E	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-27	SWNW	Need BIA Concurrence
175	1798	NBU	920-15PT	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-15	SESE	Need BIA Concurrence
176	1804	NBU	920-21J	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-21	NWSE	Need BIA Concurrence
177	1805	NBU	920-20D	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-20	NWNW	Need BIA Concurrence
178	1806	NBU	920-20F	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-20	SENW	Need BIA Concurrence
179	1807	NBU	920-20C	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-20	NENW	Need BIA Concurrence
180	1808	NBU	920-29O	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	SWSE	Need BIA Concurrence
181	1809	NBU	920-33L	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	Lot 2	Need BIA Concurrence
182	1810	NBU	920-33J	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	NWSE	Need BIA Concurrence

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183	1811	FEDERAL	920-34N	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-34	SESW	Need BIA Concurrence
184	1812	FEDERAL	920-33M	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	SWSW	Need BIA Concurrence
185	1813	FEDERAL	920-33I	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	NESE	Need BIA Concurrence
186	1814	FEDERAL	920-34L	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-34	NWSW	Need BIA Concurrence
187	1815	FEDERAL	920-33N	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	SESW	Need BIA Concurrence
188	1816	FEDERAL	920-34M	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-34	SWSW	Need BIA Concurrence
189	1817	FEDERAL	920-33K	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	NESW	Need BIA Concurrence
190	1818	NBU	920-33F	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	SENW	Need BIA Concurrence
191	1819	NBU	920-29P	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-29	SESE	Need BIA Concurrence
192	1820	NBU	920-33C	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	NENW	Need BIA Concurrence
193	1821	NBU	920-33E	KERR-MCGEE OIL & GAS ONSHORE LP	2/17/2009	09S-20E-33	SWNW	Need BIA Concurrence
194	1850	NBU	920-33D	KERR-MCGEE OIL & GAS ONSHORE LP	3/6/2009	09S-20E-33	NWNW	Need BIA Concurrence
195	2076	NBU	920-13C4BS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-20E-13	NENW	Need BIA Concurrence
196	2077	NBU	920-13C1AS	KERR-MCGEE OIL & GAS ONSHORE LP	6/29/2009	09S-20E-13	NENW	Need BIA Concurrence
197	2078	NBU	920-12M4CS	KERR-MCGEE OIL & GAS ONSHORE LP	6/29/2009	09S-20E-12	NENW	Need BIA Concurrence
198	2086	NBU	921-22D1CS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-21E-15	SESW	Need BIA Concurrence
199	2087	NBU	921-22C4BS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-21E-15	SESW	Need BIA Concurrence
200	2088	NBU	921-22D1BS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-21E-15	SESW	Need BIA Concurrence
201	2089	NBU	921-22C1CS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-21E-15	SESW	Need BIA Concurrence
202	2090	NBU	920-14M3AS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-20E-14	SWSW	Need BIA Concurrence
203	2091	NBU	920-14M1CS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-20E-14	SWSW	Need BIA Concurrence
204	2092	NBU	920-14M1BS	KERR-MCGEE OIL & GAS ONSHORE LP	6/30/2009	09S-20E-14	SWSW	Need BIA Concurrence
205	2093	NBU	921-18C4BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/1/2009	09S-21E-18	Lot 1	Need BIA Concurrence
206	2094	NBU	921-18D3DS	KERR-MCGEE OIL & GAS ONSHORE LP	7/1/2009	09S-21E-18	Lot 1	Need BIA Concurrence
207	2095	NBU	921-18F1BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/1/2009	09S-21E-18	Lot 1	Need BIA Concurrence
208	2096	NBU	921-18F1CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/1/2009	09S-21E-18	Lot 1	Need BIA Concurrence
209	2115	NBU	920-20M3AS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	SWSW	Need BIA Concurrence
210	2116	NBU	920-20M2AS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	SWSW	Need BIA Concurrence
211	2117	NBU	920-20L4CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	SWSW	Need BIA Concurrence
212	2120	NBU	920-20I2AS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	NESE	Need BIA Concurrence
213	2121	NBU	920-20H4CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	NESE	Need BIA Concurrence
214	2122	NBU	920-20G3CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/15/2009	09S-20E-20	NESE	Need BIA Concurrence
215	2127	NBU	920-14A	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	NENE	Need BIA Concurrence
216	2128	NBU	920-14B	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	NWNE	Need BIA Concurrence
217	2129	NBU	920-14C	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	NENW	Need BIA Concurrence
218	2130	NBU	920-14F	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	SENW	Need BIA Concurrence
219	2131	NBU	920-15I	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-15	NESE	Need BIA Concurrence
220	2132	NBU	920-22N	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-22	SESW	Need BIA Concurrence
221	2133	NBU	920-23D	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	NWNW	Need BIA Concurrence
222	2134	NBU	920-23F	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	SENW	Need BIA Concurrence
223	2135	NBU	920-23I	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	NESE	Need BIA Concurrence
224	2136	NBU	920-23JT	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	NWSE	Need BIA Concurrence
225	2137	NBU	920-23K	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	NESW	Need BIA Concurrence
226	2138	NBU	920-23L	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	NWSW	Need BIA Concurrence
227	2139	NBU	920-23M	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	SWSW	Need BIA Concurrence
228	2140	NBU	920-23N	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-23	SESW	Need BIA Concurrence
229	2141	NBU	921-20D4CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-20	NWNW	Need BIA Concurrence
230	2142	NBU	921-20D1CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-20	NWNW	Need BIA Concurrence
231	2143	NBU	921-20B3CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-20	NWNW	Need BIA Concurrence
232	2144	NBU	921-20D4BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-20	NWNW	Need BIA Concurrence
233	2145	NBU	920-14H	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	SENE	Need BIA Concurrence
234	2146	NBU	920-14G	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-20E-14	SWNE	Need BIA Concurrence
235	2147	NBU	921-19P4CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-19	SWSE	Need BIA Concurrence
236	2148	NBU	921-19P4BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-19	SWSE	Need BIA Concurrence
237	2149	NBU	921-19O1CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-19	SWSE	Need BIA Concurrence
238	2150	NBU	921-19O4BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/22/2009	09S-21E-19	SWSE	Need BIA Concurrence
239	2151	NBU	921-20I4CS	KERR-MCGEE OIL & GAS ONSHORE LP	7/23/2009	09S-21E-20	NESE	Need BIA Concurrence
240	2152	NBU	921-20P1BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/23/2009	09S-21E-20	NESE	Need BIA Concurrence
241	2153	NBU	921-20J4BS	KERR-MCGEE OIL & GAS ONSHORE LP	7/23/2009	09S-21E-20	NESE	Need BIA Concurrence
242	2174	NBU	921-21A2DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-21	NENE	Need BIA Concurrence
243	2175	NBU	921-21A3AS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-21	NENE	Need BIA Concurrence

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244	2176	NBU	921-21A3DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-21	NENE	Need BIA Concurrence
245	2177	NBU	921-21B1CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-21	NENE	Need BIA Concurrence
246	2178	NBU	921-23E1CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/3/2009	09S-21E-23	SWNW	Need BIA Concurrence
247	2179	NBU	921-23E4BS	KERR-MCGEE OIL & GAS ONSHORE LP	8/3/2009	09S-21E-23	SWNW	Need BIA Concurrence
248	2180	NBU	921-23F4CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/3/2009	09S-21E-23	SWNW	Need BIA Concurrence
249	2181	NBU	921-23L1BS	KERR-MCGEE OIL & GAS ONSHORE LP	8/3/2009	09S-21E-23	SWNW	Need BIA Concurrence
250	2182	NBU	921-22J3BS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-22	NWSE	Need BIA Concurrence
251	2183	NBU	921-22P2DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-22	NWSE	Need BIA Concurrence
252	2184	NBU	921-22I3DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-22	NWSE	Need BIA Concurrence
253	2185	NBU	921-22J2CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/7/2009	09S-21E-22	NWSE	Need BIA Concurrence
254	2190	NBU	921-28C1CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-21E-28	NWNW	Need BIA Concurrence
255	2192	NBU	921-28C4CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-21E-28	NWNW	Need BIA Concurrence
256	2193	NBU	921-28D1BS	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-21E-28	NWNW	Need BIA Concurrence
257	2194	NBU	920-21I	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	NESE	Need BIA Concurrence
258	2195	NBU	920-21L	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	NWSW	Need BIA Concurrence
259	2196	NBU	920-21M	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	SWSW	Need BIA Concurrence
260	2197	NBU	920-21N	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	SESW	Need BIA Concurrence
261	2198	NBU	920-21KT	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	NESW	Need BIA Concurrence
262	2199	NBU	920-21P	KERR-MCGEE OIL & GAS ONSHORE LP	8/11/2009	09S-20E-21	SESE	Need BIA Concurrence
263	2207	NBU	921-30E2AS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-21E-30	Lot 1	Need BIA Concurrence
264	2208	NBU	921-30D3DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-21E-30	Lot 1	Need BIA Concurrence
265	2209	NBU	921-30D2DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-21E-30	Lot 1	Need BIA Concurrence
266	2210	NBU	921-30C3CS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-21E-30	Lot 1	Need BIA Concurrence
267	2211	NBU	921-8C1AS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-21E-08	NWNE	Need BIA Concurrence
268	2215	NBU	922-30C3S	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-22E-30	LOT 1	Need BIA Concurrence
269	2216	NBU	922-30D3DS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-22E-30	Lot 1	Need BIA Concurrence
270	2217	NBU	922-30D3AS	KERR-MCGEE OIL & GAS ONSHORE LP	8/25/2009	09S-22E-30	Lot 1	Need BIA Concurrence
271	2252	NBU	921-19E	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21-19E	Lot 2	Need BIA Concurrence
272	2253	NBU	921-19F	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-19	SENW	Need BIA Concurrence
273	2254	NBU	921-12J	KERR-MCGEE OIL & GAS ONSHORE LP	9/2/2009	09S-21E-12	NWSE	Need BIA Concurrence
274	2255	NBU	921-12N	KERR-MCGEE OIL & GAS ONSHORE LP	9/27/2009	09S-21E-12	SESW	Need BIA Concurrence
275	2264	NBU	921-17C	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-17	NENW	Need BIA Concurrence
276	2265	NBU	921-17D	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-17	NWNW	Need BIA Concurrence
277	2266	NBU	921-17G	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-17	SWNE	Need BIA Concurrence
278	2267	NBU	921-17H	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-17	SENE	Need BIA Concurrence
279	2268	NBU	921-18P	KERR-MCGEE OIL & GAS ONSHORE LP	8/27/2009	09S-21E-18	SESE	Need BIA Concurrence
280	2269	NBU	921-29A2AS	KERR-MCGEE OIL & GAS ONSHORE LP	9/2/2009	09S-21E-29	NWNE	Need BIA Concurrence
281	2270	NBU	921-29A3AS	KERR-MCGEE OIL & GAS ONSHORE LP	9/2/2009	09S-21E-29	NWNE	Need BIA Concurrence
282	2271	NBU	921-29A3DS	KERR-MCGEE OIL & GAS ONSHORE LP	9/2/2009	09S-21E-29	NENW	Need BIA Concurrence
283	2272	NBU	921-29B2CS	KERR-MCGEE OIL & GAS ONSHORE LP	9/2/2009	09S-21E-29	NENW	Need BIA Concurrence
284	2305	NBU	921-19L	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-19	LOT 3	Need BIA Concurrence
285	2306	NBU	921-19M	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-19	Lot 4	Need BIA Concurrence
286	2307	NBU	921-19N	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-19	SESW	Need BIA Concurrence
287	2308	NBU	921-20B	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-20	NWNE	Need BIA Concurrence
288	2309	NBU	921-20C	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-20	NENW	Need BIA Concurrence
289	2310	NBU	921-20H	KERR-MCGEE OIL & GAS ONSHORE LP	9/11/2009	09S-21E-20	SENE	Need BIA Concurrence
290	2321	NBU	921-7D	KERR-MCGEE OIL & GAS ONSHORE LP	9/18/2009	09S-21E-07	Lot 1	Need BIA Concurrence
291	2322	NBU	921-8C	KERR-MCGEE OIL & GAS ONSHORE LP	9/18/2009	09S-21E-08	NENW	Need BIA Concurrence
292	2323	NBU	921-8D	KERR-MCGEE OIL & GAS ONSHORE LP	9/18/2009	09S-21E-08	NWNW	Need BIA Concurrence
293	2324	NBU	921-8N	KERR-MCGEE OIL & GAS ONSHORE LP	9/18/2009	09S-21E-08	SESW	Need BIA Concurrence
294	2325	NBU	921-7L	KERR-MCGEE OIL & GAS ONSHORE LP	9/18/2009	09S-21E-07	Lot 3	Need BIA Concurrence
295	2374	NBU	920-21G	KERR-MCGEE OIL & GAS ONSHORE LP	9/25/2009	09S-20E-21	SWNE	Need BIA Concurrence
296	2375	NBU	920-27M	KERR-MCGEE OIL & GAS ONSHORE LP	9/30/2009	09S-20E-27	SWSW	Need BIA Concurrence
297	1221	UTE TRIBAL	10-8-5-2E	NEWFIELD PRODUCTION COMPANY	7/15/2008	05S-02E-08	LOT 3	Need BIA Concurrence
298	1222	UTE TRIBAL	13-5-5-2E	NEWFIELD PRODUCTION COMPANY	7/15/2008	05S-02E-05	SWSW	Need BIA Concurrence
299	1223	UTE TRIBAL	5-6-5-2E	NEWFIELD PRODUCTION COMPANY	7/15/2008	05S-02E-06	LOT 2	Need BIA Concurrence
300	1224	UTE TRIBAL	13-9-5-2E	NEWFIELD PRODUCTION COMPANY	7/15/2008	05S-02E-09	SWSW	Need BIA Concurrence
301	1733	UTE TRIBAL	5-29-4-1E	NEWFIELD PRODUCTION COMPANY	1/26/2009	04S-01E-29	SWNW	Waiting on BIA concurrence
302	1734	UTE TRIBAL	6-29-4-1E	NEWFIELD PRODUCTION COMPANY	1/28/2009	04S-01E-29	SWNW	Waiting on BIA concurrence
303	1735	UTE TRIBAL	7-29-4-1E	NEWFIELD PRODUCTION COMPANY	1/26/2009	04S-01E-29	SWNE	Waiting on BIA concurrence
304	1736	UTE TRIBAL	8-29-4-1E	NEWFIELD PRODUCTION COMPANY	1/26/2009	04S-01E-29	SEME	Waiting on BIA concurrence

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305	1739	UTE TRIBAL	7-30-4-1E	NEWFIELD PRODUCTION COMPANY	1/26/2009	04S-01E-30	SWNE	Waiting on BIA concurrence
306	1740	UTE TRIBAL	8-30-4-1E	NEWFIELD PRODUCTION COMPANY	1/26/2009	04S-01E-30	SENE	Waiting on BIA concurrence
307	1760	UTE TRIBAL	9-35-4-1E	NEWFIELD PRODUCTION COMPANY	1/28/2009	04S-01E-35	NESE	Waiting on BIA concurrence
308	1761	UTE TRIBAL	10-35-4-1E	NEWFIELD PRODUCTION COMPANY	1/29/2009	04S-01E-35	NWSE	Waiting on BIA concurrence
309	1762	UTE TRIBAL	6-35-4-1E	NEWFIELD PRODUCTION COMPANY	1/28/2009	04S-01E-35	SENW	Waiting on BIA concurrence
310	1774	UTE TRIBAL	4-35-4-3	NEWFIELD PRODUCTION COMPANY	2/4/2009	04S-03W-35	NWNW	Waiting on BIA concurrence
311	1799	UTE TRIBAL	10-6-5-2E	NEWFIELD PRODUCTION COMPANY	2/18/2009	05S-02E-06	NWSE	Waiting on BIA concurrence
312	1801	UTE TRIBAL	1-1-5-1E	NEWFIELD PRODUCTION COMPANY	2/18/2009	05S-01E-01	Lot 5	Waiting on BIA concurrence
313	1802	UTE TRIBAL	3-8-5-2E	NEWFIELD PRODUCTION COMPANY	2/18/2009	05S-02E-08	NENW	Waiting on BIA concurrence
314	1803	UTE TRIBAL	14-6-5-2E	NEWFIELD PRODUCTION COMPANY	2/18/2009	05S-02E-06	Lot 5	Waiting on BIA concurrence
315	2201	UTE TRIBAL	4-8-4-1	NEWFIELD PRODUCTION COMPANY	8/14/2009	04S-01W-08	NWNW	Need BIA Concurrence
316	2202	UTE TRIBAL	6-8-4-1E	NEWFIELD PRODUCTION COMPANY	8/14/2009	04S-01E-08	SENW	Need BIA Concurrence
317	2203	UTE TRIBAL	7-11-4-1	NEWFIELD PRODUCTION COMPANY	8/14/2009	04S-01W-11	SWNE	Need BIA Concurrence
318	1265	WV	2B-22-8-21	QUESTAR EXP & PROD COMPANY	7/23/2008	08S-21E-22	NWNE	Need BIA Concurrence
319	1266	WV	8D-22-8-21	QUESTAR EXP & PROD COMPANY	7/23/2008	08S-21E-22	NENE	Need BIA Concurrence
320	1286	GB	12-27-8-21	QUESTAR EXPL & PROD CO	8/1/2008	08S-21E-27	NWSW	Need BIA Concurrence
321	1374	GH	16A-20-8-21	QUESTAR EXPL & PROD CO	9/3/2008	08S-21E-20	SWSE	Need BIA Concurrence
322	1409	FR	11P-21-14-20	QUESTAR EXPL & PROD CO	9/12/2008	14S-20E-21	SWSW	Need BIA Concurrence
323	1701	WF	15-21-15-19	QUESTAR EXPL & PROD CO	1/12/2009	15S-19E-21	SWSE	Need BIA Concurrence
324	1702	WF	4D-22-15-19	QUESTAR EXPL & PROD CO	1/12/2009	15S-19E-22	NWNW	Need BIA Concurrence
325	1704	WF	8D-21-15-19	QUESTAR EXPL & PROD CO	1/13/2009	15S-19E-21	SENE	Need BIA Concurrence
326	455	FR	11P-20-14-20	QUESTAR EXPL & PROD COMPANY	8/20/2007	14S-20E-20	NESW	Need BIA Concurrence
327	456	FR	12P-20-14-20	QUESTAR EXPL & PROD COMPANY	12/4/2007	14S-20E-20	NWSW	Need BIA Concurrence
328	457	FR	15P-21-14-20	QUESTAR EXPL & PROD COMPANY	12/6/2007	14S-20E-21	SWSE	Need BIA Concurrence
329	458	FR	2P-20-14-20	QUESTAR EXPL & PROD COMPANY	5/6/2008	14S-20E-20	NWNE	Need BIA Concurrence
330	459	FR	3P-21-14-20	QUESTAR EXPL & PROD COMPANY	12/4/2007	14S-20E-21	NENW	Need BIA Concurrence
331	460	FR	8P-21-14-20	QUESTAR EXPL & PROD COMPANY	12/4/2007	14S-20E-21	SENE	Need BIA Concurrence
332	463	GB	16BML-19-8-22	QUESTAR EXPL & PROD COMPANY	4/20/2007	08S-22E-19		Need BIA Concurrence
333	464	GB	1CML-29-8-22	QUESTAR EXPL & PROD COMPANY	4/20/2007	08S-22E-29	NENE	Need BIA Concurrence
334	583	WVX	16MU-18-8-21	QUESTAR EXPL & PROD COMPANY	6/2/2006	08S-21E-18	SESE	Need BIA Concurrence
335	584	WVX	1MU-17-8-21	QUESTAR EXPL & PROD COMPANY	5/23/2006	08S-21E-17	NENE	Need BIA Concurrence
336	585	WVX	4MU-17-8-21	QUESTAR EXPL & PROD COMPANY	6/2/2006	08S-21E-17	NWNW	Need BIA Concurrence
337	1203	FR	2P-21-14-20	QUESTAR EXPL & PROD COMPANY	7/2/2008	14S-20E-21	NWNE	Need BIA Concurrence
338	1287	WV	11-23-8-21	QUESTAR EXPL & PROD COMPANY	8/1/2008	08S-21E-23	NESW	Need BIA Concurrence
339	1373	GH	11C-20-8-21	QUESTAR EXPLORATION & PROD CO	9/3/2008	08S-21E-20	NESW	Need BIA Concurrence
340	1035	UTE TRIBAL	1-29-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	10/29/2007	14S-20E-29	NENE	Need BIA Concurrence
341	1038	UTE TRIBAL	15-29-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	10/29/2007	14S-20E-29	SWSE	Need BIA Concurrence
342	1039	UTE TRIBAL	3-30-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	10/29/2007	14S-20E-30	NENW	Need BIA Concurrence
343	1040	UTE TRIBAL	7-29-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	9/28/2007	14S-20E-29	SWNE	Need BIA Concurrence - AGAIN - In Whiting name, redo NEPA
344	1041	UTE TRIBAL	7-30-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	10/1/2007	14S-20E-30	SWNE	Need BIA Concurrence - AGAIN - In Whiting name
345	1042	UTE TRIBAL	9-29-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	9/28/2007	14S-20E-29	NESE	Need BIA Concurrence - AGAIN -In Whiting name, redo NEPA
346	1043	UTE TRIBAL	9-30-14-20	WHITING NOW - MILLER DYER & COMPANY LLC	9/28/2007	14S-20E-30	NESE	Need BIA Concurrence - AGAIN - In Whiting name
347	2204	UTE TRIBAL	1-25-14-19	WHITING OIL & GAS CORP	8/17/2009	14S-20E-30	Lot 2	Need BIA Concurrence and original 1-25-14-19 FAN from Miller Dyer
348	2205	UTE TRIBAL	5-25-14-19	WHITING OIL & GAS CORPORATION	8/25/2009	14S-19E-25	NESE	Need BIA Concurrence; onsite Scheduled for 10/22/2009
349	2206	UTE TRIBAL	13-25-14-19	WHITING OIL & GAS CORPORATION	8/25/2009	14S-19E-25	NESE	Need BIA Concurrence; onsite Scheduled for 10/22/2009
350	1514	HCU	1-30F	XTO ENERGY INC	10/14/2008	10S-20E-30	NENE	Need BIA Concurrence
351	1515	HCU	4-30F	XTO ENERGY INC	10/14/2008	10S-20E-30	NWNW	Need BIA Concurrence
352		HCU	16-31F	XTO ENERGY INC	1/4/2006	10S-20E-31	NESE	Need BIA Concurrence
353		HCU	15-29F	XTO ENERGY INC	2/13/2006	10S-20E-32	NWNE	Need BIA Concurrence
354		HCU	2-28F	XTO ENERGY INC	11/7/2005	10-S-20E-28	NWNE	Need BIA Concurrence
355		RBU	9-22F	XTO ENERGY INC	2/13/2006	10S-20E-22	SESE	Need BIA Concurrence
356		RBU	2-21F	XTO ENERGY INC	11/28/2005	10S-20E-21	SWSE	Need BIA Concurrence
357		RBU	14-15F	XTO ENERGY INC	6/20/2005	10S-20E-15	SWSW	Need BIA Concurrence
358		RBU	7-16F	XTO ENERGY INC	1/26/2006	10S-20E-16	SWNE	Need BIA Concurrence
359		RBU	16-20F	XTO ENERGY INC	12/27/2005	10S-20E-20	SESE	Need BIA Concurrence
360		RBU	6-22F	XTO ENERGY INC	11/9/2007	10S-20E-22	SWNE	Need BIA Concurrence
361		RBU	14-16f	XTO ENERGY INC	2/13/2006	10S-20E-16	SWSE	Need BIA Concurrence

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

On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "Tribes"), I appreciate the opportunity to provide the Committee on Indian Affairs this statement on the Colville Tribes' views on the discussion draft of the "Indian Energy Promotion and Parity Act of 2010. The Colville Tribes appreciates the Committee convening a hearing on this important legislative initiative and we are pleased to share our ideas and experiences as the Committee considers these issues during the remainder of the current session of Congress and into next year. The Colville Tribes strongly supports the discussion draft, particularly Section 208, which would establish biomass demonstration projects for Indian tribes, and Section 301, which would allow Indian tribes to transfer their otherwise unusable portion of the production tax credit to their taxable partners. The Colville Tribes also suggests and urges the Committee to include provisions in the bill that recognize that activities conducted under certain Department of the Interior approved tribal management plans are considered "sustainable."

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

Renewable Energy Production on Indian Lands

Since passage of Title V of the Energy Policy Act of 2005, energy development on Indian lands has been a priority for many Indian tribes, including the Colville Tribes. Renewable energy development has been of particular interest to the Colville Tribes as

the Tribes seeks new ways to promote on-reservation economic development and to diversify its economy.

As the Committee is surely aware, renewable energy development has been a growth industry nationally. In May 2008, the U.S. Department of Energy's Office of Coal, Nuclear, Electric and Alternative Fuels released its Renewable Energy Consumption and Electricity Preliminary 2007 Statistics report. That report noted that the growth rate for renewable energy is three percent during the last five years and that the growth rate for biofuels and wind is 25 percent and 29 percent, respectively. These growth rates are directly attributable to federal tax incentives to entice the private sector to invest in renewable energy projects and have early penetration in the respective markets. Within the electric power sector, wind energy consumption has grown each year since 1998.

Utilizing grants and technical assistance from both the Department of the Interior and the Department of Energy, the Colville Tribes is hoping to take advantage of the growth in the biofuels market. The Tribes is in the initial planning and development stages to construct a cogeneration facility on the Colville Reservation that will utilize woody biomass from the Tribes' forestry activities, both on-reservation and on adjacent federal lands. The facility would be a 40 megawatt cogeneration plant at Colville Indian Power & Veneer, the Tribes' existing plywood and power plant in Omak, Washington. The Tribes is allowed to harvest up to 78 million board feet of timber annually and, together with resources available within 50 miles of the facility, has determined not only that sufficient wood resources exists to sustain the facility, but also that transferring this material to the facility in Omak is economically feasible.

In addition to the cogeneration facility, the Colville Tribes is also exploring wind energy projects on the Colville Reservation. The Tribe has entered into an agreement with a third party developer, Clipper Wind, to install sensors on certain on-reservation sites to assess the feasibility of larger scale wind production on the Colville Reservation.

The Colville Tribes Strongly Supports Section 208, "Tribal Forest Assets Protection"

The Colville Tribes is gratified that Section 208 is included in the discussion draft. Section 208 would establish a demonstration project that would direct the Secretary of the Interior and the Secretary of Agriculture to enter into contracts or agreements with Indian tribes that would encourage tribal energy development and promote the utilization of woody biomass on federal lands. As the Committee is aware, many federal lands that are adjacent to tribal trust lands are in need of restoration activities – activities that Indian tribes are uniquely suited to perform because of tribes' experience managing their own forests and natural resources.

The demonstration project established by Section 208 would allow for the incorporation of on-reservation tribal management plans to projects performed on federal lands and, most importantly, would allow the contracts to have terms of up to 20 years, with the possibility of up to an additional 10 year renewal. In the context of this demonstration project, these provisions will ensure that Indian tribes, like the Colville Tribes, that seek to develop biomass will have a reliable supply of biomass over a longer period. Based on the Tribes' analysis, any time frame longer than 10 years will make the cogeneration facility attractive to outside investors.

The incorporation of tribal management planning principles in these demonstration projects at the tribes' request will also ensure that protection of cultural resources and sacred sites—resources that typically are not accounted for in federal land management plans—will receive the attention that they deserve in carrying out these projects.

The Colville Tribes Supports the Ability of Tribes to Transfer Tax Credits as Provided for in Section 301

Both the cogeneration facility and any wind project that the Colville Tribes pursues will require significant private capital to succeed. Apart from private capital needed to develop and finance these facilities, the need for new transmission lines in the Northwest and the cost of providing them are also considerations. As the Committee is aware, the federal production tax credit ("PTC") is generally recognized as the principal tool to encourage the investment of private capital into renewable projects around the nation. Tax credits such as the PTC, however, are of little use to Indian tribal governments because tribal governments are not taxable entities for income tax purposes under the IRS code. The PTC could not be utilized for either of the projects described above unless the Tribe agreed to sacrifice its ownership interest in the projects for the term of the tax credit.

As a solution to this problem, the Colville Tribe is encouraged by Section 301, which would amend the IRS code to allow tribal governments to transfer the credit for electricity produced from renewable resources to non-tribal government partners. If enacted into law, this bill would allow for full utilization of the PTC for projects on tribal land while allowing Indian tribes to maintain an ownership interest throughout the life of the project, instead of relying on the "flip" model. This provision would also promote the infusion of private investment in Indian country by ensuring that the PTC is a bankable component of any renewable energy project in which an Indian tribe is a partner or owner.

The Colville Tribes Strongly Urges the Committee to Include Language that Recognizes the Sustainability of Activities Conducted under BIA Approved Tribal Management Plans

There has been an increased emphasis on ensuring that resources on federal lands and, in some cases, tribal lands, are harvested using sustainable management practices for purposes of qualifying for certain standards or benefits. For example, Section 133 of the American Clean Energy Leadership Act of 2009, as reported by the Senate Environment and Natural Resources Committee, would amend the Energy Policy Act of 2005 to require that vegetative material be managed "through practices that maintain or contribute toward the restoration of ecological sustainability" in certain instances to be considered in the definition of "biomass."

There is no accepted, uniform definition of what "sustainable" means. In response, third party entities have promulgated their own standards to fill this gap. For example, a group formed in 2007 called the Council on Sustainable Biomass Production has released draft standards that will define "sustainable" for purposes of biomass production. These third party entities in almost all cases make a profit by charging certification and recurring annual fees to entities that wish to claim the certification.

In some cases, the federal government has adopted these private, third party certification standards. For example, the General Services Administration and a number of federal departments and agencies have adopted the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System of the U.S. Green Building Council.[1] LEED is a commercial building design guideline and third-party certification standard. Under the LEED standard, points can be awarded in five categories: sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process. Under the materials and resources category, the LEED standard requires that at least 50 percent of wood-based materials and products that will be used in a project be certified by the Forest Stewardship Council (FSC), a separate third party certification entity that certifies forest management activities.

Both the LEED and FSC standards, therefore, include components that address sustainability and, in the case of FSC, the sustainability of forest management practices. It is possible, perhaps even likely, that federal agencies will similarly adopt whatever final standards the Council on Sustainable Biomass Production may promulgate or that other entities may promulgate. In nearly all cases, these third party standards do not take into consideration the unique differences between Indian land and state, private, or non-Indian federal lands.

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[1] *See* http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=8154.

Ensuring that resources are harvested in a sustainable manner is a goal that the Colville Tribes and other tribes not only support, but have been practicing since time immemorial through traditional management practices. Federal law and regulations currently require the Secretary of the Interior, consistent with the United States' trust responsibility, to ensure that forest and agricultural management activities that are conducted on Indian lands are sustainable. These plans are developed and approved by the Secretary under the National Indian Forest Resources Management Act, 25 U.S.C. § 3101 et seq. ("NIFRMA"), the American Indian Agricultural Resource Management Act, 25 U.S.C. § 3701 et seq. ("AIARMA"), and the respective implementing regulations. Should the Secretary approve a plan that is not sustainable and the plan results in overharvesting or otherwise causes damage to the landscape, the Secretary, as trustee, could be liable to a tribe for money damages. The plans directly relate to energy development because the resources used in biomass and biofuels production derive from a tribe's management of forests and agriculture.

If the Secretary of the Interior, in his role as trustee, has determined that a tribal management plan on Indian lands is sustainable, that determination should control for purposes of other federal standards or benefits that require sustainability unless otherwise specifically exempted. Express congressional recognition that tribal management activities that the Secretary of the Interior has already determined to be sustainable under NIFRMA and AIARMA are recognized as such for purposes of other federal standards, requirements, or benefits that also require sustainability would ensure that Indian tribes will not be required to comply with some other definition of sustainability that may in the future be developed by third parties.

Congressional recognition of the sustainability of tribal management plans would also benefit those tribes that sell resources harvested under their plans on the open market. This is particularly true of Indian tribes that rely on revenue from timber harvesting to fund tribal programs. For example, congressional recognition that management plans developed under NIFRMA constitute sustainable management practices would help tribes better compete with wood products sold on the open market that have been certified as by private third party entities using their own definitions of sustainable, such as FSC.

To address this issue, the Colville Tribes respectfully requests that the Committee include the following the language in the version of the bill that will be introduced.

[for NIFRMA, by adding a new § 322 to Pub.L. 101-630 to read:]

> § 322 TRIBAL RESOURCE MANAGEMENT PLANS — Unless otherwise explicitly exempted by federal law, any activity conducted

> or resources harvested or produced pursuant to a tribal resource management plan or an integrated resource management plan approved by the Secretary under this chapter shall be considered a sustainable management practice for purposes of any federal standard, benefit, or requirement that requires demonstration of sustainability.

[for AIARMA, by redesignating § 303 of Pub.L. 103-177 as § 304 and including a new § 303 that would read:]

> § 303 TRIBAL RESOURCE MANAGEMENT PLANS — Unless otherwise explicitly exempted by federal law, any activity conducted or resources harvested or produced pursuant to a tribal resource management plan or an integrated resource management plan approved by the Secretary under this chapter shall be considered a sustainable management practice for purposes of any federal standard, benefit, or requirement that requires demonstration of sustainability.

The language above would apply only to activities and resources conducted on Indian lands, not federal lands generally. The Secretary's approval of any tribal management plan or IRMP triggers NEPA, so any plans that have been approved by the Secretary would have been subjected to NEPA. For example, a full EIS was completed prior to the Secretary's approval of the Colville Tribes' IRMP.[2]

The Colville Tribe appreciates the Committee's consideration of these important issues and looks forward to working with the Committee on these and other Indian energy related issues.

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[2] *See* http://www.epa.gov/EPA-IMPACT/2000/December/Day-15/i31951.htm (*Federal Register* notice of availability of final EIS).

PREPARED STATEMENT OF THE PUEBLO OF LAGUNA

At the Pueblo of Laguna, our history and destiny are intertwined with energy production. The Pueblo Indians built the Country's first passive solar homes. We used the sun to warm us in the winter and careful planning brought us cool interiors in the summer.

At the Pueblo of Laguna, we have also lived with the consequences of short sighted energy policy that would sacrifice human health and our fragile environment. As home to the world's largest open pit uranium mine for decades, we know first-hand the long lasting harm that energy production can cause—our miners and villages are still experiencing high rates of disease associated with radiation exposure, and after years of clean-up that met federal standards of the time, we can still see leaching from the old mine that covers nearly 1,000 acres of now unusable land.

Because the Pueblo lives in the arid Southwest, we will bear a disproportionate burden of an anticipated climate change that will bring hotter summers, longer droughts, and less winter snow to feed our rivers, agriculture, wildlife and traditions.

At the Pueblo of Laguna, we do not want to be passive in the face of climate change. We refuse to stand by while others develop solutions that may not solve our problems. We have the experience and resources to be active in both managing the negative effects from climate change, and developing energy production solutions that draw upon our historic reliance on the natural environment to warm us and give us sustenance.

As an example, *at the Pueblo of Laguna there are three (3) surveyed sites that could provide up to 400 MW of solar derived electricity if fully developed.* The sites are adjacent to three (3) different high voltage electric transmission lines. Two of the solar sites are also crossed by a gas transmission line that could be used to complement a solar energy facility. The Pueblo is willing to invest its own funds in the development of these sites.

Under the existing federal incentives and transmission regulations, however, these sites may not be developed because federal policy does not encourage alternative energy investment in Indian Country in the same manner as off-Reservation development. Utilization of the existing transmission lines is moribund and complicated because of FERC regulations and bottlenecked queues for transmission.

Indeed, in 2008, the Pueblo of Laguna invested time, energy and resources as the land partner with a large solar developer interested in providing 175,000 megawatt hours to the Public Service Company of New Mexico. When PNM abruptly withdrew its RFP for the solar energy, our potential solar partner pulled out of Laguna. Because we were relying on the partner's utilization of federal incentives to make the deal work and the transmission lines could presently only be used to supply PNM—this ideal solar field is not in development. Our experience highlights several problems that Congress can address:

First, Tribes need to be able to capture *all* the federal tax incentives for generating new renewable energy plants similar to non-Tribal businesses.

Unfortunately, the existing federal tax incentives do not favor a model of energy development on Indian lands where the Tribes are full partners and beneficiaries in the business. The tax incentives, if not monetized, are useless to Tribes, and make Tribes very unattractive partners. The Pueblo has repeatedly called for Congress to offer the same incentives available to non-Indian renewable energy developers available to tribally owned renewable energy projects. We asked Congress to consider monetizing the production tax credits and the accelerated depreciation. We are pleased that the proposed Indian Energy bill would allow for the transfer of tax credits for electricity produced from renewable resources on Indian lands. *However, we are disappointed that the bill does not address the accelerated depreciation that is available to developers off-reservation. It is only through the combination of both the tax credits and the accelerated depreciation that most renewable projects can be financially feasible.* Like Tribes throughout the country, we call upon Congress to monetize the accelerated depreciation. The impact to the federal treasury would be the same, but the potential benefit to Indian country would be significant.

Sect. 303 of the draft bill extends the accelerated depreciation provisions found in IRC Sect. 168(j) for property on Indian reservations by deleting the termination clause at IRC 168(j)(8). Still, the benefits of accelerated depreciation accrue to non-tribal owners, not tribes. There is no provision for tribal owners to transfer this benefit to another owner as is now allowed for Production Tax Credits, much less to sell the accelerated depreciation benefit outright when a tribe is the sole owner.

Second, Tribes should be able to monetize the tax credits on projects they undertake themselves.

Section 301 only works if the Tribe can assign production to a partner in a renewable energy facility thus forcing Tribes to have a partner if they are to get the benefits of the tax credits.

We urge Congress *not* to limit the ability to monetize the tax credits to solely a tribe's partner in the energy generation. While certain large scale projects would require a partner, there are many small scale projects that a Tribe may wish to pursue without a partner.

Requiring a tax paying partner would also add layers of complication to the deal structure, which necessarily adds cost to the project. The hundreds of thousands of dollars of extra cost could financially doom a smaller project. We know of at

least one project that has at least $1 million in incremental structuring costs that could be avoided under a monetized tax credit approach.

The Pueblo urges Congress to develop a simple solution to the need to monetize the tax credit and accelerated depreciation benefits. Allow Tribes to sell the tax benefits on the market to any taxable entity. The cost to the Treasury would be same, yet the cost to the Tribes would be significantly less—putting more money directly into the renewable energy project instead of into financial intermediaries.

Third, the renewable energy potential of Indian Country must not be restricted by the transmission bottlenecks. Tribes must be included in national and regional transmission planning and there must be a reform of the FERC queue process.

Sec. 109 of the draft bill calls for a study on inclusion of Indian tribes in national and regional electrical infrastructure planning. The study will assess the potential for electric generation on Indian land from renewable energy resources and the electrical transmission needs relating to carrying that energy to the market. The Pueblo has already identified the valuable potential for solar electricity generation on its land and determined that access to close-by PNM transmission lines are key to the viability of that solar project.

Once again, Tribes do not want to be passive participants. The transmission lines crossing our reservations should work for us while at the same time helping to transition our country to clean energy. The transmission lines crossing Laguna have excess capacity for energy traveling away from Albuquerque. If PNM does not want to buy power from a nearby reservation-based solar plant, then we should be able to send that electricity to other markets.

If the country is to get the benefit of the tremendous renewable resource potential located in the heart of Indian Country in the Southwest, then the reform of the transmission grid needs to take into account our unique position and opportunities. We need to be able to move renewable energy out to the rest of the country. The bottlenecked queue process means that even if we had solar electricity to sell tomorrow, we could not feed it into the grid because of the two year plus backlog in the FERC regulated queue.

Fourth, Congress should explicitly state that Tribes retain jurisdiction over rights of ways.

Section 201 of the draft bill provides for the "inclusion of necessary and reasonable rights-of-way in leases" of Indian land. The Pueblo of Laguna reminds Congress that several courts have interpreted rights of way granted by the Secretary as the equivalent of non-Indian land. Tribes never intended rights of way to be transformed into non-Indian land. We have lost too much land over the centuries to allow the courts to decree that when we allow others to use our land for energy or transportation, we are giving up our jurisdiction over that land. At the Pueblo of Laguna we will no longer use the right of way statutes to grant easements across our Reservation. Instead, we will utilize the leasing statutes. We recently concluded two energy transmission right of way renewals using a lease instead of a right of way. We urge the Indian Affairs Committee to ensure that any legislation it proposes to modify the right of way or leasing statutes preserve the ability of Tribes to use leases for expiring rights of way, and contain an explicit statement that it is not the intent of Congress to strip Tribes of jurisdiction over their lands even if there is an existing right of way. Since many energy rights of way will not come up for renewal for decades, an express congressional statement that Tribes retain jurisdiction in rights of way would resolve the problems posed by *Strate* and lead to better cooperation between energy companies, Tribes and the states.

Fifth, eliminate NEPA's application to approvals of leases or rights of way.

A significant portion of the bill addresses the delays that occur in the permitting process when developing energy projects in Indian country. In some projects where there is no direct federal funding, the only federal action is approval of the lease or right of way. Tribal leaders have been arguing for years that this application of NEPA to tribal lands places development on tribal lands at an unfair advantage when compared to development on private lands. The fact that the United States has a trust obligation to approve the lease, should not impose upon tribal projects additional burdens—the trust relationship becomes a hardship rather than a benefit. Eliminating NEPA's application to approval of leases will bring tribal developments into the same approval process timeline as other projects occurring on non-Indian, non-federal lands. It is the simplest and quickest way to remedy the finding set out in Section 2(a)(2)(B)

that "Federal policies have created uncertainty and inequality regarding tribal energy development."

Finally, eliminate dual taxation on energy projects.

At the Roundtable discussion on Indian Energy legislation held in Albuquerque New Mexico, our representatives raised the issue of dual taxation and called upon Congress to eliminate the burden that dual taxation would place on energy development in Indian Country. State and local taxes should not apply to tribal renewable energy projects, since tribes provide all services for such facilities, which have little or no off-reservation impact. As an example, in our negotiations over the solar project, the non-Indian developer was asking the Pueblo to waive its possessory interest taxes because they were going to have to pay the county property tax on the lease. The Tribal tax revenue was an important benefit of the project that would have been hard to give up. Since there is not yet significant renewable energy development in place in Indian Country, a prospective pronouncement from Congress disallowing State and County taxation of projects located on trust lands would not have any negative impact on existing revenue streams to those local governments.

PREPARED STATEMENT OF HON. MARTY SHURAVLOFF, CHAIRMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Introduction

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and distinguished members of the Senate Committee on Indian Affairs. My name is Marty Shuravloff and I am the Chairman of the National American Indian Housing Council (NAIHC), the only national tribal non-profit organization dedicated solely to advancing housing, physical infrastructure, and economic development in tribal communities in the United States. I am also an enrolled member of the Leisnoi Village of Kodiak Island, Alaska.

First, on behalf of NAIHC and our membership, thank you for introducing the *Indian Energy Promotion and Parity Act of 2010* (hereinafter "Indian Energy Act"). It is our understanding that the legislation is designed (i) to promote and streamline Indian energy development, and (ii) to enhance programs to support the development and efficiency of energy projects in Indian Country. As you are all undoubtedly aware, many of our tribal lands contain vast natural energy resources, such as coal deposits, wind power, and water power, but they often remain largely untapped due to a variety of barriers to economic development in Indian Country, particularly the extensive and burdensome federal regulatory processes that tribes must navigate to develop such programs.

We appreciate the opportunity to submit written testimony regarding this important legislation and would like to express our general support for the planning, development, and implementation of energy projects in Indian Country. For purposes of this testimony, we will limit our comments

primarily to the portion of the legislation that is of greatest importance to our membership: the provisions of Section 207 *et. al.* of the Indian Energy Act regarding home weatherization assistance.

Background on the National American Indian Housing Council (NAIHC)

The NAIHC was founded in 1974 and has, for 36 years, served its members by providing valuable training and technical assistance (T&TA) to all tribes and tribal housing entities; providing information to Congress regarding the issues and challenges that tribes face in terms of housing, infrastructure, and community and economic development; and working with key federal agencies in an attempt to address such issues and meet such challenges. The membership of NAIHC is expansive, comprised of 271 members representing 463[1] tribes and tribal housing organizations across the United States. The primary goal of NAIHC is to support native housing entities in their efforts to provide safe, quality, affordable, and culturally relevant housing to native people.

Brief Summary of the Problems Regarding Housing and Health in Indian Country

While the country has been experiencing an economic downturn in general, this trend is greatly magnified in Indian communities. The national unemployment rate peaked recently at an alarming rate of nearly 10 %.[2] However, that rate does not compare to the unemployment rates in Indian Country, which average 49 %.[3] The highest unemployment rates are on the Plains reservations, where the **average** rate is 77 %, and is, in some cases, higher than 90 %.[4] Because of the remote locations of many reservations, there is a lack of basic infrastructure in tribal communities and economic development opportunities are difficult to identify and pursue.

As a result, the poverty rate in Indian Country is exceedingly high at 25.3 %, nearly three times the national average.[5] These employment and economic development challenges exacerbate the housing situation in Indian country. Our first Americans face some of the worst housing and living conditions in the country and the availability of affordable, adequate, safe housing in Indian Country falls far below that of the general U.S. population. Consider the following:

- According to the 2000 U.S. Census, nearly 12 % of Native American households lack plumbing compared to 1.2 % of the general U.S. population.
- On reservations, more than 50 % of homes rely only on old-fashioned wood burning for heating.

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[1] There are approximately 562 federally-recognized Indian tribes and Alaska Native villages in the United States, all of which are eligible for membership in NAIHC. Other NAIHC members include state-recognized tribes that were deemed eligible for Indian housing assistance under the 1937 Act and grandfathered in to the Native American Housing Assistance and Self-Determination Act (NAHASDA).

[2] *See* http://www.bls.gov/news.release/empsit.nr0.htm.

[3] Bureau of Indian Affairs Labor Force Report (2005).

[4] Many of these reservations are in the state of South Dakota, which has one of the lowest unemployment rates in the nation. Ironically, on some South Dakota reservations, the unemployment rate exceeds 80-90%.

[5] US Census Bureau, *American Indian and Alaska Native Heritage Month: November 2008. See* http://www.census.gov.

- According to 2002 statistics, 90,000 Indian families were homeless or under-housed.
- On tribal lands, 28 % of Indian households were found to be over-crowded or to lack adequate plumbing and kitchen facilities. The national average is 5.4 %.
- When structures that lack heating and electrical equipment are included, roughly 40 % of reservation housing is considered inadequate compared to 5.9 % of national households.
- Roughly 60 % of reservation homes lack telephone service.
- Seventy percent of the existing housing stock in Indian Country is in need of upgrades and repairs, many of them extensive. Weatherization improvements often fall into this category.
- Less than half of all reservation homes are connected to a sewer system.

Issues regarding the availability of safe, affordable, appropriate housing in Indian communities are further complicated by land title status. Most Indian lands are held in trust or restricted-fee status; even tribes that have fee title to their lands, such as the pueblos in New Mexico, have restrictions on their titles. Therefore, private financial institutions will not recognize tribal homes as collateral to make improvements or for individuals to finance new homes. Private investment in the real estate market in Indian Country is virtually non-existent. Tribes are wholly dependent on the federal government for financial assistance to meet their growing housing needs, and the provision of such assistance is consistent with the federal government's centuries-old trust responsibility to American Indian tribes and Alaska Native villages.

Further, the modes of providing basic amenities utilized on reservations are often outdated, unsanitary, and unsafe. To expand on one of the examples noted above, less than 50 % of all reservation homes are connected to a public sewer system. Residents of those homes must resort to alternative means of sewage disposal like "honey-bucket" systems, wherein household waste and sewage are collected into large receptacles and later dumped in lagoons beyond the boundaries of the reservation. After a heavy rainfall, the waste and sewage washes back into the community, resulting in serious contamination, severe bacterial and viral infections, and the poisoning of crops.

This phenomenon results in a chronic need in our Indian communities for better health care, more sanitary living conditions, and nutrition assistance. Unfortunately, Native Americans have a shorter life expectancy and a higher rate of disease than the general population of the United States. An investment in remedying the underlying problem may well result in a reduction in costs to meet such chronic needs. The health care burden regarding Indian people, the provision of which is again consistent with the federal government's continuing trust responsibility to Indian people, falls largely on the federal government's Indian Health Service, as only 28% of American Indians and Alaska Native people have private health insurance through an employer. As a result of the poor housing conditions in Indian Country and the lack of sufficient federal resources to meet tribal health care and housing needs, American Indians and Alaska Natives endure, on a daily basis, conditions that would be unacceptable to most other United States citizens.

To summarize, there is already a consensus among many members of Congress, HUD, tribal leaders, and tribal organizations that:

- There is a severe housing shortage in tribal communities;
- Approximately 90,000 of Native families are homeless or under-housed, meaning severely overcrowded;
- Many of the existing homes, also known as housing stock, in Indian Country are in need of repairs, some of them substantial;
- Many reservation homes lack basic amenities that many of us take for granted, such as full kitchens and plumbing; and
- At least 200,000 new housing units are needed in Indian Country immediately, without any consideration to the growth of tribes and potential future need.

These facts are not in question, yet many members of the public, as well as members of our respected United States Senate and House of Representatives, remain unaware of the third-world conditions that exist in our very back yards. Even tribal members are often surprised when confronted with the extreme sub-standard living conditions faced by members of other Indian tribes. After touring several reservations in Northern California, John Muncy, a member of the tribal council of California's Morongo Band of Mission Indians, stated:

> *"I was just awestruck that people still live like that...It was an epiphany, an eye-opener. I felt, this isn't the Third World. This is Northern California. And people are living like this. It really helped change how I felt about tribes in California that don't have the success we do."*

Financial and capital barriers, when added to the clear, overwhelming need for improved tribal housing, compound the problem. A study by the Housing Assistance Council, a national rural housing organization, found that poverty, the lack of economic opportunity, and the shortage of financing for affordable housing all contribute to the deplorable housing conditions that exist for Native Americans living on reservations.

As afore-mentioned, substandard housing has long been recognized as contributing to worse health outcomes for Native Americans than the general population. An investment in improving living conditions for Native people may well, in the long-term, result in a reduction of costs in other areas, such as health care and nutrition assistance.

Programs for Weatherization of Tribal Homes

Currently, most federal weatherization funding is awarded through the states and the support of tribal weatherization programs and equitable distribution of funds to tribal communities varies, state by state. Sadly, much-needed funds rarely reach Indian Country under the current federal Department of Energy funding structure for a variety of reasons. NAIHC applauds the Indian Energy Act's allocation, or set-aside, of a minimum of 10 % of each fiscal year's funding to meet the weatherization needs of low-income Native Americans living on reservations.

For example, in the Bristol Bay area of Alaska alone, the need for weatherization on low-income homes exceeds $50 million. With the current level of federal and state funding that is available, the Bristol Bay housing authority is able to weatherize approximately 100 homes per year, which

leaves a 90% gap. **Ninety percent of the community's needs remain unmet.** In order to better serve Indian Country and carry out the federal government's ongoing trust responsibility to American Indians and Alaska Natives, this gap must be bridged.

As is true with many federal programs that transfer to tribal governments under the principle of tribal self-determination and self-governance, along with the need for weatherization dollars comes the need to provide training and technical assistance to tribes and tribal housing authorities so that they may effectively plan, implement, and manage weatherization programs. NAIHC stands ready to partner with the Department of Energy's Office of Indian Energy Policy and Programs to take on this important role and responsibility to assist tribes in building their institutional and organizational capacity to implement the weatherization provisions of the Indian Energy Act, should it become law.

Below, please find photos depicting some of the deplorable housing conditions that exist in Indian Country, as well as photos illustrating how weatherization funds might be utilized by tribes to improve living conditions for their membership. Sometimes the best way to grasp the severity of an issue is through photographic evidence.

Sadly, each year, many of our elders die, particularly on the Northern Plains reservations, due to insufficient insulation and heating systems. The reverse is true in parts of the Southwest, where sufficient cooling systems are not consistently available to tribal members. These are tragedies that are 100% preventable, and the weatherization funds proposed in the Indian Energy Act would be a valuable resource for use toward remedying this situation.

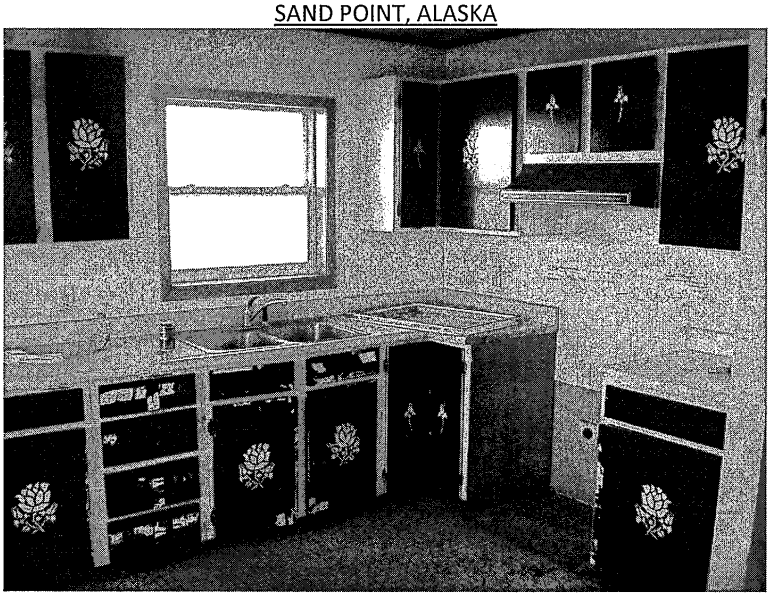
Again, thank you for introducing the *Indian Energy Promotion and Parity Act of 2010.* NAIHC stands in full support of the Act and is readily available to offer any assistance to advance and promote its consideration as it moves through the legislative process.

Thank you for time and consideration.

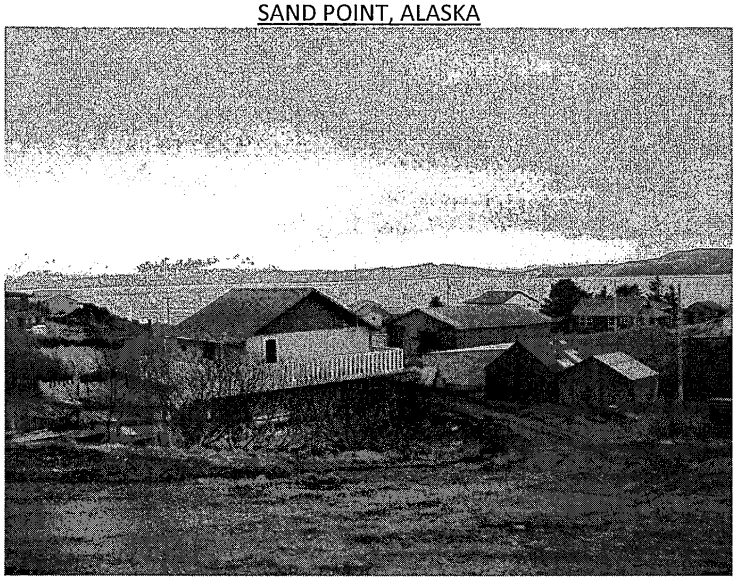
PICTURE 1: TRIBAL HOME IN NEED OF WEATHERIZATION AND IMPROVEMENTS
SAND POINT, ALASKA

PICTURE 2: TRIBAL HOME IN NEED OF WEATHERIZATION AND IMPROVEMENTS
SAND POINT, ALASKA

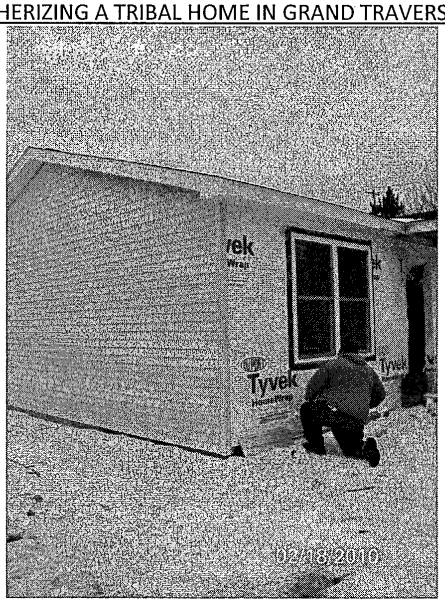
PICTURE 3: TRIBAL HOME IN NEED OF WEATHERIZATION AND IMPROVEMENTS
SAND POINT, ALASKA



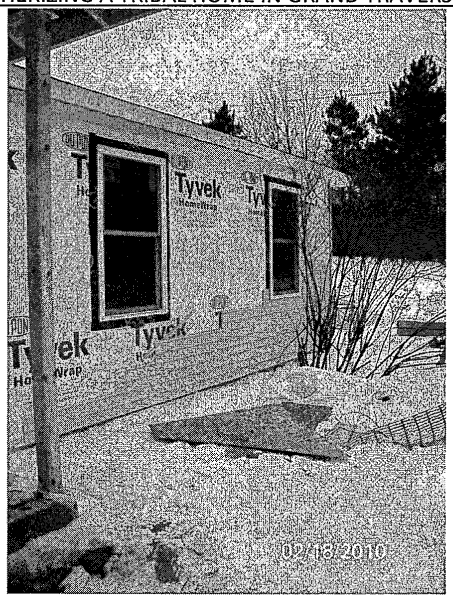
PICTURE 4: TRIBAL HOME IN NEED OF WEATHERIZATION AND IMPROVEMENTS
SAND POINT, ALASKA



PICTURE 5: WEATHERIZING A TRIBAL HOME IN GRAND TRAVERSE BAY, MICHIGAN



PICTURE 6: WEATHERIZING A TRIBAL HOME IN GRAND TRAVERSE BAY, MICHIGAN



PREPARED STATEMENT OF HON. RON SUPPAH, CHAIR, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION TRIBAL COUNCIL

Dear Chairman Dorgan, Vice Chairman Barrasso and Members of the Committee:

The Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS" or "Tribe") is a federally recognized Tribe located in Central Oregon. The Tribe's 644,000 acre Warm Springs Reservation ("Reservation") is highly rural in nature, reaching from the crests of the Cascade mountains to the high desert of Central Oregon and houses significant renewable energy potential, including hydroelectric, geothermal, biomass, solar and wind.

CTWS is actively engaged in implementing and developing these and other energy resources on the Reservation and is a member of the Northwest Energy Tribal Group ("NWTEG"), the Affiliated Tribes of Northwest Indians ("ATNI") and the National Congress of American Indians ("NCAI"). The Tribe greatly appreciates the efforts of the Committee to engage these groups and individual tribes in crafting many of the energy legislative initiatives contained in this bill. The Tribe supports not only the initiatives in this bill but would like to express our support for a bill that focuses on Indian energy matters. The Tribe requests that this testimony be included in the Committee's hearing record of April 22, 2010, on the draft bill.

Energy Development: A Unique Opportunity for Tribal Community Development

At a time when energy independence is gaining federal and state policy prominence, it has become apparent that, for many tribes, renewable energy provides a realistic opportunity to significantly improve tribal communities and economies. This is particularly felt in the western states where many states are already implementing renewable energy portfolio standards, raising the demand for renewable generation in the marketplace and where numerous tribes, such as CTWS, have access to renewable resources with different generation capabilities.

While renewable energy generation resources are, by definition, renewable, the resource base that Tribes have access to is, in fact, limited. ***It is critically important that tribes be empowered***

to seize this unique opportunity in a strategic manner to be able to leverage projects to produce the greatest benefit for tribal communities and economies.

This Committee is well informed of the distinctive challenges facing tribal communities. Energy development is a community development issue for tribes. Accordingly, it is fitting that this Committee consider energy policy that can be tailored to empower tribes to be able to maximize benefits to tribal communities such as job creation, training opportunities, family wages and tribal revenue.

Current Energy Policy and The Case for Flexibility

Current energy policy largely favors tax incentives. Because tribes are not taxpayers, taking advantage of these incentives requires attracting outside investors.

Financing arrangements which involve third parties to take advantage of these tax incentives can greatly benefit tribes as well as the private investors and the economy as a whole. However, the heavy emphasis on the tax incentive tool has developed into heavy emphasis on a certain general model for development and financing of projects—one that may not provide adequate flexibility to tribes to maximize benefits to the tribal community.

Every development model or structure involves certain trade-offs. For example, a single financing effort to develop a wind farm in one phase may produce significant tribal revenue benefits; however, the necessary pace of construction to meet tax incentive dates may not provide opportunities to develop tribal workforces over a reasonable timeframe to construct the necessary infrastructure and turbines, which expertise could later open opportunities for off-reservation tribal enterprises.

Similarly, outside financing without federal loan guarantees, will normally look to power sale revenues for the lifetime of the investment as security for the financing. Utilizing power sales agreements as the primary security for outside investment—while ensuring a certain revenue stream to the tribe—inevitably also reduces the flexibility of tribes to market the energy in potentially more advantageous ways. For example, the Warm Springs Reservation has wind, biomass, hydro, solar and geothermal generation potential. If CTWS were able to shape its own energy and sell that energy, it could provide tremendous marketing opportunities for the Tribe, not only for power sale revenue but also for attracting other green industries on the Reservation that seek to utilize one hundred percent renewable energy.

It is critically important to provide meaningful options to tribes to enable flexibility in evaluating the planning, financing, development, and operation of tribal energy projects. These options should include: effective grant and loan guarantee programs, tax free bonding authorization, and easier and more reliable access to tax incentives for tribes.

The Tribe is pleased to see many of these issues addressed in the bill. The Tribe has commented numerous times to numerous committees regarding: the need for permanent authorities regarding accelerated depreciation and Indian employment wage credits, the need for transferability of production tax credits ("PTC") and investment tax credits ("ITC") and the need for loan guarantee and grant programs. Notably, the Tribe is currently attempting to finalize financing of its proposed biomass generation facility and is finding that the tax credits are not as valuable in the current market. The Grant in Lieu of Tax Credit created by ARRA promises to be a very valuable incentive during the ongoing market conditions. ***The Tribe strongly supports each item in the Energy Financing Title of the bill and the loan guarantee program in Section 205 of the bill.***

CTWS Biomass Proposal. What Would Assist in Getting it Financed

Most members of this Committee are well informed of the Tribe's proposed 20 megawatt biomass generation facility to be co-located with the Tribe's lumber mill. This project has been under development since 2003. This is a good project. It is shovel ready and it can: (1) help to manage serious forest health conditions on the Reservation and on adjacent federal lands; (2) create at least 30-40 jobs; (3) generate needed renewable domestic energy; (4) reduce wildfire risks to rural communities as well as air pollution from such fires; and (5) generate needed revenue for tribal governmental services, among other benefits. These are the reasons why the project has been awarded an ARRA wood-to-energy grant and the reasons why the Tribe continues to pursue this biomass project, despite significant challenges in getting the project financed.

Tax Credits and Grant in Lieu of Tax Credit. Some of these challenges have related to the financing marketplace in general. Even in light of the challenges of attracting investors with capital and with tax credit appetite, the project has attracted investors; but reliance on expiring tax incentives for the financing has raised other challenges because the project has a significant construction timeline (18 months) and it is difficult to beat the clock with respect to expiring tax credits such as the PTC or ITC. ARRA made significant improvements by extending the current in-service date for the PTC to 2013. ARRA also created an important new financing incentive. It created a new Grant in Lieu of Tax Credit program whose value does not rely wholly on the tax credit appetite of investors in this challenging market and which increases flexibility in partnering opportunities.

Extension of the PTC and ITC credit and the transferability of these credits are important steps to help facilitate these financing tools for tribes, and the Tribe supports the bill's efforts to build on the ARRA improvements to increase transferability. Because there are ongoing challenges in the tax credit financing market and because tribes can benefit from the increased flexibility created by the Grant in Lieu of Tax Credit, the Tribe strongly supports the bill's extension of the Grant in Lieu of Tax Credit to 2016.

Fuel Supply. Another significant challenge has been demonstrating contractually obligated fuel supply to the plant to meet the power sale agreement obligations. The Tribe has a well developed fuel supply plan with fuel coverage of two and a half to six times the plant's fuel needs. In addition, the Tribe controls approximately thirty percent of the fuel for the plant on the Reservation; however a significant portion of the fuel is planned to be sourced from federal lands. Federal land managers have demonstrated enthusiastic support for the project and have entered into an Memorandum of Understanding ("MOU") which identifies that the agencies will include biomass utilization clauses in contracts on federal lands; however, an MOU often falls short in demonstrating contractually obligated fuel. ***The woody biomass demonstration projects initiative under Section 208 of the bill may assist the Tribe in overcoming challenges in demonstrating a reliable fuel supply from adjacent federal lands. In addition, loan guarantee programs, such as the one in Section 205 of the bill, may help to reduce the financing focus on contractually obligated fuel.***

Tax Exempt Bonding. The proposed bill does not include tax exempt bonding authority. This may be because Section 1402 of Title I of Division B of the ARRA authorized Tribal Economic Development Bonds ("TED bonds"). These bonds along with other tax exempt bonding programs such as the Clean Renewable Energy Bonds ("CREBs") provide important tools for Tribes to evaluate alternate financing methods from the other tax incentive mechanisms. This could be important for the Tribe's biomass project as well as other potential energy projects. In the past the CREB funding has been insufficient to meaningfully assist in project financing. With respect to the TED bonds, the Tribe is aware that not all of the TED bond allocations have been issued. ***Because of the important opportunities that TED bonds or CREBs could make available to tribes, the Tribe believes that it is important to increase CREB funding authorizations and to re-award unused TED bond allocations and extend the deadline for issuance of the TED bond. The Tribe encourages the Committee to consider including this in the bill.***

Other Sections of the Bill

The Tribe supports the bill as a whole; however there are a few additional areas of special interest to the Tribe for which the Tribe wishes to express support. ***The Tribe strongly supports the establishment of the Indian energy development offices in Section 101 of the bill along with comprehensive energy resource planning program in Section 104 of the bill.*** These functions will be critical tools for shaping federal programs and policies to assist tribes with current authorizations and in the future. As noted above, CTWS believes that it is critical that tribes seize this energy opportunity strategically. Comprehensive planning is critical to enable tribes to accomplish this.

The Tribe also strongly supports streamlining of NEPA compliance efforts on tribal lands and modernizing leasing authorities. Tribes, unlike the federal government, are engaging in

significant commercial activity on their tribal lands. NEPA was not crafted to accommodate this commercial model, yet it applies to tribal lands because they are federal lands and are often administered by Interior. It is no surprise then that the length and cost of NEPA compliance efforts, and the associated legal challenge risks, often discourage private investment on tribal lands. Streamlining this process while also protecting tribal resources makes good sense. Authorizing commercially reasonable leasing authority is also critical in attracting private investment.

Conclusion

The Tribe appreciates the opportunity to present comments and testimony on the draft. Even more, the Tribe appreciates the Committee's significant efforts to craft a bill that can have a meaningful effect in improving the lives of tribal members by improving the communities in which they live. As noted above, energy development for tribes is first and foremost a community development tool. It is critical that tribes and our elected representatives continue to work together to tailor federal policy that enables tribes to seize this opportunity in a way that will maximize benefit for our communities.

YERINGTON PAIUTE TRIBE
171 Campbell Lane
Yerington, Nevada 89447

Tribal Chairman
Elwood L. Emm

Vice-Chairman
Keneth Roberts

Member
Loretta Johnson

Member
Louina Emm

Member
Claudia Saunders

Member
Lisa Williams

Member
Linda Howard

Tribal Manager
Mike Sharkey

Secretary of Record
Marlene D. Smallwood

Chairman Byron Dorgan and Members of the Committee on Indian Affairs:

We write this letter in support of the changes proposed by the Native Energy Community Coalition to the Committee's Discussion Draft of the "Indian Energy Promotion and Parity Act of 2010." Further, we support their request for defining eligible entities for the entire proposed language to include the same definitions as are currently defined under the Native American Housing and Self Determination Act.

The Native Community Energy Coalition (NCEC) is a group of Tribally Designated Housing Entities with the common goal of developing renewable energy on tribal land to support Native American housing units. We agree with the President and the Department of Energy in acknowledging that less than 5% of renewable energy potential on tribal lands is currently being utilized. The problem is that small housing programs, like those of NCEC members, lack the resources to develop systems using wind, biomass, solar, geo-thermal, and micro-hydro. Grant application requirements prohibit small entities from submitting competitive applications such as those in the Tribal Renewable Energy Program. Thus, we agree with the Committee that there is the need to establish the Distributed Energy and Community Transmission Demonstration Project as drafted under Title II Section 203 of the Discussion Draft. However, the Committee must amend the language to ensure that small and economically disadvantaged tribal entities are sole beneficiaries.

We propose that the Committee include in any final draft the "Indian Energy Promotion and Parity Act of 2010" the following changes to Title II Section 203:

-Add to the Priority Projects the following criteria to ensure the program addresses the needs of small and economically disadvantaged tribes:

- (5) There is a need for a new generation facility or distribution system or the replacement of an existing facility;
- (6) The tribes' population is a minimum 1,000 and maximum 3,800 enrolled members;
- (7) The extent of poverty and economic distress and the number of Indian families within Indian areas of the Tribe as defined in the Native American Housing Assistance and Self Determination Act;

-Under Eligible Projects replace "instream hydrokinetic energy" with "micro-hydro."
-Add a new clause that provides an exemption for eligible entities from all Cost-Sharing requirements under P.L. 109-58 sec. 988, minimum generation capacity requirement, and maximum benefit to maximum population consideration in the evaluation of projects.

Please do not hesitate to contact our offices if you have any further questions or concerns about these proposed amendments or other issues addressed by the Native Community Energy Coalition.

Respectfully,

Elwood L. Emm, Tribal Chairman

PREPARED STATEMENT OF JEFF CRAWFORD, ATTORNEY GENERAL, FOREST COUNTY POTAWATOMI COMMUNITY

On behalf of the Forest County Potawatomi Community ("FCPC" or "Tribe"), I would like to greatly thank the Senate Committee on Indian Affairs (the "Committee") for its concern about and understanding of Tribal energy issues as shown in its preparation of the Draft Indian Energy Promotion and Parity Act of 2010 (the "Draft Act"). The Tribe strongly supports your efforts to promote renewable and other energy development and energy-efficiency projects in Indian Country.

The provisions in the Draft Act are greatly needed and will significantly benefit both Indian Country and our nation as a whole, since the Draft Act will allow Indian tribes more of an equal playing field in developing renewable energy and energy-efficiency projects. This is particularly important because of the vast renewable as well as traditional energy resources that tribal lands possess and because of the significant present hurdles to developing those resources.

As is discussed below, FCPC has made it a great priority to implement energy-efficiency measures and to develop its available renewable resources. However, it presently faces significant hurdles in implementing these projects. Many of these hurdles would be addressed through passage of the Draft Act. These comments focus on some of the key elements of the Draft Act for the Tribe, as well as modifications and additions to the Draft Act to help address additional hurdles that the Tribe faces.

Among the most important aspects of the Draft Act are the provisions that put tribes on an even playing field with other renewable energy developers, by being able to utilize production tax credits, investment tax credits and grants in lieu of investment tax credits. This is crucial, given the critical importance of these tax credits and grants to making renewable energy projects economically viable. Accordingly, FCPC wishes to especially stress the importance of these provisions in the Draft Act. In addition, because small changes to these provisions would make them substantially more valuable to tribes such as FCPC who are focused on developing their renewable assets, these comments also include suggested modifications to these provisions of the Draft Act.

Background Regarding FCPC Renewable Energy and Energy-Efficiency Initiatives

Because of the Tribe's long dedication to protection of the environment and because of the Tribe's goal of becoming energy independent through the use of only renewable carbon-free or carbon-neutral resources, the Tribe has taken significant steps to improve its energy efficiency and to develop its renewable resources.

Energy-efficiency efforts. The Tribe has implemented an extensive energy-efficiency program that has included energy audits of all of the Tribe's major energy-using buildings. These audits have identified over 100 potential energy-efficiency measures, which the Tribe has been working diligently to implement. As a result, the Tribe now uses 11.6 percent less energy per square foot of building space and has 19.7 percent less carbon emissions than in 2007. The Tribe is continuing to put in place major energy-efficiency projects, in a continuing effort to improve its overall energy efficiency. However, many of these additional projects require substantial capital investments. Accordingly, the provisions in the Draft Act that provide incentives for energy-efficiency projects are very important to the Tribe's continuing efforts to become more energy efficient and to lower its carbon profile. In addition, as discussed below, allowing tribes to transfer energy-efficiency tax credits, as other governmental units are presently able to do, would be a very beneficial addition to the Draft Act.

Renewable energy development. The Tribe is taking a number of steps to develop its available renewable resources. These steps include developing its Community Renewable Energy Project that utilizes the extensive forestry biomass material on and around the Tribe's Reservation, as well as biogas from digested waste materials, to produce green energy and steam for use by the Tribe and sale to its utility and potentially other third parties. The Project also includes a biomass drying facility that produces significant amounts of dried wood chips both for the on-Reservation biomass/biogas generation facility and for use to displace significant amounts of coal in existing off-Reservation power plants.

On January 21, 2010, the U.S. Department of Energy (DOE) named the Tribe as one of the only five communities nationwide, and the only tribe, to receive the competitive Community Renewable Energy Deployment Grant. Under this grant, the Tribe would become a "showcase" renewable community, showing other communities how to become energy independent in a sustainable manner. DOE awarded the Tribe a potential $2.6 million grant based on DOE's recognition of the Tribe's long-standing environmental commitment and because of the thoroughness of the Tribe's application and its renewable energy plan. The Tribe's application included several renewable energy components, including the biomass/biogas energy and steam system and wood chip-drying facility described above, as well as smaller biomass heating and wind and solar generating systems.

The Tribe is also performing a feasibility analysis to potentially develop a biogas digester and co-generation facility that will utilize waste from the Tribe's Milwaukee Casino and surrounding businesses to produce green energy and steam. In addition, the Tribe is evaluating installing a large geothermal heating and cooling system to serve its historic Concordia Trust Property, which is located in a Milwaukee urban neighborhood, as well as potentially the surrounding area.

All of these projects involve significant planning and capital resources, as well as permitting and other complexities. Accordingly, the provisions in the Draft Act are very important to help make sure that these projects become a reality. In addition, it is very important that the Draft Act contain the suggested modifications below

to help ensure that it is beneficial to FCPC's renewable energy projects, as well as numerous other projects in Indian Country.

FCPC Comments on Title I of the Draft Act

FCPC's strong support for federal program integration in Title I. FCPC strongly supports Title I of the Draft Act, which allows for integrated federal support of Tribal energy projects through comprehensive planning, expedited permitting, and coordinated technical assistance. This is a critical issue for Indian Country, where agencies of overlapping jurisdiction and assistance are often involved in renewable energy projects. This is the case with the Tribe's Community Renewable Energy Project. Accordingly, the Tribe greatly appreciates the provisions in Title I that provide for streamlining and coordination among federal agencies of Indian energy matters and notes that its Community Renewable Energy Project would be significantly benefitted if it could participate as a Indian Energy Program Integration Demonstration Project.

FCPC's strong support for development of Indian Energy Development Offices and request for office in Midwest Region. The Tribe also strongly supports establishing Indian Energy Development Offices in regional agency offices as one-stop shops for timely processing of Indian energy projects. The Tribe agrees that it is very important to focus on efficient processing of Indian energy matters, since tribes are a very important source of renewable and traditional energy and any slowdowns in processing Indian energy matters hurts both Indian Country and our country as a whole. The Tribe notes that it is very important to have an Indian Energy Development Office in the BIA Midwest Regional Office, which serves Minnesota, Michigan, Wisconsin and Iowa, given the significant biomass and wind energy resources available in this area. It is also very important that this office have expertise with respect to these and other renewable energy resources available in this area. Accordingly, the Tribe respectfully requests that the Draft Act designate that one of the Indian Energy Development Offices is to be located in the BIA Midwest Regional Office and that it focus on renewable energy resources.

FCPC Comments on Title II of the Draft Act

FCPC's strong support for distributed demonstration projects and FCPC's noting of need for funding of projects. The Tribe also strongly supports Title II of the Draft Act. In particular, the Tribe supports Section 203, which calls for the Department of Energy to conduct at least five distributed energy demonstration projects. However, FCPC notes the importance of making sure that there is adequate funding for these demonstration projects. Accordingly, FCPC respectfully requests that efforts be taken to ensure adequate funding for these important demonstration projects.

FCPC's strong support for amendments of DOE loan program and FCPC's noting of need for immediate effect of changes. The Tribe also strongly supports the amendments to the Department of Energy Loan Guarantee Program in Section 205 of the Draft Act. Since many Indian Country energy projects require significant private investment to make them work (especially if the investment tax credit, production tax credit and grant in lieu of investment tax credit rules are not changed), it is very important to make sure that DOE Indian loan guarantees are available to tribal energy resource development organizations, as well as tribes themselves. However, since these loan guarantees are important right now, FCPC respectfully requests that the changes to the Energy Policy Act of 1992 reflected in Section 205 take effect immediately, rather than up to one year after enactment of the Draft Act.

FCPC's strong support for inclusion of tribes in State Energy Conservation and Home Weatherization Programs. The Tribe also strongly supports both the inclusion of tribes in the State Energy Conservation Plan Program (Section 206) and the Home Weatherization Assistance Program (Section 207). The Tribe strongly concurs with the drafters that there should be at least a 5 percent set aside for tribes under the State Energy Conservation Plan Program and at least a 10 percent set aside for tribes under the Home Weatherization Assistance Program. These levels of funding are critical to help ensure the development of energy efficiency, weatherization, and renewable resources in Indian Country and to address historic lack of funding for Indian Country in these important areas.

Request for effective allocation system for Section 206 like that in Section 207. The Tribe notes that Section 206, regarding inclusion of Indian tribes in the State Energy Conservation Plan Program does not set forth factors regarding how resources under this program should be allocated among tribes. FCPC respectfully recommends that Section 206 include an allocation provision similar to that provided under Section 207, regarding home weatherization assistance. This would allow for one third of the funds to be allocated in equal shares among tribes that elect to receive funds, while two thirds are allocated under competitive grants. This would

help ensure that sufficient funding flows to tribes that have well-developed plans for projects that can be effectively implemented once competitive funding is obtained, while still ensuring that all tribes have access to funds.

Suggestion to not prioritize building repair and construction over new heating and cooling equipment in Section 207. With respect to the Home Weatherization Assistance Program, the Tribe strongly supports the provisions that recognize the government-to-government and trust relationships between the United States and Indian tribes and therefore remove potential barriers to the use of weatherization assistance funds such as energy audits, grant limitations, income and other administrative and other eligibility requirements. The Tribe notes, however, that the requirement that activities funded primarily involve the acquisition and installation of energy-efficient windows and doors and the repair, replacement or installation of floors, walls and ceilings and only secondarily involve the acquisition and installation of heating and cooling equipment may not allow tribal members to achieve maximum energy-efficiency gains. While for some Indian households the installation of energy efficient windows and doors and the repair, replacement or installation of floors, walls and ceilings may be the most pressing energy-efficiency need, with respect to other Indian households, with older and inefficient heating and cooling equipment, installation of new equipment may be a substantially more cost-effective measure. Accordingly, the Tribe respectfully recommends that the Draft Act remove the distinction in priority between energy-efficiency measures related to building repair and construction and measures to install efficient heating and cooling equipment.

FCPC's strong support for and request for modification and clarification of woody biomass demonstration projects. The Tribe also strongly supports the addition of woody biomass demonstration projects to the Tribal Forest Protection Act of 2004, as reflected in Section 208 of the Draft Act. This provision, which allows for contracts between tribes and the Departments of Agriculture and Interior to provide reliable supplies of woody biomass from federal lands for Indian biomass demonstration projects, is critically important for biomass energy projects, such as the Tribe's Community Renewable Energy Project. While tribes such as FCPC often have significant forestry resources, to make a biomass-energy project feasible, it is often critical to obtain substantial additional forestry material. That is the case with the Tribe's Community Renewable Energy Project.

The Tribe respectfully requests that the drafters add to the selection criteria whether the proposed demonstration would add to the electric reliability of the Indian land and surrounding areas. Many rural tribes, such as FCPC, are located in areas with poor electric reliability, and the siting of new biomass generation in these areas can provide significant reliability as well as renewable energy benefits. This added electric reliability is key to further economic development in Indian Country.

In addition, the Tribe respectfully requests that this section be clarified to indicate that contracts can be entered between tribes and the U.S. Government to provide woody biomass so long as any portion of the tribe's reservation is adjacent to any portion of the federal lands. This confirmation is important, since many Indian lands, such as the FCPC Reservation, are "checker boarded." This checker boarding, combined with the checker boarding of adjacent or nearby federal lands, such as the Nicolet National Forest (which is adjacent to portions of the FCPC Reservation but not others) may create confusion regarding whether a tribe such as FCPC can enter into contracts with various portions of the federal land at issue. With respect to the Tribe's Community Renewable Energy Project, it appears likely that the most effective location for the biomass/biogas generation facility may be on Reservation lands that are not directly adjacent to the Nicolet National Forest. Accordingly, the Tribe respectfully requests that this provision be modified to clarify that contracts can be entered into by tribes and the Departments of Agriculture and Interior for federal lands that are adjacent to any portion of a tribe's reservation.

FCPC Comments on Title III

FCPC very strongly supports Title III of the Draft Act, especially the provisions that bring tribes into parity with states and local governments and private individuals with respect to production tax credit, investment tax credits and grants in lieu of investment tax credits.

FCPC's strong support for Sections 301 and 302 and request for limited modifications to substantially increase flexibility and value of credits to tribes. The Tribe welcomes and strongly supports Sections 301 and 302, which would allow tribes to at least indirectly take advantage of federal tax credits for investments in renewable energy projects. However, the Tribe respectfully suggests that the transaction costs associated with the transfer of these credits could be dramatically decreased, and

that both the value of the credits and tribal flexibility with respect to Indian energy projects could be dramatically increased, if tribes could transfer these credits to taxable parties that do not have an ownership interest in a tribal energy facility or in tribal energy equipment. The Tribe respectfully proposes below, language that would allow tribes to more freely transfer these tax credits:

- Section 301: in proposed Section 45(e)(3)(B)(i) of the Code, strike the words "who has an ownership interest in the gross sales from such facility" immediately following the words "the Indian tribe may assign to any other person."
- Section 302: in proposed Section 48(a)(6)(A) of the Code, strike the words "who has an ownership interest in the property" immediately following the words "such government may assign to any other person."

This added flexibility should greatly aid the development of Indian energy project without adding any additional costs to the Federal Government.

FCPC's strong support for extension of Treasury grants to tribes. The Tribe also welcomes and very strongly supports extension of the Treasury grants to tribes. This change is critical since it allows, for the first time, tribes to own their renewable energy projects, while receiving critical financial incentives, available to other entities. This will help tribes achieve true energy autonomy. However, while extending the Treasury grants to tribes brings tribes closer to parity with for-profit developers of renewable energy projects, the Code still imposes a number of limitations on depreciation deductions for projects owned in part by, or leased to, tribal governments. These include the requirement that owners of projects leased to, or owned in partnership with, tribal governments calculate depreciation deductions for those projects using a straight-line depreciation method and much longer recovery periods than would be available under the modified accelerated cost recovery system. They also include the general limitation of losses imposed on owners of projects leased to tribal governments. These limitations on losses, and particularly the limitations on depreciation deductions attributable to property leased to or owned in part by tribal governments, impedes tribal governments from exercising control over renewable energy projects on Indian land and therefore hampers tribal energy autonomy. The Tribe believes that a logical—and enormously beneficial—corollary to the extension of Treasury grants to tribes would be to relax these limitations on a very limited basis and allow for-profit entities that work with tribes to develop renewable energy projects on Indian lands to take advantage of the accelerated depreciation generally available to for-profit entities that place business property in service on Indian lands. The Tribe feels that such a rule, properly tailored to cover only renewable energy projects that would otherwise be eligible for the Treasury grants, would remove a key remaining imbalance between tribes and for-profit developers of renewable energy projects, and would thus be integral to helping tribes take control of and develop the energy resources on their lands. The Tribe would, of course, be happy to work with the Committee in crafting appropriate language to address this issue.

Request for harmonization of expiration dates of tax credits and grants. The Tribe respectfully notes a disconnect between both the placed-in-service deadline for the Treasury grants (December 31, 2015) and the expiration of the provision allowing tribes to transfer ITCs (December 31, 2014) and the latest placed-in-service deadline under the ITCs (December 31, 2016). The Tribe respectfully acknowledges that there may be myriad legislative concerns underlying this disconnect. Nevertheless, for simplicity in the tax code, and to ensure that the tribes have flexibility to choose the most appropriate ownership structure for a renewable energy project, the Tribe respectfully suggests that these expiry dates be harmonized to all fall on December 31, 2016.

Request for equal playing field regarding energy-efficiency tax incentives. The Draft Act does not include provision for tribes to take advantage of federal income tax incentives for energy-efficiency projects. Currently, tribes are shut out of energy-efficiency tax incentives that federal, state and local governments can allocate to the developers of their energy-efficiency projects. *See,* U.S.C. ⧫179D (d)(4). Unlike federal, state and local governments, which are allowed to transfer these incentives to the developer of their energy-efficiency projects, tribes are provided no such opportunity. These energy-efficiency tax incentives are critical to help FCPC and other tribes implement significant energy-efficiency initiatives. Accordingly, FCPC respectfully suggests that the Draft Act should allow for tribes to be provided equal access to energy-efficiency tax incentives as are other government entities. This could occur simply by adding federally-recognized Indian tribes to the list of governmental entities that can allocate the tax incentive to the person primarily responsible for designing the energy-efficiency improvements.

Thank you for your consideration of our comments, and we look forward to working with you to help ensure that tribal energy development (including renewable-energy development) and tribal energy-efficiency measures can be successfully implemented.

PREPARED STATEMENT OF HON. EDWARD L. METCALF, CHAIRPERSON, COQUILLE INDIAN TRIBE

Title I

- Section 101
  - (E) – The Director's role here is described as "ensuring the timely processing of Indian energy material in the jurisdiction of the director that are subject to the development, review, or processing by – [various Interior offices]." It would be helpful to more clearly define the Director's authority to enforce this obligation.
  - The Director's role will be necessarily limited if it does not include some ability to direct the agencies described in Section 102(b)(2).

- Section 102
  - (b) – Will a tribal or tribal energy resource development organization's plan be subject to FOIA?
  - (b)(3) – Will the "federally funded energy-related activities" include those that are transferred to a tribe under the Self Determination or Self Governance Programs? Tribes will likely object to an additional layer of authority over such Federally-funded programs.
  - Is the plan described in Section 102 the same as the plan described in Section 104?

- Section 207
  - The bill provides for funding of energy efficiency improvements to homes "in tribal communities". The Coquille Tribe, like many restored Indian tribes has a small lands base. Our Restoration Act provides that our five county service area constitutes our reservation for Tribal members receipt of Federal services and benefits. It would be helpful if this legislation allowed tribes like ours to use these funds not only for our trust land Tribal housing program, but also for Tribal members residing in our five-county service area.

- Section 208. We have a number of comments to section 208 of the discussion draft.
  - In the first sentence, the word "electricity" should be replaced with "energy, steam and fuel" to permit both steam generation and the creation of fuels through pyralysis or similar processes.
  - Also in the first sentence the phrase "on Indian forest land" is much too narrow. Many tribes, for example, will manage their forests to provide a fuel supply for a trust land biomass facility located outside of the forest, but still on trust land. This phrase should be replaced to read, "within Indian country or on other lands owned by a Tribe."
  - Also in the first sentence the word "adjacent" should be struck so that the end of that sentence would read, "from Federal land." Alternatively, please add the following phrase after deleting the word "adjacent", "Federal lands of special geographic, historical, or cultural significance ot a Tribe."
  - At subparagraph (3)(B)(i), please replace the phrase "Indian forest land" with "Indian-owned land". Similarly, at subparagraph (3)(B)(ii)(I), please replace the phrase "on Indian forest land" with "on Indian owned land". We would be satisfied with any alternate designation that addresses our concerns above.
  - We suggest that you add a new subsection (6) and renumber the current subsection (6) to become subsection (7). New subsection (6) would authorize a Coos Bay Wagon Road demonstration project between the Secretary of the Interior and the Coquille Indian Tribe. This new section would include the following provisions:
    - The Secretary will enter into an agreement with the Coquille Indian Tribe for a demonstration project for the Coos Bay Wagon Road lands located in Coos County, Oregon, which will provide for the Tribe to assume all or some of the forest management responsibilities for those lands.

- Notwithstanding any other provision of Federal law, revenues generated from management of these lands will be shared equally between the Coquille Indian Tribe and Coos County, Oregon.
- The Agreement entered by the Secretary will provide that, for Forest Management Activities (as defined in 25 USC 3103) assumed by the Tribe, the Coos Bay Wagon Roads will be treated exclusively as Indian forest land under 25 USC 3103-3110 & 3115 and the Secretary's regulations implementing the National Indian Forest Resources Management Act.

Thank you for the opportunity to provide these comments.

Why Wind & Solar Taxes should stay on the Reservations

Michael Connolly Miskwish – April, 2010

In the United States, taxes are assessed primarily based on the location of the transaction. Taxes are the basis for funding governmental services and, in many ways, are the reward to governments and the local citizens for creating conditions that promote the establishment of revenue streams in their jurisdiction. States and Counties jealously guard their tax base, working to ensure that the revenue generated from their jurisdictions is used to provide services to their communities.

In 1989 the U.S. Supreme Court ruled that States can tax commerce on Reservations without regard for services provided, double taxation or impacts to tribal economies. (Cotton Petroleum v New Mexico, 1989). Even though the Cotton Petroleum case involved the imposition of a mineral severance tax, it has been used to justify State and County intrusion into all areas of Reservation taxes.

There are few cases as egregious in their unfairness to tribal economies as the intrusion of State and County taxation into wind and solar energy projects. To start with, over 10-20% of the long term value of the commercial scale wind and solar energy projects is the generated sales, property and State income taxes. This is critically needed revenue for the Reservations communities, especially when you look at the fact that the Reservations with the highest renewable resources are much more likely to be in areas of limited gaming potential and therefore more impoverished.

If we look at a typical breakdown of local tax expenditures it is obvious that the Reservations are the place where the tax revenue should be staying. The following is the most common use of local tax bases and impact of renewable wind or solar to off-Reservation:

Category	Impact
Schools	Minimal. Less than 30 personnel can manage a $500 Million facility. Much of the monitoring is done off-site through the internet.
Roads	Once the facility is built, only a minor increase in traffic is required for repairs, maintenance and commutes of on-site personnel. Almost all of the road impact is to tribal roads.
Police	The remote location of these facilities helps to ensure that they bring little increases in crime. Most of the issues involve security of the facility and that is provided through tribal police or security personnel.
Emergency Services	Almost all Reservations provide emergency services either directly or under contract. Outside emergency services providers are unlikely to have any impact.
Environmental Protection	Reservations have their own environmental protections departments that monitor and ensure that development activity meets applicable standards.
Public Works/Land Use Planning	These activities are managed through the tribal governments. Renewable energy projects on Reservations minimally impact the land use planning and infrastructure of off-Reservation communities except to access the transmission grid.

Since most governmental impacts are borne by the Reservation hosting the facility, costs of providing the services must be diverted from the revenue stream to make up for the loss of taxation revenue. This means that Reservations are economically penalized by off-Reservation tax intrusion or they can double-tax and put themselves at a competitive disadvantage to the off-Reservation sites.

VINCENT YAZZIE
Flagstaff, AZ, May 5, 2010

Dear Honorable Senators,

I have been reading the draft version of the Indian Energy Promotion and Parity Act of 2010.

It almost reminds me of the last chapter in the Book of Revelation. Kill in the Name of energy development. The tribal entities will run rough shod over the indigenous people for that gold, silver, uranium, coal, peat, oil, gas, etc.

Again we have been pushed, shoved, and harassed off good grazing into the deserts to live humble lives many years ago. Now there is uranium, coal, oil, and gas under those lands and now you send holocaust guards to do the dirty work of moving their own people off the land and paying them in coupons.

At 36 degrees 7 minutes 54.52 seconds North, 111 degrees 14 minutes 22.90 seconds West, WGS 84 on Google Earth is a blown steam plant. A Navajo Navy man

ran the steam plant, but he retired and the people replacing him did not know how to run it. One day it blew up spreading asbestos threw out the whole building.

The tribes will start a power plant, but Indians will not be running it. If Indians are going to be running power plants, they need to spend two years at another power plant shadowing power plant people. Do not let the BIA train the people or you get another blown up steam plant.

Another broken dam is at 36 degrees 3 minutes and 10.31 seconds North, 110 degrees, 35 minutes, 8.71 seconds West WGS 84 Google Earth.

Another broken dam is at 35 degrees, 46 minutes, 57.29 seconds North, 109 degrees, 6 minutes, 21.36 seconds West. The dam was built and someone used too much plastic explosive and drained the lake.

Giving tribes waivers is not good if they already had a history of messing things up.

I say table the legislation.

VINCENT YAZZIE

A copy of the Discussion Draft on the Indian Energy Promotion and Parity Act of 2010 has been retained in Committee files and can be found at *www.indian.senate.gov* under "Issues".

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