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# DEFICIT REDUCTION AND JOB CREATION: REGULATORY REFORM IN INDIAN COUNTRY

## HEARING

BEFORE THE

## COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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# DEFICIT REDUCTION AND JOB CREATION: REGULATORY REFORM IN INDIAN COUNTRY

**THURSDAY, DECEMBER 1, 2011**

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. Daniel K. Akaka, Chairman of the Committee, presiding.

## OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The Committee will come to order. Aloha and welcome to all of you, to this Committee's oversight hearing on Deficit Reduction and Job Creation: Regulatory Reform in Indian Country.

Today, our Country finds itself in very difficult economic times. Many Native communities have been hit hard by the economic downturn and stagnant job market.

Unfortunately, such challenges are not new to Indian Country, where double-digit unemployment rates have always soared high above the national average. In some Native communities, unemployment is as high as 75 percent. Can you believe it?

Tribes have difficult and unique challenges in developing their economies. They are not equal with State and local government in their ability to access essential financial tools such as tax-exempt bonds.

Native communities also suffer from a lack of sufficient infrastructure, especially broadband, which makes it difficult to provide housing, health care and education for a qualified work force.

Finally, Tribes suffer from disproportionate regulatory hurdles that prevent energy and other economic development projects. Tribes need strong local economies, not just to provide jobs and services to their own members, but also to help support families in surrounding communities. Tribes are often the largest local employer as well as the largest purchaser of goods and services. They also are often in a unique position to drive local economic growth and job creation. But they need the right tools to do that.

That is why we are here today. Federal agencies can play a very important role in helping Tribes overcome these challenges, support Tribal financing and infrastructure development. They can also help reform administrative policies and regulations to reduce barriers to economic development.

At a time when deficit reduction is a national priority, we must make our current Federal programs work better. We look forward to hearing testimony today from our Federal and Tribal witnesses about how our agencies can work more efficiently and effectively to support Tribal economic development and spur job creation.

And now I would like to ask our Vice Chair, Senator Barrasso, for any opening remarks that he may have.

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

Senator BARRASSO. Thank you very much, Mr. Chairman, for holding this very important hearing. I agree with your comments and I appreciate your leadership on this. Because wherever I go in Wyoming and meet with leaders of the Eastern Shoshone and the Northern Arapaho Tribes, they continue to point out and we continue to visit about how important economic development is in Wyoming's Indian communities, which is exactly what you have said for the entire Nation.

Certainly on the Wind River Reservation, economic development is often another term for energy development. Energy development on the Wind River Reservation means jobs. And it means incomes for families, it means paying the bills, putting food on the table, just as you have said, Mr. Chairman.

Like many other reservations, the Wind River communities have significant challenges when it comes to economic development. Some of them are in remote locations. Metropolitan areas with large markets are far away. Employment opportunities are much too limited. Some reservations are blessed with a wealth of natural resources, energy, mineral resources, agriculture, timber, and other resources. Under applicable law, these resources are supposed to be managed in a way that benefits the Tribes and the members of the Tribes.

Sometimes, however, Federal laws and regulations and the way that they are implemented seem to do more harm, I am seeing, at least, seem to do more harm than good. And I will cite some examples. I recently introduced, and Mr. Chairman, you co-sponsored, what is titled the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. Before doing that, we engaged in a lot of consultation in Indian Country. The one thing we heard time and again is that the energy lease approval process is tied up on red tape and it takes too long. The NEPA process was a major contributor, we heard, to this problem. Some stakeholders urged us to simply exempt Indian lands from NEPA. These are similar to the complaints that we heard prior to the introduction of the HEARTH Act, which you and I have co-sponsored, working together. The Energy Bill and the HEARTH Act represent efforts to reform Federal laws that are inhibiting development that we will need in Indian Country.

Statutory laws are not the problem, however. Federal regulations and agency implementation of the statutes are often significant factors as well. Today, we are going to hear testimony from President Ben Shelly. We read through his written testimony on behalf of the Navajo Nation, and it tells a compelling story about the impact of EPA actions in Indian Country. So I urge all of our members and

everyone in the audience to listen closely to what he has to say about the EPA's regional haze rule in the Four Corners area. We need to be reminded that there are definite, real-life consequences to over-zealous regulations.

One last example I will mention as involving EPA is the recently-promulgated Minor Source Rule for Indian Country. That is a rule that significantly affects oil and gas activities in Indian Country under the Clean Air Act. That rule was adopted in August of this year. Most of the rule doesn't go into effect for three years. That delay is crucial to have a smooth implementation process.

Unfortunately, the new rule went into immediate effect for any new development of so-called synthetic minor sources. And it is my understanding that neither the EPA nor industry is prepared for that. And we are hearing from some corners of Indian Country that this will cause real problems.

EPA easily could have avoided these problems by simply postponing the effective date for the entire rule. So I can't fathom why they chose to bifurcate the effective date of the rule.

I could go on, Mr. Chairman, but I think I made my points. In these times of economic hardship, as you said in your statement today, we should be looking for ways to encourage economic development, not inhibit it or prevent it. So I look forward to hearing from the witnesses and I thank you for your continued leadership, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much, Senator Barrasso. You certainly have made your points clearly.

Now I would like to call on Senator Al Franken for his remarks.

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

Senator FRANKEN. Thank you, Mr. Chairman. I would like to thank you and the Vice Chairman for holding this important hearing about the relationship between economic development in Indian Country and Federal Government programs. Economic development is really the key to every community's success. If there is economic development, there are jobs. Where there are jobs, there is hope, there is dignity and a sense of purpose. There is housing for families and kids have a better chance for a good education.

But if economic development is hindered, all those are at risk. Tribes face a host of hurdles when trying to bring economic development to their communities, from a lack of infrastructure and duplicative regulations to problems accessing Federal programs and capital. There are definitely ways to improve Federal Government regulations and programs. I was pleased to see that as directed by President Obama, the Department of Interior intends to reduce the regulatory burden on Indian Country. In its plan for retrospective regulatory review it has highlighted its goal to save 50,000 hour of unnecessary clerical paperwork. I hope that is on more than one guy.

[Laughter.]

Senator FRANKEN. By streamlining administration for Indian Country, more agencies should follow that lead.

With limited resources, we also need to look at ways to increase flexibility and improve collaboration across programs and agencies.

I hope that in today's hearing we can look at what is working and what is not in Indian Country. One thing we know for sure is that the active involvement of Tribes is absolutely critical.

I look forward to hearing from our witnesses about innovative ways to create jobs and drive economic development in Indian Country. I thank all of the witness for coming today. Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much, Senator Franken.

And now I will call on Senator Tom Udall for his opening statement.

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

Senator UDALL. Thank you, Chairman Akaka, and thank you for holding this important hearing. I think we have all recognized how important it is to have economic development in Indian Country. I want to echo what all the others have said before me.

I hope today we can identify some areas where Congress and the Administration can work with Tribal communities to remove regulatory roadblocks and bolster economic development.

I would like to welcome the President of the Navajo Nation, Ben Shelly. He is here today and I believe the first lady, Martha Shelly, is also with us here in the audience.

There have been some impressive infrastructure and economic developments in the last decade as more broadband has spread into the Navajo Nation. Housing efforts have been redoubled and those have been very successful. And more economic opportunities have emerged. The Navajo Nation has bold and aggressive plans to increase renewable energy development, expand infrastructure, from rural water pipelines to roads and to housing. I look forward to hearing from President Shelly on some of these issues and on areas where we can work with him and other Tribal leaders to build Tribal economies.

This hearing is also a good opportunity for the Committee to reemphasize the vital need to ensure, through the coming years of deficit reduction, Tribal programs are not sacrificed. The Federal Government has a trust obligation to Native Americans to provide vital services. As budgets are tightened, this obligation should not be diminished. I would urge my colleagues in Congress to remember this commitment to Tribal nations as we move forward on stabilizing the Federal budget.

Thank you, Chairman Akaka, again, and I look forward to hearing from out witnesses before us and then the panel after that.

The CHAIRMAN. Thank you very much, Senator Udall.

With that, I welcome the witnesses to our hearing today. I appreciate all of you for traveling to be with us today and look forward to hearing your testimony on this very important matter.

I ask you to limit your oral testimony to five minutes. Your full written testimony will be recorded. Also, the record for this hearing will remain open for two weeks from today, so we welcome written comments from any interested parties. Thank you very much.

I would like now to introduce Mr. Doug O'Brien, Deputy Under Secretary for Rural Development for the United States Department of Agriculture, and Mr. Geoffrey Blackwell, Chief of the Office of

Native Affairs and Policy for the Federal Communications Commission.

Mr. O'Brien, please proceed with your remarks.

**STATEMENT OF DOUG O'BRIEN, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE**

Mr. O'BRIEN. Thank you. Chairman Akaka, Vice Chairman Barrasso and members of the Committee, it is my pleasure to join you today to discuss USDA's role in supporting economic development on Tribal lands, and our efforts to improve the delivery of these programs.

USDA programs span a wide range of areas, including those that directly affect farmers, conservation on private lands, the Forest Service lands, international trade, food safety, nutrition, housing, business development and much more. Secretary Vilsack is committed to a USDA that faithfully serves Tribal organizations and individual American Indians and Alaska Natives.

The Office of Tribal Relations, located within the Office of the Secretary, works to ensure that relevant programs and policies are easy to understand, accessible and developed in consultation with the American Indian and Alaska Native constituents. President Obama signed an executive order establishing the first White House Rural Council on June 9, 2011. The White House Rural Council, chaired by Secretary Vilsack, coordinates programs across Government to encourage public-private partnerships, to promote further economic prosperity and improve the quality of life in rural communities nationwide and has focused on issues important to Tribal communities.

USDA is also addressing civil rights complaints for new and stronger relationships with the farming and ranching community. In October of 2010, Secretary Vilsack announced the Keepseagle settlement with Native American farmers that, beyond the monetary award, very importantly features significant technical assistance.

As the Deputy Under Secretary of Rural Development, I would like to spend the balance of my time this morning talking specifically about this mission area and its associated programs. Rural Development is a collaborative agency with programs that build upon one another. We offer programs that support essential public facilities and services that promote economic development in rural areas. Rural Development's network of staff in 47 State-level offices and 500 area offices work closely with Tribes and dedicated partners. Staffs in local offices deliver programs for all three of Rural Development's agencies: the Rural Business and Cooperative Service; Rural Housing Service; and the Rural Utility Service. We also maintain a Native American Tribal coordinator to assist Tribes with their development interests at our State offices.

From 2001 to 2010, Rural Development assistance benefitting Tribes totaled more than $2.7 billion, including $400 million to expand broadband access in Tribal communities. We continue to support Tribal businesses in 2011 and look forward to supporting them in the future.

For example, through the Rural Business Enterprise Grant Program, the Montana Indian Business Alliance received a grant to provide business technical assistance to members to the Indian Tribes of Montana. The Wind River Development Fund in Wyoming also received a grant to conduct a feasibility study for the development of a joint venture construction project to build a new health clinic in Fort Washakie to serve residents of the Wind River Indian Reservation.

While we have been proud to partner with Tribal communities and members on important projects, we believe that we can do better. We have utilized the Tribal consultation process as directed by President Obama in 2009 to learn about how we can adjust our programs to better fit the needs of Indian Country. In 2010 and 2011, Rural Development conducted 20 direct government to government consultations, 7 regional consultations and countless other roundtables, listening sessions and meetings. Not only have we listened in the consultations, we have already acted on the wise counsel provided.

For example, we expanded the definition of small business in the Rural Energy for America program, a program that provides grants and loans for renewable energy production, to explicitly include Section 17 corporations and other similar Tribal corporations as eligible applicants. Rural Development recently released an administrative notice to clarify the eligibility of Amerind Risk Management Corporation as an insurer for single family housing direct loan programs.

Historically, insurance and insurance-like products have been unavailable, difficult to access or expensive on trust lands owned by Tribes and Tribal members. Our efforts in working with Amerind to bring them into the insurer pool for rural Development projects will make access to our housing funding projects more amenable in Indian Country.

Rural Development's programs are a critical component to supporting, growing and ultimately sustaining Tribal communities. While Rural Development program funding for fiscal year 2012 has been reduced, we are committed to continuing to improve our support and partnership through consultation in Tribal communities.

Again, thank you for the opportunity to be here today. I look forward to addressing any questions that you have, Chairman, or any of the other members have.

[The prepared statement of Mr. O'Brien follows:]

PREPARED STATEMENT OF DOUG O'BRIEN, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE

Chairman Akaka, Vice Chairman Barrasso and Members of the Committee, it is my pleasure to join you today to discuss USDA's role in supporting economic development on tribal lands. USDA Programs span a wide range of areas, including international trade, food safety, housing, business development, telecommunications, water systems, crop insurance, school lunches and more. I encourage tribal leaders to be innovative in thinking about how to best utilize USDA's diverse resources to better serve their communities.

Secretary Vilsack is committed to a Department of Agriculture (USDA) that faithfully serves Tribal organizations and individual American Indians and Alaska Natives. The Office of Tribal Relations (OTR), located within the Office of the Secretary, works to ensure that relevant programs and policies are efficient, easy to un-

derstand, accessible, and developed in consultation with the American Indian and Alaskan Native constituents they impact.

OTR is the primary point of contact for Tribal issues within USDA, and is responsible for:

- Government-to-government relations between USDA and tribal governments;
- Advising Secretary Vilsack on Tribal issues and concerns; Tribal Consultation;
- Alaska Native Claims Settlement Act (ANCSA);
- Issues impacting Tribal members; and
- Working cooperatively and collaboratively across USDA to build an integrated approach to issues, programs, and services addressing the needs of American Indians and Alaskan Natives.

We believe that the efforts and commitment of OTR is guiding the Department towards a more flexible approach in addressing the needs on Tribal lands.

Since President Obama's 2009 Memorandum on Consultation, a dedicated team from across USDA has been working to re-examine existing departmental policies and regulations regarding collaboration and consultation. We have held a series of joint consultation events where we heard from tribal representatives about program rules and challenges to utilizing USDA programs in Indian Country to better understand the specific needs of Tribes across the country. Staff continues to communicate with tribal leaders, members and organizations on a daily basis. In addition, on June 9th, President Obama signed an Executive Order establishing the first White House Rural Council. The White House Rural Council will coordinate programs across government to encourage public-private partnerships to promote further economic prosperity and quality of life in rural communities nationwide.

Chaired by Secretary of Agriculture Tom Vilsack, the Council is responsible for providing recommendations for investment in rural areas and will coordinate Federal engagement with a variety of rural stakeholders, including tribal governments. The Council will break down silos and find areas for better collaboration and improved flexibility in government programs and will work closely with state, local and tribal governments, non-profits, private companies, and to leverage federal support.

In furtherance of this objective, in August the Rural Council convened the White House Native American Business Leaders Roundtable with tribal representatives, economic development experts, and Federal policymakers. At this listening session, participants discussed challenges tribal businesses face, including access to capital, job skills and training shortfalls, and limited broadband deployment and adoption in tribal communities.

The feedback and insight gained by my colleagues are being incorporated into our ongoing efforts to address economic growth in Indian Country, and USDA looks forward to all we can achieve with our partners in the Federal Government and in Indian Country to create more opportunity in Native American communities.

USDA is also addressing civil rights complaints that go back decades to pave the way for new and stronger relationships with the farming and ranching community. In October of 2010, Secretary Vilsack announced the Keepseagle settlement with Native American farmers. The OTR reminded Native American farmers and ranchers in July that those who believe they are entitled to funds under the Keepseagle settlement must file a claim no later than December 27, 2011. Up to $760 million will be made available in monetary relief, debt relief, and tax relief to successful claimants.

Furthermore, USDA continues to be an active participant on the Infrastructure Task Force to address the ongoing need for safe drinking water and basic sanitation in Indian Country. The combined funding from the Task Force Agencies—USDA, Environmental Protection Agency, Indian Health Service and the Department of Housing and Urban Development—between 2003 and 2009 provided 80,941 tribal homes access to safe drinking water and 43,562 tribal homes access to basic sanitation. These numbers demonstrate significant progress made by the Task Force agencies, but we recognize that more work is needed. To this end, the Task Force is refocusing the access goal around the principle that "access to safe drinking water and basic sanitation shall be provided through entities that are sustainable and implemented through integrated agency planning that links the development goals of the tribe with the need for such services and infrastructure." This refocused principle fits well with USDA Rural Development programs that are committed to improving the economy and quality of life in rural areas.

As the Deputy Under Secretary of Rural Development, I'd like to spend the balance of my time this morning specifically talking about this mission area and its associated programs.

Rural Development is a collaborative agency with programs that build upon one another ultimately creating efficiencies for the taxpayers and the communities that

we serve. Rural Development provides financial programs to support essential public facilities and services such as water and sewer systems, housing, health clinics, emergency service facilities, electric, telephone and broadband services. Rural Development promotes economic development in rural areas by providing loans, loan guarantees, grants, and other assistance to applicants, including tribes, tribal members, individuals and families, banks, and community-managed lending pools. To better serve tribes and to ensure Rural Development investments flow onto tribal lands, it is both pragmatic and necessary to work in cooperation with tribal councils, adhere to tribal ordinances and laws, and partner with other federal agencies such as the Indian Health Service, the Bureau of Indian Affairs and the Department of Housing and Urban Development.

Rural Development has exceptional staff in our network of 47 state-level field offices and 500 area offices across the rural landscape working closely with tribes and dedicated partners in the for-profit and non-profit sectors. Rural Development staff in the local offices delivers programs for all three agencies in the Rural Development mission area—Rural Business and Cooperative Services, Rural Housing Service and Rural Utilities Services. By being located in rural communities, we are able to cultivate important relationships with tribal leaders, tribal professional staff, lenders, realtors, community-based organizations, redevelopment authorities, leadership groups, and others. Each state-level Rural Development office maintains a Native American Tribal Coordinator to assist tribes with their development interests by providing technical assistance and programmatic knowledge throughout the application process.

Rural Development has a long history of investing in tribal economies. From 2001 to 2010, Rural Development assistance benefiting tribes totaled more than $2.7 billion.

To understand what these programs mean to the communities they serve, it might be helpful to frame the situation in terms of the more familiar urban landscape most Americans inhabit. When an urban area loses an employer, the fallout, while potentially very significant, is seldom crippling for the local economy. City leaders assemble a team and redouble ongoing efforts to woo other corporations with promises of infrastructure improvements and tax credits, promotional materials that highlight transportation efficiencies, and an abundant and educated labor supply. They point to quality housing stock, good schools, and strong vibrant communities that are supportive of long-term investment.

This response is almost without corollary in vast areas of rural America—including Indian Country. The municipal resources needed to market a rural area to compete for businesses often don't exist. The available labor supply generally doesn't have the depth of educational achievement or skills of its urban or suburban counterpart. The infrastructure, transportation, housing and schools are typically challenged, and the distances to customers or markets are often greater.

Rural Development programs are designed to address these challenges. Using program resources to encourage healthier, more efficient credit markets, Rural Development field offices develop innovative to meet the unique needs of tribal and rural communities. To support rural regional and tribal economic prosperity, Rural Development provides job training and business development opportunities for rural residents, including cooperative business development, community economic development and strategic community planning and self-help initiatives. Funding for most of these efforts is administered by Rural Business Programs.

Rural Development also offers programs to provide the educational opportunities, training, technical support, and tools for rural residents to start small businesses and to access jobs in agricultural markets, the green economy, and other existing markets, as well as acquire training in vocational and entrepreneurship skills they can use in the marketplace and business sector.

USDA, in cooperation with our public and private partners, is connecting tribes, tribal members and rural residents to the global economy by:

1. Increasing access to broadband and continuous business creation;
2. Facilitating sustainable renewable energy development;
3. Developing regional food systems; and
4. Generating and retaining jobs through recreation and natural resource restoration, conservation, and management.

Such investments support our long-term national prosperity by ensuring that rural communities are self-sustaining, repopulating, and thriving economically.

For example, in 2011, Rural Development invested in businesses in Indian County through multiple programs. These investments included $7.6 million through the Business and Industry (or B&I) Loan Guarantee program and another $4.2 million in grants through the Rural Business Enterprise and Rural Business Opportunity

Grant Programs (RBEG and RBOG programs) to support tribal economic development and job creation opportunities for tribal members. RBEG and RBOG programs are among the few Rural Development programs where Congress legislatively mandates that some funds be reserved exclusively for the benefit of Federally Recognized Tribes.

Under the Rural Business Opportunity Grant Programs funding this year, in Oklahoma, the Indian Country Agriculture Resource Development Corporation was selected to receive a grant to provide business training to two dozen Native American agricultural entrepreneurs who are working to supply meat and vegetable products to southwestern buyers. The funding will be used for training that includes general business planning and feasibility assessment, risk assessment, marketing techniques and financial planning. The Nez Perce Tribe in rural Idaho also received a Rural Business Opportunity Grant this year to establish a Business Information Research Library and a Chamber of Commerce with a Leadership Development Program.

Likewise, under the Rural Business Enterprise Grant Program the Montana Indian Business Alliance in Great Falls, Mont., was selected to receive a grant to provide businesses training technical assistance to members of Indian Tribes of Montana. The funding will create an estimated 14 jobs. In Ukiah, Calif., Resource for Native Development was selected to receive a technical assistance grant to provide Tribal members with business and entrepreneurial training—including training that focuses on developing biomass-centered businesses and local food hubs. This project is expected to create 30 jobs.

The Wind River Development Fund in Wyoming received an RBEG grant to conduct a feasibility study for the development of a joint venture construction project to build a new health clinic in Fort Washakie, Wyoming to serve residents of the Wind River Indian Reservation. The Wind River Development Fund is a tribally chartered, non-profit corporation assisting Native peoples develop small and emerging businesses.

USDA also received Recovery Act funds to expand broadband access, and through those funds provided grants and loans totaling over $400 million to expand broadband access in tribal communities through the Broadband Initiatives Program. This included $182 million to ten infrastructure investments directly to tribes and tribally-owned businesses and eleven technical assistance awards to tribes to assist with regional broadband plans to promote economic development. Similarly, Rural Development made $216.3 million in Recovery Act investments benefiting American Indian and Alaska Native populations, including $36.3 million for community water and wastewater infrastructure, $97.5 million for community facilities, and $81.1 million for single family housing. The Obama Administration continues its commitment to the success of rural areas by providing tribal communities and rural areas with resources to expand economic opportunities.

In 2010 and 2011 Rural Development engaged in unprecedented tribal consultation and outreach activities. Rural Development conducted twenty direct government-to-government Substantially Underserved Trust Areas (or SUTA) consultations, seven regional consultation, one listening session, and three Internet and toll free teleconference webinars. Feedback from these efforts helped the Rural Utilities Service with the implementation of the SUTA provision of the 2008 Farm Bill—for which we just published a proposed rule in the Federal Register on October 14th. The SUTA provision, once fully implemented will allow Rural Development to provide much greater flexibility and more favorable term loans to create much needed utilities infrastructure.

This past year, based on tribal feedback, we also expanded the definition of small businesses in the Rural Energy for America Program to explicitly include Tribal Section 17 Corporations and other similar Tribal Corporations as eligible applicants. This may seem like a minor change, but it provides a clear path toward eligibility so that tribal corporations can access both grants and loan guarantees to help finance renewable energy and energy efficiency projects.

Through consultation with tribes and tribal leaders, communicating with staff and analyzing our programs, it also became apparent that significant challenges exist when tribal entities attempt to access the Value-Added Agricultural Product Market Development grants or VAPG program. The program is designed to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program will also provide working capital for expenses such as implementing an existing viable marketing strategy.

Eligible applicants for the VAPG program are independent producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures. The unique cultural and governmental structures of

tribes are diverse, but in general the tribal nature of these communities does not encourage further grouping of shared interests (e.g. cooperatives, producer groups, majority controlled producer-based business ventures). The VAPG program requirements coupled with the typical governmental structures of tribal entities may have discouraged some tribal organizations from applying for VAPG funds.

Due to the unique nature of the relationship between USDA and Federally Recognized Indian Tribes and changes in the 2008 Farm Bill that provide priorities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms, Rural Development is encouraging the field staff to use maximum flexibility when determining whether or not applications from tribal entities are eligible for assistance under the VAPG program.

The unique cultural and governmental structures of tribes does not typically encourage grouping of shared interests into cooperatives, producer groups, or majority controlled producer-based business ventures. In many instances, tribal organizations forming shared interest organizations would be duplicative and unnecessary. In lieu of these organizational structures in Indian Country, tribal entities engaged in value added activities might be considered independent producers or agriculture producer groups. Examples of tribal entities that may be eligible include: tribally owned for profit corporations, tribally owned farms, tribal Section 17 Corporations, for profit and not for profit corporations created under the laws of a federally recognized tribe, cooperatives formed under the laws of a federally recognized tribe, and tribal governments (including sub-divisions thereof).

On another note—Rural Development is in the process of releasing an administrative notice to clarify the eligibility of AMERIND Risk Management Corporation as an insurer for Single Family Housing Direct Loan programs. Historically, insurance and insurance-like products have been unavailable, difficult to access, or expensive on trust lands owned by tribes and tribal members. In some instances this lack of insurance may have been an impediment to utilizing Rural Development financing for projects on tribal lands. In practice, Rural Development requires Federal and applicable state laws and regulations to be followed when insuring Rural Development financed projects, but barring those limitations there is no legal or programmatic reason to deny the use of an appropriate AMERIND product on any project financed through Rural Development's Single Family Housing Direct Loan programs. Our efforts in working with AMERIND to bring them into the insurer pool for RD projects will make access to our housing funding products more amenable in Indian Country.

Rural Development will continue to build upon this Administration's strong commitment to Indian Country by working to find areas for better collaboration and improved flexibility in government programs.

An example of collaboration with Rural Development is demonstrated by the Bois Forte Tribe in northeastern Minnesota. As recently as 10 years ago, there were areas of the Bois Forte community that did not have safe and sanitary drinking water. Building safe and affordable housing for tribal members also was an issue, along with other infrastructure and facility needs.

Tribal leaders took a proactive approach and formed a valuable partnership with USDA Rural Development. The partnership has resulted in modern infrastructure, updated facilities, and more affordable housing being built in the community. Though the work at Bois Forte is not done, the tribe is now recognized for its dedication toward economic development and improving the quality of life for tribal members.

According to the USDA Rural Development State Director in Minnesota, Colleen Landkamer, "It's amazing to see the dedication and passion that Bois Forte puts into improving its community. Bois Forte understands how housing, infrastructure and essential community facilities intertwine to create sustainable and livable communities."

Since 1994, Rural Development has invested over $13.5 million throughout the Bois Forte community. Projects include funding to deliver safe drinking water to new affordable housing developments, equipment for a tribal fitness center, utility vehicles and equipment, and gap financing for tribal businesses.

Kevin Leecy, Bois Forte Tribal Chair recently stated, "Through our partnership with the USDA, we've been able to build the infrastructure necessary to develop residential neighborhoods and complete other projects. The partnership is a win-win for our people and the economic growth of the broader community."

Rural Development also awarded a $100,000 loan and grant to finance the purchase of a new snow plow for the reservation. A $2.5 million loan and grant also helped deliver water and sewer services to over 100 new homes in the Lake Vermillion portion of the Bois Forte community.

Rural Development's programs are a critical component to supporting, growing and ultimately sustaining rural communities. According to the 2010 decennial cen-

sus, 42.6 percent of all Native Americans live in rural areas. Unfortunately, some reservations face unemployment rates of up to 80 percent. While Rural Development program funding for fiscal year 2012 is limited, we recognize the importance of our programs. Tribal communities can benefit from the resources, knowledge and experience of Rural Development staff in addressing the challenges unique to rural areas. Rural Development can be an even more involved partner with Indian Country as we move forward. We have been actively engaging tribal leaders in consultation and intend to continue on this path. We know Rural Development has a portfolio that more tribal governments can use to build vibrant rural economies.

While we know that there are real challenges in Indian Country, we also recognize the opportunity. We stand ready to support Tribes and Tribal members in their efforts to improve their quality of life and create economic opportunities. We are committed to continually improving our service to Native Americans, with particular focus on nation to nation consultation and recognition of the special trust relationship we have with Tribal Communities.

I again encourage tribal leaders to reach out to the Rural Development Native American Coordinators. Below is a list of those coordinators, respectfully submitted to the Committee.

Tedd Buelow, Native American Coordinator, USDA__Rural Development
1400 Independence Avenue, SWStop 3250, Washington DC 20250
**Alabama**
Ricky Dawson, 207 Faulkner Drive, Suite 119, Bay Minette, AL 36507
**Nebraska**
Dale Wemhoff, 1909 Vicki Lane, Suite 103, Norfolk, NE 68701
**Alaska**
Gene Kane, 510 L Street, Suite 410, Anchorage, AK 99501
Wayne Maloney, 800 W. Evergreen #201, Palmer, AK 99645
**Nevada**
Barbara Allen, 1390 South Curry Street, Carson City, NV 89703
**Arizona**
Don Irby, 8841 E. Florentine, Suite B, Prescott Valley, AZ 86314
**New Jersey**
Christie Mayers, Suite 2, 51 Cheney Road, Woodstown, NJ 08098
**Arkansas**
LaWanna Duvall, 420 N. Hampton Avenue, Russellville, AR 72802
**New Mexico**
Elizabeth Kistin, 6200 Jefferson NE__Room 225, Albuquerque, NM 87109
**California**
Janice Wadell, 430 G Street, Davis, CA 95616
**New York**
David Miller, 441 S. Salina St., Suite 357, Syracuse, NY 13215
**Colorado**
Amelia Owens, 628 W. 5th Street, Cortez, CO 81321
**North Carolina**
Vacant
**Delaware/Maryland**
Vacant
**North Dakota**
Marion Houn, 220 East Rosser, Federal Bldg. Room 208, Bismark, ND 58502
**Florida/Virgin Islands**
Luis Carrero, 2629 Waverly Barn Road, Davenport, FL 33897
**Ohio**
Christie Hooks, 200 North High Street, Room 507, Columbus, OH 43215
**Georgia**
Deborah Callahan, 355 E. Hancock Avenue, Suite 300, Athens, GA 30601–2768
**Oklahoma**
David M. Moore, 200 South 3rd, McAlester, OK 74501
**Hawaii**
Alvin Okamoto, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720
**Oregon**
Barrie Lasure, 625 S.E. Salmon Ave., Suite 5, Redmond, OR 97756
**Idaho**
Roni Atkins, 9173 West Barnes, Suite A1, Boise, ID 83709
**Pennsylvania**
Vacant
**Illinois**

Rob Loschen, 2118 West Park Court Suite A, Champaign, IL 61821
**Puerto Rico**
Vacant
**Indiana**
Rochelle Owen, 5975 Lakeside Boulevard, Indianapolis, IN 46278
**South Carolina**
Cathy Seawright, 1835 Assembly Street, Room 1007, Columbia, SC 29210
**Iowa**
Eric Ulrichs, 709 S. Iris St., Suite 103, Mt. Pleasant, IA 52641
**South Dakota**
Christine Sorensen, 1717 N. Lincoln, Suite 102, Pierre, SD 57501
**Kansas**
Daniel Fischer, 3705 Miller Parkway, Suite A, Manhattan, KS 66503–7604
**Tennessee**
Robert Connely, 3322 West End Avenue, Suite 300, Nashville, TN 37203
**Kentucky**
Vacant
**Texas**
Anita Sprankle, 11930 Vista del Sol, Suite C, El Paso, TX 79936
**Louisiana**
Cathy Beales, 1803 Trade Drive, P.O. Box 1990, Ruston, LA 71273
**Utah**
Perry Mathews, 302 E. 1860 Street, Provo, UT 84606
**Maine**
Milton Ross, 735 Main Street, Suite 1, Presque Isle, ME 04769
**Vermont/New Hampshire**
Sherry Paige, 89 Main Street, 3rd Floor City Center, Montpelier, VT 05602
**Massachusetts/Rhode Island/Connecticut**
Jennifer Lerch, 451 West Street, Suite 2, Amherst, MA 01002
**Virginia**
Jerry Outlaw, 100 Dominion Drive, Farmville, VA 23901
**Michigan**
Wendy Sexton, N16550 County Road 563, Powers, MI 49874
**Washington**
Paul Johnson, 1835 Black Lake Boulevard, S.W., Suite B, Olympia, WA 98512
**Minnesota**
Adam Czech, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101
**West Virginia**
Jesse Gandee, 1 Ball Park Drive, McMechen, WV 26040
**Mississippi**
Betty Price, Suite 831, Federal Building, 100 West Capitol Street, Jackson, MS 39269
**Wisconsin**
Donna Huebner, 603–B Lakeland Road, Shawano, WI 54166
**Missouri**
Lue Lockridge-Lane, 601 Business Loop 70 W., Suite 235, Columbia, MO 65203–2546
**Wyoming**
Ann Stoeger, 508 N. Broadway, Riverton, WY 82501
**Montana**
James "J.P." Pendleton, 2229 Boot Hill Court, Bozeman, MT 59715

Thank you for the opportunity to be here today, Mr. Chairman. I appreciate the opportunity to talk about Rural Development programs and our commitment to job creation in Indian Country. I look forward to addressing any questions you and other members of the Committee might have.

The CHAIRMAN. Thank you very much, Mr. O'Brien, for your statement.

Mr. Blackwell, please proceed with your remarks.

**STATEMENT OF GEOFFREY C. BLACKWELL, CHIEF, OFFICE OF NATIVE AFFAIRS AND POLICY, FEDERAL COMMUNICATIONS COMMISSION**

Mr. BLACKWELL. Chairman Akaka, Vice Chairman Barrasso, Senator Franken, Senator Udall, members of the Committee, hesci, aloha and thank you for the opportunity to return and testify today about the importance of broadband infrastructure to the economic opportunities for Native America and the Commission's efforts to work with Native leaders to deploy broadband and other communications services.

I previously testified to the Committee that the lack of communications services in Indian Country is alarming. Our most recent reliable census data indicates a basic telephone service penetration rate of only 67.9 percent. And evidence indicates even more troubling, a broadband penetration rate of less than 10 percent on Tribal lands.

The work of the Office of Native Affairs and Policy is a new strategic partnership in which we exercise the trust relationship that the Commission shares with Tribal nations. In our work, we have heard the following key points directly from Tribal leaders. Virtually no critical infrastructure has come to Tribal lands without Federal investment, oversight and regulation.

There are numerous and comprehensive communications needs throughout Indian Country. And there is great diversity within those critical needs. It is clear that one size fits none. Broadband is a predicate to thriving communities and an environment of economic opportunities. That is, broadband enables the provision of quality health care, education, public safety and jobs.

Broadband can also empower the opportunities of hope by keeping young and old generations connected in community culture. Perhaps most importantly, broadband must be available, accessible and affordable to meet its great promise for Tribal nations and Native communities.

Under the leadership of Chairman Genachowski, with the longtime dedication of Commissioner Copps and with the involvement of the entire Commission, and all of its bureaus and offices, there is a new focus on Native issues at the Commission. We have engaged in discussions that have led us to a better understanding of some of the greatest challenges facing Native communities. We have spoken at length with Tribal leaders about the interrelated nature of broadband deployment, overall community well-being and economic development.

The term economic development raises many different viewpoints and opinions. We have spoken with Tribal nations on those many different kinds of economies, those with small, fragile or unstable economies, those with stable but undiversified economies, and those with diverse economies with broad capabilities. Economic opportunities germinate and grow in a safe, educated and healthy environment. And broadband can create a more level playing field for Tribal economies. Broadband has become the linchpin for creating the stability within communities that fosters the opportunities for economic empowerment. That is, workforces can be educated be educated or trained and recruited at a distance with broadband, health care and public safety services supported by robust

broadband networks provide the stability that outside corporate partners seek when looking to locate in or partner with Tribal communities. When research is available and marketplaces accessible online, goods and services can be brought to the global buyer.

Through opportunities based on their sovereign status, Tribal nations can be potent partners in strategic development alongside industry teammates. In sum, broadband infrastructures that employ to engage all the needs of a Native community, Tribal-centric employment, are investments that have a much greater chance to see successful returns and ultimate profitability.

Several Tribes have said that the term economic development is often taken to mean merely chasing the dollars or simply looking for the next contract or sales opportunity. In other words, a short-term fix approach and not a true, lasting solution. They have explained that the Development of their economies is a better approach to the efforts to create opportunities for economic empowerment by building systems of governance that engage with industries, demonstrate stability and encourage the deployment of services.

In closing, the Commission is engaged in several efforts to create opportunities for just such Tribal government engagement, designed to bring the benefits of 21st century communication services to Tribal lands. For example, the recently-released Connect America Fund Order will, for the first time, require all carriers providing voice and broadband services on Tribal lands to undertake meaningful engagement with Tribal governments on a variety of broadband-deployment related priorities.

Also for the first time, the Commission created a Tribal Mobility Fund dedicated to the provision of wireless services on Tribal lands. This Tribal Mobility Fund, as a part of the Connect America Fund, will provide an allocation of $50 million in its first year and an allocation thereafter of up to $100 million per year. This is of course just one example of the multiple proceedings underway at the Commission.

Mvto, mahalo and thank you again for the opportunity to testify this afternoon. I look forward to answering any questions you may have.

[The prepared statement of Mr. Blackwell follows:]

PREPARED STATEMENT OF GEOFFREY C. BLACKWELL, CHIEF, OFFICE OF NATIVE AFFAIRS AND POLICY, FEDERAL COMMUNICATIONS COMMISSION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, hesci, aloha, and thank you for the opportunity to testify today about the importance of broadband infrastructures to the economic opportunities for Tribal Nations and Native Communities, and the Commission's efforts to work with Native leaders to deploy broadband and other services.

In October, I told the Committee that the lack of all communications services in Indian Country is alarming. Our most recent reliable census data indicates that over 70 years of development and expansion of the telecommunications industry has resulted in only a 67.9 percent basic telephone service penetration rate. I shared that the statistics for broadband penetration are even more troubling—less than 10 percent of residents on Tribal lands have access to the lifeblood of our 21st century economy, educational opportunities, health care, and public safety. Behind these too familiar statistics lurks a stark and complex reality. A consequence of the unfortunate history that Indian Country has endured is an endemic lack of many critical infrastructures in Tribal and Native communities.

It is especially important, in the context of this hearing, to reiterate certain key points. Virtually no critical infrastructure has come to Tribal lands without federal investment, oversight, and regulation. There are numerous and comprehensive communications needs throughout Indian Country, and there is great diversity within those critical needs. It is clear that "one size fits none." Broadband, the most critical 21st century infrastructure, is the predicate to thriving communities and an environment of economic opportunity. That is, broadband enables the provision of quality health care, education, public safety, and jobs. Broadband can also empower the opportunities of hope, by keeping young and old generations connected in community culture. Perhaps most importantly, broadband must be available, accessible, and affordable to meet its great promise for Tribal Nations and Native Communities. We have heard these key points directly from Tribal leaders throughout Native America.

**Broadband Deployment and Economic Opportunities in Indian Country**

On many occasions, we have spoken at length with Tribal leaders from across the country about the inter-related nature of broadband deployment, overall community well-being, and economic development. We have spoken with Tribal Nations with small, fragile, or unstable economies. We have also spoken with those who have stable, but undiversified economies, and those with diverse economies with broad capabilities. We have engaged in discussions that have led us to a better understanding of some of the greatest challenges facing Tribal leaders.

We have been told many times that Tribal Nations cannot develop the potential of their economies and communities without the proper tools, and that the tool of broadband must be more affordable and accessible. The term "economic development" raises many different viewpoints and opinions. Most importantly, broadband has become the linchpin to creating the stability within a community that fosters the opportunities for economic empowerment.

Some Tribes have posited that "economic development" means merely chasing the dollars, or simply looking for that next contract or sales opportunity. They explain how, as a Washington buzz-word, "economic development" connotes a short-term fix approach and not a true lasting solution. Tribal Nations have also explained that the development of their economies is more appropriately approached through efforts to create opportunities for economic empowerment by building systems of governance that engage industries, demonstrate stability, and encourage the deployment of services. Economic opportunities germinate and grow in a safe, educated, and healthy environment. Workforces can be educated or trained and recruited at a distance with broadband. Healthcare and public safety services supported by robust broadband networks provide the stability that outside corporate partners seek when looking to locate or partner in Tribal communities. When research is available and marketplaces accessible online, goods and services can be brought to the global buyer. Along with industries, Tribal Nations can be potent partners in strategic development through certain opportunities based on their sovereign status. As a federal economic regulatory agency, the Commission is engaged in efforts throughout the agency to create opportunities for just such Tribal government engagement. In sum, broadband infrastructures that are deployed to engage all the needs of a Native community—"Tribal-centric" deployment—are investments that have a much greater chance to see successful returns and ultimate profitability.

In our work with Tribal leaders, we have heard many priorities and concerns, including those associated with broadband speed and reliability. Common priorities include the ability of Tribal entities to become their own regulated service providers in the future and to access new opportunities in mobile services. A major concern is the accurate measurement of the actual state of broadband availability on Tribal lands. Many Tribal and Native community leaders have articulated concerns about both the depth and accuracy of the data on the state of services on their lands. They have asked how this data is verified by the state and federal agencies involved in the field. This Committee articulated this same concern in October. While attending the late September Native American Summit in Salt Lake City, we witnessed representatives of the Goshute Confederated Tribes explain to the Utah state broadband mapping manager that the gross overestimation of wireless broadband coverage on the Goshute Reservation actually precluded the Tribe from applying for federal grants and loans for a Tribal project that would address the lack of services. The Utah state broadband mapping coordinator explained that the federal grant did not have funding to verify the data. Increased coordination among the relevant federal agencies and the meaningful involvement of Native Nations, embracing them as partners, would begin to address these unintended consequences and barriers.

**Tribal Engagement as a Critical Component to Broadband Deployment**

In October, and this past April while before the Senate Commerce Committee, I explained the purposes of the Office of Native Affairs and Policy. Our work with Tribal Nations is a new strategic partnership, one in which we effectuate and exercise the trust relationship that the Commission shares with Tribal Nations. The enormity of our mission is vast. Changing our rules alone is not enough. Complex problems require new approaches and mechanisms, and active efforts both in Washington and far into the field, to develop and coordinate well thoughtout solutions. Our approach is to work together to identify and remove barriers to solutions and build models with Tribal Nations that engage their core community or anchor institutions. As Tribes govern with a unique understanding of their communities, their vested and active involvement is critically important to finding lasting solutions in their communities. We seek to place Native Nations themselves in the center of those solutions, whether it is through actual self-provisioning of communications services or through new "Tribal-centric" methods of engagement and deployment with industry, public, or private partners. These models must respect the cultural values and sovereign priorities of Tribal Nations and be infused with the local knowledge that will lead to better opportunities for successful deployment in Native communities.

The Office is responsible for developing and driving a Tribal agenda at the Commission and serves as the Commission's primary point of contact on all Native issues. To fulfill our mission and transform the communications landscape, our work as an Office cannot be as just another outsider from Washington. Instead, the Office must be a knowledgeable and respected Indian Country insider. We must foster an expert understanding and familiarity with Native America and maintain a firsthand view of the complexity of the problems. Within our first five quarters of operations, we met with Tribal leaders in Arizona, California, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, and Washington, as well as within the Hawaiian Home Lands. We went to some of the most unserved areas of the Nation. Other remote and underserved areas, including those within Alaska, are at the top of our future travel priorities. We will continue to go deep into the Native Nations, meeting collectively and individually with Tribal leaders, Tribal Councils, Native associations, Triballyowned and operated communications providers, Tribal broadcasters and broadband providers, as well as with Native consumers and businesses.

We logged thousands of miles and traveled to places where the Commission has never been before, experiencing the lack of connectivity from the other end of the digital divide, and seeking the input of American Indian, Alaska Native, and Native Hawaiian leaders. In Native Communities, one sees the human side of the lack of communications and broadband services, and the limitations of connectivity, speed, and reliability. We have visited some of the most remote schools in the country, engaging in distance education discussions from classrooms at the *Native* end of the signals. Also at the *Native* end of the line, we experienced the concerns raised by lower speed and lower resolution Internet connections while sitting alongside an oncology patient in her telemedicine distance diagnosis session. On many occasions, we saw impressive solutions juxtaposed with overwhelming needs and challenges.

**The Commission's Priorities on Tribal Lands in 2011 and Beyond**

Under Chairman Genachowski's leadership, and with the involvement of the entire Commission and all of its Bureaus and Offices, the Commission has launched a number of groundbreaking rulemaking proceedings with Tribal engagement and inclusion at their very core. From rules reforming universal service and expanding broadcast opportunities, to proposed rules for new mobile wireless licensing opportunities, to an omnibus inquiry on a range of issues related to broadband adoption and deployment on Tribal lands, these proceedings will in part serve as the foundation for the engagement of Native Nations that is critical to the deployment of communications infrastructure and the resulting availability of broadband and advanced communications services on Tribal lands.

*The Connect America Fund Order and Further Notice of Proposed Rulemaking*

On October 27th, the Commission comprehensively reformed the universal service and intercarrier compensation systems by creating a new Connect America Fund. For the first time, meaningful engagement with Tribal governments will be required of all carriers providing voice and broadband services on Tribal lands, including both communications providers currently providing service and those contemplating the provision of service on Tribal lands. Engagement must include, for example, a needs assessment and deployment planning with a focus on Tribal community anchor institutions, and feasibility and sustainability planning. Also for the first time,

the Connect America Fund will secure universal service support for mobility directly, rather than as a side effect of the competitive eligible telecommunications carrier (ETC) system, by the establishment of a Mobility Fund and a Tribal Mobility Fund. Phase I of the Mobility Fund will provide $300 million in one-time support, with an additional $50 million allocated to the Tribal Mobility Fund. Phase II of the Mobility Fund will provide ongoing, recurring support for mobile service, with an annual budget of $500 million, of which up to $100 million will be designated annually for the Tribal Mobility Fund. Carriers seeking to serve Tribal lands may participate in both phases of the general Mobility Fund and the Tribal Mobility Fund. In addition, Tribally-owned or controlled providers seeking general or Tribal Mobility Fund Phase I support for the purpose of providing service on Tribal lands will receive a 25 percent bidding credit, thus increasing the likelihood that Tribally-owned or controlled entities will receive funding and creating an atmosphere conducive to Tribal economic opportunity and development.

*The Wireless Spectrum Tribal Lands Notice of Proposed Rulemaking*

If Tribally-owned or controlled entities are to realize the benefits of the general Mobility Fund and the Tribal Mobility Fund, Tribal governments must have access to robust wireless spectrum. Native Nations have asked the Commission for greater access to such spectrum to meet the challenges of terrain and distance that many Native communities face and, for some time now, the need for this action has been critical. On March 3rd, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to promote greater use of spectrum to help close the communications gap on Tribal lands and to ensure that Native governments are at the center of the decisionmaking process. This NPRM, one of the most important requests from Native Nations in the last decade, strives to put licenses in the hands of those who will value the spectrum and build out on Tribal lands. Three of the five proposals launched in the NPRM would create new opportunities for Native Nations to gain access to spectrum through Commercial Mobile Radio Services licenses, while the other two proposals are designed to create new incentives for existing licensees to deploy wireless services. This proceeding is pending at the Commission.

*The Rural Radio Tribal Priority Order*

Tribal governments want to provide information and community news to their people, and are looking at radio programming to promote and preserve Native culture and language, and to advance cultural dialogue. KUYI on the Hopi Reservation, KLND on the Standing Rock Reservation, KIDE on the Hoopa Valley Reservation, and KWSO on the Confederated Tribes of Warm Springs Reservation are prime examples of such cultural enterprise. Last year, the Commission took steps to address the imbalance in the number of radio stations licensed to Native Nations and communities, as compared to the rest of the country, when it adopted an historic Tribal Priority designed to award a decisive preference to any federally recognized American Indian Tribe or Alaska Native Village seeking to establish its first *noncommercial* radio station on its Tribal lands. The Tribal Priority was greeted with enthusiasm by Tribal governments, but it was noted that certain Native Nations, because of their historical or geographic circumstances, might not be able to take advantage of the priority. In a Second Report and Order adopted on March 3rd, the Commission addressed these special circumstances by adopting provisions to address the needs of non-landed Native Nations and those with small or irregularly shaped lands that make it difficult to meet some of the requirements of the Tribal Priority. In addition, the Commission adopted a Notice of Proposed Rulemaking seeking comment on proposals to apply the Tribal Priority to certain commercial FM channel allotments and potentially obviating the need to go to auction. An order in this proceeding is currently on circulation at the Commission, and the hope is that these new mechanisms can help Native Nations deploy services in this critical and widely adopted media technology, as they also build designs and resources for new advanced broadband platforms.

*The Native Nations Notice of Inquiry*

The Commission has said on many occasions that broadband is indispensable infrastructure for economic growth and job creation, and nowhere is that need more acutely felt than on Tribal lands. The lack of robust broadband services—and, in fact, even basic communications services—contributes to the challenges Native Nations face in building strong economies with diverse businesses and development projects. On March 3rd, therefore, the Commission launched a broad-based inquiry into a wide range of communications issues facing Native Nations—an inquiry that will provide a foundation for updating the Commission's rules and policies to provide greater economic, market entry, and communications adoption opportunities and incentives for Native Nations. The result of a broad collaborative effort across

the Commission, led by the Office of Native Affairs and Policy, the Notice will lay the groundwork for policies that can help Native Nations build economic and educational opportunities for their own Tribal lands. The Notice seeks comment on the best ways to support sustainable broadband deployment, adoption, and digital literacy training on Tribal lands. Among other important questions, the Commission asks about the possibility of expanding the Tribal Priority concept into a Native Nations Priority, to identify and remove barriers to entry, rather than using a case-by-case waiver approach, thus making it easier for Native Nations to provide other services—wireless, wireline, and satellite—to their communities. The Commission also asks about opportunities to use communications services to help Native Nations address public safety challenges on Tribal lands, including the broad lack of 911 and E–911 services, and the needs of persons with disabilities on Tribal lands.

Recognizing that, given their unique challenges and significant obstacles to broadband deployment, Native Nations need substantially greater financial support than is presently available, the Notice of Inquiry also seeks comment on a recommendation of the National Broadband Plan to establish a Native Nations Broadband Fund. The National Broadband Plan notes that grants from a new Native Nations Broadband Fund could be used for a variety of purposes, including bringing high-capacity connectivity to governmental headquarters or other anchor institutions, deployment planning, infrastructure build out, feasibility studies, technical assistance, business plan development and implementation, digital literacy, and outreach. In the Notice of Inquiry, the Commission seeks comment on a number of issues associated with the establishment of the Native Nations Broadband Fund, including the need for such a fund, the purposes for which it would be used, and the level of funding. The public comment period for the Notice has ended, and we are in the process of assessing the record and determining next steps for each of the issues addressed in the Notice.

*The Low-Income Program Notice of Proposed Rulemaking*

The Commission has long recognized the unique and dire economic circumstances many Tribal Nations and Native Communities face and has sought to alleviate the issue of affordability through the Lifeline and Link Up programs of the universal service fund. But with a telephone penetration rate hovering below 70 percent and a broadband penetration rate well below ten percent, much remains to be done. According to Gila River Telecommunications, Inc., a Tribally-owned telecommunications company, the telephone penetration rate for the Gila River Indian Community stands at 86 percent, still well below the national average of 98 percent but significantly above the average on Tribal lands. Gila River attributes its success in expanding the reach of telephone service largely to Lifeline, given that roughly 91 percent of the Community's elders participate in Lifeline. On March 3rd, the Commission adopted a Notice of Proposed Rulemaking in which it proposes to reform and modernize Lifeline and Link Up—issues of great interest to Native Nations. The Commission is preparing to take action in the near future to address many of the issues raised in the Notice of Proposed Rulemaking.

*The FCC-Native Nations Broadband Task Force*

One of the top requests from Native Nations in the National Broadband Plan was the creation of a new FCC-Native Nations Broadband Task Force that would ensure that the Commission's consultation with Native Nations is an ongoing, continuous dialogue and a shared effort between partners. Chairman Genachowski fulfilled this request when, on March 3rd, he appointed to the Task Force 19 members representing Native Nations and 11 members representing Bureaus and Offices across the Commission. The Task Force will ensure that Native concerns are considered in all relevant Commission proceedings and will work to develop additional recommendations for promoting broadband deployment and adoption on Tribal lands.

*A New Federal Interagency Tribal Broadband Working Group*

The Office will also coordinate a new federal interagency broadband working group that we will initiate by the end of this year. This interagency working group will coordinate both internally and directly with Tribal Nations, the Task Force, and other Native Community institutions on broadband-related policies and programs. The working group will be comprised of representatives from other federal agencies concerned with Tribal Nations and Native Communities with missions on related to broadband and communications deployment, such as education, health, public safety, energy, cultural preservation, and economic empowerment.

**Conclusion**

All of these efforts will culminate in more efficient ways of working with our Tribal Nation and Native Community partners, the industries, and the institutions of

Indian Country. We have heard several recurring themes in our conversations with Native leaders—continue to meet with us, listen to us, and use what we tell you to bring communications on Tribal lands into the 21st century. One of our remaining top priorities is to overhaul, update, and increase the collaborative value of the Commission's Indian Telecom Initiatives, or ITI program. We look forward to increasing the effectiveness and value of these regional workshops, trainings, consultation, and networking events. We also look forward to infusing this program with the new prerogatives of Tribal engagement and economic empowerment.

The overarching message we hear from Tribal leaders is that if consultations are to be successful, and if efforts to inform, educate, and put Tribal Nations at the center of the decisionmaking process are to succeed, we must do our work largely within their communities. Tribal leaders have told us that, in order to best help them solve communications problems, we must work with them where the problems exist, see the problems first-hand, help them engage with government and industry institutions, and endeavor to find the solutions in concert with them. We welcome all of these opportunities.

Mvto, mahalo, and thank you again for the opportunity to testify this afternoon. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Blackwell, for your remarks.

Mr. O'Brien, many Native-serving utility companies that use the RUS program have relied heavily on funds from the Universal Service Fund. How does the new FCC order issued this month affect the availability of these companies to use the RUS program now?

Mr. O'BRIEN. Thank you for that question, Chairman. You are correct that most of the lenders of the RUS, in particular the telecommunications program, also utilize the Universal Service Fund as part of their revenue package. In fact, 99 percent of the 435 total lenders utilize the USF.

We were happy to and gratified that the FCC invited USDA to provide an analysis of the proposed rule on USF, which we did, and provided it into the public comment period. And now as we have received, just within the last two weeks, the 700-page rule, our folks in RUS are analyzing the rule for its effect on our borrowers.

We have already been in contact with a number of our borrowers and we have heard concern. We are tracking that very closely and will take their input as we consider the effect on our portfolio.

At the end of the day, our responsibility is to ensure that the portfolio of RUS is sound and that we have a vital program into the future.

The CHAIRMAN. Thank you very much. I will have further questions. But let me defer and ask my colleagues for questions that they may have. Senator Udall?

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

Deputy Under Secretary O'Brien, as you said in your statement, you have excellent staff out at your State offices. I know at least in New Mexico, where Terry Bruner has been working hard to present development opportunities and programs to the Tribes and been working closely with them, there have been some real successes out there. Can you tell me how my Congressional office can help increase communication between the Tribes and USDA Rural Development and how well can the Tribes work to be certain that they have all of the USDA programs, know what they are and be able to access them?

Mr. O'BRIEN. I appreciate that question, Senator. Certainly as I mentioned, an absolute goal of Secretary Vilsack to have a very ro-

bust relationship and consultation as we set our regulations and rules. We would appreciate the support of your office or any of the offices represented on this Committee.

We have, as I mentioned, in each of the State offices, in particular active in those States that have a significant American Indian/Alaska Native population, a Native American coordinator. We also have an Office of Tribal Relations right here in Washington, D.C., to ensure that all of the programs within the broad spectrum of USDA take into consideration the effects of programs, processes that were presented and are trying to be improved. In fact, essentially, every one of the regulations that we undergo at Rural Development, one of the places that it goes through for approval is the Office of Tribal Relations, to get comment from the people there who are expert in what can be very complicated issues.

We continue to plan to grow the consultation process that we developed in the last two years, and we welcome your office's participation and your comments on how we can improve that

Senator UDALL. Thank you very much.

This one is to Mr. Blackwell. I am pleased that the recent Universal Service Fund reforms will directly address challenges facing Indian Country. The Tribal Mobility Fund and the Tribal Engagement Requirements I think are positive steps in the right direction.

Mr. Blackwell, how do you envision the Tribal Engagement Requirements will work in practice, when it comes to rolling out broadband to Native American communities? And how soon would the proposed Tribal Mobility Fund begin expanding wireless access to under-served areas?

Mr. BLACKWELL. Thank you, Senator. To begin with the second part of your question first, perhaps, the Tribal Mobility Fund, the first year of the Mobility Fund was actually $350 million, $50 million of which is allocated to Tribal lands. Tribal lands are of course eligible for the initial $300 million as well, and Tribal entities. The goal is to have that Mobility Fund Phase 1 in 2012, and to time the Tribal Mobility Fund in such time afterwards that, I am sorry, Mobility Phase 1 timed to occur in 2012 with disbursements in 2013, and to time the $50 million Tribal Mobility Fund to follow thereafter. In time analysis can be done about the initial $300 million so that the $50 million can be effectively utilized.

To answer the first part of your question, the Connect America Fund articulates what sort of discussions must include, at a minimum, in the Tribal engagement procedures. And directly from the order, there are just a few, very quickly, at a minimum, such discussions must include a needs assessment and deployment planning with a focus on Tribal community anchor institutions, feasibility and sustainability planning, marketing services in a culturally-sensitive manner, rights of way processes, land use permitting, facility siting, environmental and cultural preservation review processes and compliance with Tribal business and licensing requirements.

The order envisions an annual certification both to the Commission and to Tribal governments. And we envision, the order also envisions that the Office of Native Affairs and Policy, in coordination with the Wireless Bureau to utilize our delegated authority to develop specific procedures for this Tribal engagement as well.

Senator UDALL. Thank you for all your hard work over there at the FCC. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall.

Senator Franken, your questions.

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. O'Brien, I want to thank you for bringing up Bois Forte in your written testimony. And I want to thank, more importantly, USDA for what you have done in partnership with the Bois Forte Reservation. I have seen first-hand how economic development has tremendously benefitted that community and Chairman Leecy should be commended for his leadership and vision.

I sit on both the Energy and obviously Indian Affairs Committee. Indian energy is of particular interest to me. Tribes and Bands in Minnesota have strong interest in developing energy resources on their lands. But year after year, they go unused and Tribal communities continue to suffer from extremely high rates of unemployment. In Minnesota, we have a lot of biomass resources. I think you talked about a project in California, a biomass project there. What is that? What is that project? What steps has your department taken to reduce administrative and regulatory hurdles that stand in the way of their businesses and like Senator Udall asked, how can my office help in facilitating getting biomass projects going in Minnesota?

Mr. O'BRIEN. Thank you, Senator, for your question. We have a suite of energy programs in Rural Development and actually a few other agencies that were created primarily in the 2008 Farm Bill. I think the program that you are referring to is the Biomass Crop Assistance Program, which essentially supports efforts to utilize biomass to create energy. In fact, we were able to award a BCAP award to Dakota Energy in Shakopee, and innovative combined heat and power plant which generates electricity and heat by burning agriculture byproducts and grown energy crops to create heat.

Senator FRANKEN. In Minnesota?

Mr. O'BRIEN. Yes, sir. So there are not as many examples as, frankly, we would like.

Senator FRANKEN. That is essentially burning biomass

Mr. O'BRIEN. That is right, to create energy, yes.

Senator FRANKEN. Energy and heat? Combined energy and heat?

Mr. O'BRIEN. Yes, that is correct. And that is what the BCAP program is designed for. And there are some examples of it being utilized on Tribal lands, but not as many as we would like to see, because of some of the challenges, as the Chair pointed out in his statement. We have worked through the consultation process in all the regulatory, the regulatory process for all the Farm Bill programs, we utilized seven regional consultations to ensure that our programs fit and work on Tribal lands. I won't sit here and say they are perfect right now.

Senator FRANKEN. Well, I would love to have my office work with you on this. We do have a lot of biomass. And biomass is, you can do more than just burn it, you can burn it in more sophisticated ways, like gasification, more efficient ways. There is a lot you can do with biomass.

Mr. O'BRIEN. Absolutely.

Senator FRANKEN. Thank you.

Mr. Blackwell, in your testimony you state that less than 10 percent of residents in Tribal lands have access to broadband. But you also discuss an instance in Utah where inaccurate data precluded a Tribe from receiving Federal grants or loans because it was overestimated what they had, right?

Mr. BLACKWELL. Yes.

Senator FRANKEN. How did the Utah State broadband mapping manager come up with their estimates?

Mr. BLACKWELL. As I understand from that situation, the Utah State broadband mapping, she indicated that it was receiving information directly from the providers. The question that came from the representatives was how that data might, was it double checked and how was it double checked. And she indicated that there was not funding in the Act to be able to do that.

Senator FRANKEN. So how is the FCC addressing that problem?

Mr. BLACKWELL. I thank you very much for the question. Based on my experience, there are a number of Tribal leaders who also would thank you for that question.

We work in concert with the NTIA, the Department of Commerce, under a memorandum of understanding, it is their responsibility under the Broadband Data Improvement Act for the National Broadband Map. And we provided technical assistance to them. Our office in particular has met with them on a couple of occasions to provide them with feedback and some suggestions.

As I stated before with this Committee once before, I do believe that there is a way in which we might be able to work in concert to involve Tribal governments so that they have an opportunity for a voice there as well.

Senator FRANKEN. Maybe I didn't understand the full answer. That is what you are doing?

Mr. BLACKWELL. Yes, sir.

Senator FRANKEN. That is it? Okay, well, I appreciate your answer. I am not sure that is sufficient.

Mr. BLACKWELL. Well, we can certainly look into doing more, sir.

Senator FRANKEN. Thank you, sir. Thank you, Mr. Blackwell. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Mr. Blackwell, some Native telecom providers, especially in high cost areas like Hawaii and Alaska, have relied heavily on the USF to secure funding through programs like the RUS program at Agriculture. How will the FCC ensure that these RUS carriers will continue to provide services to Native people in these areas? I say that knowing full well that in the case of the Hawaiian Homelands Commission that that was set up by an act of Congress in 1920. And so I am interested in what your answer might be on this question.

Mr. BLACKWELL. Well, to begin with, Hawaii, the entities that are required to be engaged in the engagement that I spoke about earlier in Hawaii, the Department of Hawaiian Homelands and the Office of Hawaiian Affairs. Most Tribal providers are rural rate of return companies and the Commission has been very sensitive to the needs of these companies to both repay their RUS loans and to be in a position to continue borrowing to build out for their broadband networks.

Therefore, hopefully the bottom line is there are no immediate drastic cuts. Recognizing that sudden changes would be especially difficult for these small carriers serving remote areas, the Commission has avoided slash cuts and established a glide path, phasing in most of the changes to the carrier's Universal Service support over a period of years.

In the instance of Tribally-owned and operated telecommunications providers, we have within our further Notice of Proposed Rulemaking specific questions about potential impact on those entities in particular, and the effect of the reforms on them as well.

The CHAIRMAN. Well, thank you very much.

Now I would like to move on to the second panel. But I want to thank you very much for your responses and I look forward to continuing to work with you on these matters for Tribes and indigenous peoples. Thank you very much.

I would like to invite the second panel to the witness table. Serving on our second panel is the Honorable Jefferson Keel, President of the National Congress of American Indians. Welcome.

Mr. KEEL. Thank you, Mr. Chair.

The CHAIRMAN. It is good to have you here again before the Committee. Will you please proceed with your testimony?

**STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS; ACCOMPANIED BY JACQUELINE JOHNSON–PATA, EXECUTIVE DIRECTOR**

Mr. KEEL. Thank you, Mr. Chairman.

I want to tell you how much I am honored to be here today on behalf of the National Congress of American Indians. This is an important hearing and I want to thank you and the members of the Committee for your work and help in this critical situation.

I want to address two primary themes in my testimony today: honoring Tribes as governments and program flexibility to increase the return on Federal investment. The members of this Committee know that uncertainty around Indian lands is a barrier to economic development that could be removed in just an instant. Senator Akaka, you and Representative Cole got it right when you said in this oped piece here that the *Carcieri* fix is a no-cost way to build Tribal economies. That certainty would have economic ripple effects that would be felt well beyond our reservations and it wouldn't cost a cent.

On the Federal budget, we in Indian Country are in a challenging position after the collapse of the Super Committee. On the one hand, we have an Administration and Congress, especially the Senators on this Committee, who have fought hard to bring Indian Country funding to a level that has allowed us to see real progress. On the other hand, we have looming across the board budget cuts that threaten to undo all that good work.

While the focus of this hearing is on regulatory reform, I must remind the Congress that the Federal Government's trust responsibility is not a discretionary choice: it is a solemn promise. We urge you to continue to fight to hold Indian Country budgets harmless, and we truly need increases in key areas like law enforcement and education.

Also, it is critical that Congress and the Administration ensure equal access to Tribes in all programs. An example where more work would bring major improvements is the American Jobs Act, where including Tribes alongside States and local governments to protect jobs of teachers and first responders and build infrastructure would create significant economic opportunities.

Overall, NCAI is in favor of models like Self-Determination and the 477 program that permit Tribes to design their own programs and services, build Tribal capacity and use Federal funding more effectively. This could be expanded across the board to all Federal agencies. This is exactly what we should be doing, spending more dollars and time on services and less on administrative burdens, especially in areas like infrastructure and energy Development.

Indian Country has one of the youngest populations in the Nation with 42 percent of Native people under the age of 25. Tribal colleges and universities are the key to workforce development training for thousands of Native people and other rural Americans. Including the TCUs in Federal workforce funding would create significant opportunities for new job creation.

Interpreting the Green Jobs Title of the Energy Independence and Security Act to include Tribal governments, businesses and veterans associations would allow direct access for programs and technical assistance that are a critical part of the National effort to create green jobs. The Tribal set-aside should also be reinstituted for the YouthBuild program to allow Native youth to develop critical job skills.

More than 10 years ago, the CDFI Fund reported a $44 billion unmet need for capital in Indian Country. That number has only grown, and there are specific, no-cost regulatory fixes. We urge the Committee to work with Treasury to ensure Tribal Economic Development Bond funding cap limits are adjusted to encompass larger-scale development projects. We also see significant potential in the expansion of the Bureau of Indian Affairs guaranteed loan program to ensure access to surety bonding for eligible Tribal and individual Indian-owned construction companies pursuing high level and high value projects.

Match requirements for the Native CDFIs applying for funds from the CDFI Fund should be eliminated or amended to allow Native CDFIs to use other Federal Government money such as HUD or USDA grants as match funds.

The United Nations recently identified access to the internet as a basic human right. However, as you have heard already, Tribal communities continue to experience low access. Low cost solutions to facilitate the build-out and deployment of broadband internet, telephone and radio access include reforming USDA lending policies to ensure Tribal eligibility for loans, establishing interagency collaboration between the Departments of Treasury, Agriculture and Interior with Tribes to identify financing options, and urging the FCC to provide Tribal priority to available spectrum and offer it to Tribes at discounted prices.

Expanded domestic energy production is a high priority and there are barriers that could be removed with a stroke of a pen. The BLM's discriminatory permit application fee to drill on Tribal trust land could be rapidly addressed by issuing a ruling that ex-

empts Tribal trust land from the $6,500 or lowers permit fees to a level comparable with State permits.

Tribes are eager to see passage of the HEARTH Act, which would allow Tribes to speed up lease approval on Tribal lands. We support the Tribal Energy Development and Self-Determination Act Amendments. This bill would reduce existing administrative burdens and Tribes look forward to continuing our work with this Committee to enact the bill.

Once again, I want to thank you for your vision and focusing on the critical role Tribes can play in creating jobs and getting America back to work. As you know, we believe in Indian Country that the best social program is a good job. And we are certainly willing to work with you and the Committee in trying to get our people back to work. Thank you.

[The prepared statement of Mr. Keel follows:]

PREPARED STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

**Introduction**

The National Congress of American Indians (NCAI) is the intergovernmental body representing American Indian and Alaska Native tribal governments. For nearly 7 years, tribal governments have come together as a representative congress through NCAI to deliberate issues of critical importance to tribal governments and advance consensus policy positions for the betterment of tribal nations and peoples. NCAI is honored to participate in the Senate Committee on Indian Affairs hearing to discuss strategies to enhance job creation and economic development for Native peoples.

Tribal peoples have consistently demonstrated their keen ability to do more with less. When the tribes are released from burdensome oversight and requirements and are able to exercise their inherent right of self-government, innovations increase and the health and social and economic well-being of their peoples improves. The leaders of NCAI—elected tribal leaders from across the nation—constantly remind policymakers that tribal self-determination works, but to be truly effective, self-determination must continue to evolve and replicate across other dimensions of tribal governance, especially regarding economic development, monetary policy job creation, and use of tribal land and natural resources. It is both essential and mutually beneficial for the Federal Government to partner with tribes to address the challenges and leverage the economic opportunities to strengthen tribal self-governance.

For generations, tribal communities and Native peoples have faced destructive economic conditions that are more pronounced than those of the current economic crisis. While economists and policy-makers worry as the national unemployment rate hovers around nine percent, Indian communities have wrestled with the far-reaching impacts of unemployment rates that have well-exceeded ten percent for generations. Today tribal governments are facing the severe effect of the nation's present economic downturn has on tribal economies and employment opportunities. The chronic underfunding of government programs serving basic tribal needs is well-documented, with the result that tribal governments often rely on revenue from their own economic development to fund programs and services for their citizens, including health care, affordable housing, education and infrastructure programs. As the rest of America is being challenged to meet basic needs with fewer resources, tribal governments are seeking to reduce inordinate and restrictive federal administrative burdens that slow and prevent economic self-fulfillment.

Tribal economies, with their dependencies on Federal Government support and restrictions on access to capital and other financial support mechanisms are more at risk during economic fluctuations than other governments or communities. Economic development offers tribal governments the opportunity to complement government services provided to their peoples.

This statement addresses several areas where improved access to funding and technology as well as smarter regulatory and legislative management can support economic development and continued job creation in tribal nations. Those areas are: Assessments of Legislative and Regulatory Frameworks, Access to Capital and Access to Broadband.

**I. Assessments of Legislative and Regulatory Frameworks**

Tribal nations continue to experience unemployment and poverty rates well above the national average. These rates are exacerbated by the nation's current economic hardships. With deficit reduction efforts underway, it is imperative that the Administration and Congress honor the trust responsibility by allowing tribes greater flexibility to develop their economies. This may be achieved in the following areas by providing access to and streamlining federal programs and removing regulatory barriers impeding and disadvantaging economic development in Indian Country.

*A. Nation-to-Nation Partnership: The Framework for Economic Recovery*

A critical component of economic development and job creation in Indian Country resides in meaningful application and recognition of the governmental relationship between tribes and the Federal Government. The United States has a unique legal and political relationship with Indian tribes and Alaska Natives as provided in the Constitution of the United States, treaties, and Federal statutes. This relationship has been recognized by U.S. Presidents for decades and is reflected in the Administration's adherence to a government-to-government relationship and support for tribal sovereignty and self-determination—most recently affirmed by President Obama's November 5, 2009 memo to all federal agencies directing them to comply with Executive Order 13175 (E.O. 13175). The Executive Order provides a framework for a trust responsibility that extends across all federal agencies and not only the Department of the Interior (DOI).

As highlighted by the Office of Management and Budget,[1] the requirements of the Executive Order far exceed listening sessions and consultations:

> (A)gencies must adhere, to the extent permitted by law, to specified criteria when formulating and implementing policies that have tribal implications. Agencies must:
>
> • respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments;
>
> • with respect to Federal statutes and regulations administered by Indian tribal governments, grant Indian tribal governments the maximum administrative discretion possible;
>
> • when undertaking to formulate and implement policies that have tribal implications,
>
> 1. encourage Indian tribes to develop their own policies to achieve program objectives;
> 2. where possible, defer to Indian tribes to establish standards; and
> 3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Congress should consider enacting legislation consistent with the Executive Order so that the government-wide, nation-to-nation partnership between the United States and all Indian tribes can be meaningfully and fully implemented consistently across the Federal Government and ensuring that Native peoples—and the United States as a whole—fully benefit from the economic potential presented by our tribal nations.

*B. Recognition of Tribes as Governments in All Policy Areas*

i. Disadvantages in Tribal Access to Federal Funding

Indian tribes are polities recognized in the U.S. Constitution whose governments have all of the privileges and immunities routinely reserved to other governments in the U.S. federal structure. Nonetheless, tribal governments often are not given the same opportunities provided to state or local governments. For example, the large federal appropriations in the American Recovery and Reinvestment Act (Recovery Act) for energy programs provided $12 billion to state governments and less than $65 million to tribal governments even though a truly comparative distribution recognizing state and tribal land mass (not to mention immense energy potential) would have justified more than $600 million to tribes. In addition, tribal nations are excluded by law or policy from dozens of federal natural resources programs that

[1] OMB Memorandum M–10–33 Guidance for Implementing E.O. 13175, "Consultation and Coordination with Indian Tribal Governments" ( July 30, 2010)

provide funding to state and local governments, collectively worth billions of dollars every year, and including signature programs like the Coastal Zone Management Act, the Community Forestry Assistance Act, and Land and Water Conservation Fund.

ii. Disadvantages in Statutory Definitions of "Federal Lands"

Similarly, within the definitional sections of some federal statutes, tribal lands are included in the definition of "federal lands" to the detriment of tribal nations, while other statutes exclude tribal lands from the definition of federal lands—again, to the detriment of tribal nations. For example, tribal lands are included as federal lands in the National Environmental Policy Act, the Endangered Species Act, the Coastal Zone Management Act (and related acts) and the levying of a $6500 fee for an application for a permit to drill on federal lands. These inclusions result in substantial administrative burdens and fees not applicable to other entities and landowners, placing tribes at a distinct competitive disadvantage, while also creating statutory exclusions of tribal lands from federal funding. In the latter case, the exclusion of tribal lands from the definition of "federal lands" disallows tribal governments from funding assistance for tribal lands under the Tribal Forest Protection Act.

iii. Disadvantages When Tribal Governments Are Treated as Corporations

Another problem caused by regulatory differences in treatment arises when tribes are not treated as governments, but are treated as corporations or businesses. Examples include revenue rulings from the Internal Revenue Service (IRS) requiring 1099 reporting from tribes for grants for educational and cultural support provided to their members; the use of "essential government function" analysis used to determine if tribal programs qualify for tax-exempt financing (which is not used to analyze state programs); and general taxing inequities which favor and allow states' encroachment into the taxing jurisdiction of Indian tribes.

However, when tribes are treated as sovereign nations, and given the flexibility to build their own programs and develop their own economies, they have shown the ability to succeed. For instance, the Indian Self-Determination and Education Assistance Act (ISDEA), through the advent of 638 compacting, contributed immensely towards Indian tribes' ability to fund tribal public safety programs, develop their own educational and health standards and facilities and establish tribal colleges that have enabled tribes to provide higher learning institutions for tribal people within their own communities. Through greater exercise of control, and within the spirit of self-governance, tribal programs have not only grown, but have improved in a manner that reflects tribal values and addresses specific community needs.

The disproportional, and often conflicting, treatment of tribes in programs throughout the Federal Government deny tribes equal standing with state and local governments as well as economic development opportunities within areas such as the immense energy and natural resources potential on tribal lands. Equitable treatment of all governmental entities and meaningful implementation of the trust responsibility across all federal agencies require tribal access to such programs equal to that of states. Tribal nations urge Congress and the Administration undertake studies and create taskforces to identify and remedy these disparities and exclusions across all federal agencies.

*C. Streamlining Administrative Programs and Processes*

i. Consolidation of Programs

Administrative programs consolidating federal resources and programs, such as the Department of Justice's recently instituted Coordinated Tribal Assistance Solicitation (for law enforcement) and the Department of the Interior's 477 program (for workforce development), recognize the unique reliance of tribal governments on discretionary spending sources to fund general tribal governance, and affirm tribal governments' capability to manage such program areas responsibly. These programs allow tribes to concentrate on program development rather than multiple administrative burdens of grants management and reporting. Importantly, this streamlining is accomplished through the federal agencies' willingness to acknowledge the unique sovereign status of Indian tribes, their needs as government bodies, and their responsibility to develop programs and services for their citizens.

Tribal nations urge Congress and the Administration to undertake studies and create taskforces to explore, identify and enable consolidations in other program areas where multiple federal agencies provide funding and technical assistance for similar or related activities, including economic development, energy development, water infrastructure, technical assistance and planning, energy efficiency, natural resources management, and education.

One example where proposed streamlining should be effective, but has not been implemented is the 477 Program. Indian Country has deeply appreciated the Obama Administration's commitment to smarter government. In the current environment of constrained federal resources, streamlined federal programs are necessary. In this context, it is troubling that the Administration has thus far given tepid support—and in some cases presented obstacles to the success of—the Indian Employment, Training, and Related Services Demonstration Act of 1992, otherwise known as the 477 Program. The program allows for the voluntary participation of tribes to combine formula funded federal grants and funds, related to employment and training, into a single budget with a single reporting system. The lead agency in this demonstration is DOI, Office of Indian Energy and Economic Development. The formula funded programs include those offered through the BIA, Department of Labor (DOL), Department of Health and Human Services (HHS), and the Department of Education. There is no expiration date on this demonstration.

Once programs and associated funds are consolidated under 477 they lose their separate identities and are spent in accordance with the 'single budget' plan. However, in a move contrary to the consolidation of the 477 effort, auditing provisions were changed under the March 2009 OMB A–133 Compliance Supplement issued by DOI—requiring tribes to *deconsolidate* their federal employment funds and training funds so that they could be audited individually for 2010 audits. The resulting need to reclassify and rebook entries for reporting purposes created large expenses for several tribes required to recreate records for each individual program that was consolidated under the 477 program. The Administration needs to support programs like 477 as successes and work to ensure their longevity, as well as more widespread participation throughout Indian Country, while recognizing inefficiencies and ineffective administrative burdens that result in greater overall expenses.

ii. Streamlining Agency Policies and Procedures Regarding Lands and Natural Resources

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. For instance, the Secretary of the Interior must approve land into trust applications, land transfers, leases for business development, and the sale of natural resources. Due to the bottleneck created by multiple oversight requirements and the inability to delegate authority, this oversight process hinders business development and acts as a disincentive to potential partnerships with outside entities.

First and foremost, NCAI recommends immediate passage of the legislation designed to remedy the Supreme Court's decision in *Carcieri v. Salazar* in 2009. The Court's interpretation of the Indian Reorganization Act of 1934 runs contrary to over 75 years of consistent action by the Department of Interior to utilize the IRA as a tool to promote economic development and self-government by Indian tribes. We thank the Committee for its action to approve S. 676 and urge that Congress pass the legislation as soon as possible.

Additionally, tribes encourage Congress to pass the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, (S. 703 and H.R. 205) which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands. We hope that applications for the sale of resources will also be given priority treatment in the DOI's decision-making process.

Tribes are also encouraged by the Senate Committee on Indian Affairs introduction of the Indian Tribal Energy Development and Self-Determination Act Amendments (S. 1684), sponsored by Sen. Barrasso (R–WY) to spur the vast tribal energy potential for the economic development of their peoples and nearby communities. This bill would make it easier for tribes to create tribal energy development organizations and enter into tribal energy resources agreements with the Department of Interior so that many existing administrative burdens would be reduced or eliminated, and tribes—not DOI—would be the drivers and managers of the energy resources on their lands. Tribes look forward to continuing work with the Committee and Congress to enact the bill.

iii. Leases, Resource Sales and Land Into Trust

There is an extraordinary high backlog of leases and land into trust applications that have real implications for tribal economies. Research has demonstrated that some BIA regional offices have effectively prioritized land transactions with economic implications.[2] The Department of Interior should be compelled to institutionalize these best practices at the national level. If expedited, the approval of development projects, timber sales, agricultural leases, leases for right of way (e.g., to

[2] NCAI Policy Research Center, (2009), *Exercising Sovereignty and Expanding Economic Opportunity Through tribal Land Management.*

develop telecommunications infrastructure) and land into trust applications would quickly and effectively jumpstart tribal economies.

The GAO issued a report that "found no statutory or regulatory requirement that appraisals be used to establish lease values,"[3] t the appraisal process remains an integral component to lease approval under current BIA procedures. Short of eliminating the appraisal procedure altogether, we recommend that tribes be given the liberty to select their own land appraisers, providing those appraisers maintain the proper certification and/or licensing requirements. This policy change would allow the tribe to partner with DOI to expedite the leasing process.

iv. Amending Policies and Regulations

On November 29, 2011, the Department of Interior published proposed revisions to the outdated leasing regulations at 25 CFR 162 that would streamline and expedite residential, business and wind and solar resource leasing. The proposed reforms would reduce or eliminate obstructions to tribal economic and renewable energy development. This simple regulatory change promises to directly stimulate economic growth in Native communities and benefit the American economy.

The proposed rule would modify regulations governing the Bureau of Indian Affairs' (BIA) process for approving surface leasing on lands the Federal Government holds in trust for tribes and individuals. Although great potential exists, very few tribally owned renewable energy projects have moved forward because of the disproportionate review processes tribes have been subject to. The proposed regulations impose timelines on the Department for reviewing leases—up to 30 days for residential leases, and up to 60 days for business leases and wind and solar energy leases. The Department of Energy estimates Indian lands contain significant renewable energy potential—enough to meet 32 percent of the nation's energy needs with wind power and 2 times the entire country's energy needs with solar power.

We recommend the final rule be drafted to include leased rights of way, which, under current case law, fall within the regulatory jurisdiction of the outside entity. This is important because tribes sometimes lease rights of way to non-Indian entities to develop telecommunications infrastructure, not knowing that this action currently cedes jurisdiction. The result is that tribes expose themselves to outside taxation which does not benefit their communities.

The potential for economic development and growth from this one regulatory change is expected to enable noticeable, beneficial changes for Indian nations and their citizens. We would encourage across-the-board reviews to discover and reduce similar burdensome and inconsistent regulatory and administrative requirements that do not support economic development and growth in Indian Country. For example, the fee required to drill on Indian lands is $6,500—payable to the Bureau of Land Management for each application for a permit—presents an inequitable disincentive to energy development on tribal lands. The scope of the disincentive is demonstrated by comparison with state fees. For example, in the state of Montana, the same fee ranges between $25 and $150. The fee was intended to target energy development on federal lands, not tribal trust lands, but unfortunately it has been interpreted in a manner which frustrates oil and gas development on Indian lands. Additionally, BLM should be required to retract BLM Instruction Memorandum No. 2008–043, which included Indian minerals within the scope of the $6,500 fee. Also, BLM should be asked to issue a memorandum clarifying that Indian minerals are outside the scope of the energy development on federal lands targeted by the initial fee.

v. Reducing and Eliminating Funding Match Requirements for Tribal Nations

Match requirements for funding should be reduced, eliminated, or calibrated according to need, for tribal grant recipients. While many non-tribal grant recipients are organizations with an internal business component, tribal recipients are governments and must find matching funds from within their general revenue stream. Most tribes that are dependent on federal grants have extremely limited resources. Furthermore, because tribes lack the tax base available to other governments, or are deterred from imposing their own tax authority due to the existing and problematic exercise of taxing authority from other governments, imposing a match requirement on tribal governments frequently results in tribes scrambling to find matching funds from limited resources and often leads to the underutilization of funds or precludes tribes from applying for them.

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[3] GAO: Report to the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, *Indian Programs—BIA Should Streamline Its Process for Estimating Land Rental Values,* 2, June 1999.

vi. Improving Methods of Data Collection in Indian Country

Tribes need access to and control over their own data, as well as the ability to build data in areas where it is virtually nonexistent. While federal data collection itself does not stimulate business development, data is increasingly used to determine where and how scarce federal dollars are invested. Since 2000, no meaningful socioeconomic data about Indian Country as a whole has been produced by the U.S. government. The widely-documented concerns of rural and remote communities about the Census Bureau's American Community Survey (ACS) are even greater in Indian Country. The Bureau of Labor Statistics (BLS) essentially excludes data from Indian reservations in the monthly labor force reports, and there is a wide discrepancy between DOI labor force reports and those presented by BLS.

Also, the DOI retains vastly important land data but, as of yet, has chosen not to share this data with tribes. Land data is increasingly pivotal in areas such as, but not limited to, determining the extent and value of natural resources as well as the land consolidation provisions within the *Cobell* Settlement. Broadband mapping on tribal lands is also an area where data might be improved through better cooperation with states and federal funding sources for such mapping. These data deficiencies impair the ability of tribal, federal, state, and local policymakers to identify and respond effectively to the needs of tribal nations. They place tribes and Native non-profits at a competitive disadvantage when applying for federal grant funding. Finally, they make assessment of programs virtually impossible for tribes and the Federal Government.

Cost neutral improvements could be made to data collection by ensuring more effective coordination among existing federal research studies. For example, the Native American Lending Study at the Community Development Financial Institutions (CDFI) Fund could be more closely coordinated with the Native American Housing Study being conducted at the Department of Housing and Urban Development (HUD). In other areas covered in this report, interagency collaboration can promote critical access to data in natural resources, energy, education, etc. We recommend interagency collaboration to ensure support of basic surveys and inventories so tribes have accurate and current data to support tribal decisionmaking. Savings gained from collaboration could be applied to the collection of additional primary data from Indian Country.

vii. Access to Information

As the Administration demonstrated with the Recovery.gov clearinghouse, access to information is critical to efficient and effective utilization of federal resources. A similar, cross-department approach in the economic development sector would provide tribes and tribal members better training and access to the variety of economic development opportunities available from the Department of the Treasury, the Small Business Association (SBA), the Bureau of Indian Affairs (BIA), the United States Department of Agriculture (USDA) and Department of Commerce, as well as other federal agencies. This initiative could also map existing economic development programs that exclude tribes and make recommendations for regulatory or legislative fixes to ensure tribes are afforded equal opportunity to participate in those programs. A particular focus of these efforts would be to ensure that all Federal Government agencies review their legislative mandates and policies to include "and tribal governments" wherever state governments are eligible for services and funding. To ensure success, this approach begins and ends with acknowledging the unique governing status of tribal nations and their particular community needs.

*D. Recognizing Tribes as Sovereign Nations in Federal Legislation*

Legislation based on nation-to-nation relations in the area of economic development has also had success in Indian Country. The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted, for the most part, to settle jurisdictional questions between federal, state, and tribal governments. The jurisdictional questions which led to the enactment of IGRA pitted states against tribes and were rooted in the belief that tribal governments lacked the inherent authority to develop their own economies through gaming. Currently, Indian gaming is a $26.5 billion industry and has provided the foundation for many tribes to ensure quality social programs, infrastructure development, educational support and other services are available to their citizens. Congress, through powers enumerated in the Indian Commerce Clause, affirmed tribes' authority to develop their economies through gaming, even where tribal gaming was contrary to state law.

Similar battles have occurred for years in the area of tribal tax policy, where the lack of congressional involvement has allowed the judicial branch and interpretations from federal agencies to develop tribal tax law on a case by case basis. The resulting inconsistent tax policy fails to protect the taxing jurisdiction of Indian

tribes and predominantly favors states' interest in taxing transactions occurring on tribal lands.

Additionally, tribes need to be expressly included in legislative proposals to protect state and local government budgets. For example, provisions in the American Jobs Act to stabilize funding for teachers and first responders and invest in 21st century infrastructure inconsistently address (or are silent on) tribal eligibility for these programs. Given the critical role tribes play in many of America's regions, especially in rural areas, equal access to fiscal stabilization funding is critical for all Americans, including Native peoples.

Furthermore, it is worth noting that when tribes are successful, they contribute not just toward the overall well-being of their own communities, but often towards the well-being of the surrounding local communities. As an example, through tribal-state gaming compacts, Indian tribes routinely contribute significant dollars in gaming revenue to support local governments. Also, tribes have created hundreds of thousands of jobs for both Indians and non-Indians through construction contracting, hotel and resort management, law enforcement, emergency support services and gaming facilities operation as well as natural resource development. Even with these successes, tribes are still in need of greater administrative flexibility—when it comes to economic development in Indian Country, one thing is clear: tribes know what tribes need to succeed.

Throughout the various eras of the Federal Government's policy towards Indian tribes, the majority of tribal communities have largely been dependant on federal funding—in particular, discretionary funding. Looking at the current economic downturn and its projected effects on discretionary government spending, Indian tribes are in dire need of greater opportunities through little to no costs. Strengthening the nation-to-nation partnership between the United States and Indian Nations will better equip tribes to continue the development of their economies and help their neighboring communities. In this context, tribes have identified broad recommendations in areas such as budget appropriations, promoting partnerships with the private sector, improving access to capital, natural resources, education and workforce development, infrastructure development, healthcare, public safety, and agriculture. The specific recommendations are included in the Program Flexibility Matrix which can be found at *tinyurl.com/TNC2011.*

**II. Access To Capital**

While many tribes have succeeded in the area of business development and job creation, other tribal governments and individual tribal citizens have struggled to access the necessary capital to build strong, healthy economies within their sovereign territories. Strategies towards expanding access to capital include: (1) facilitating greater access to traditional financing tools; (2) alleviating administrative barriers to economic development; and (3) promoting financial stability and individual entrepreneurship on tribal lands.

*A. Facilitating Greater Access to Traditional Financing Tools*

Financial capital is the foundation of business development as well as the primary factor required for developing energy resources on tribal lands. While there are a host of financing opportunities available for business development in general, sometimes tribes experience difficulty making use of these opportunities due to regulatory barriers or lack of information.

i. Protecting Tribal Tax Jurisdiction

Tribal tax policy is the result of Supreme Court precedent and agency interpretations issued by the Internal Revenue Service. Both of these 'rulemaking' processes are accomplished on a case-by-case basis, which results in inconsistent tax policy towards tribal nations. This Committee and Congress should recognize tribal nations' exclusive jurisdiction to levy taxes on tribal lands. The ability to levy taxes is one of the primary functions of a government, yet Indian tribes are often asked to share critical tax revenue with outside jurisdictions, sometimes in the form of discriminatory dual taxation, with no assurance that any of that taxing revenue will be redistributed from the outside jurisdiction back to the tribal nation in the form of services or programs. On the federal level, tribal leaders agree that federal tax policy implicating Indian tribes needs to recognize the governmental status of Indian nations equal to other government authorities, and support the inherent exclusive authority for tribes to levy taxes within their tribal lands. This recognition will enable tribes to build core governance funding that may be used to fund government programs, services, and secure government bonds on the market, without interference from outside entities. During the current economic downturn, this recognition of tribal taxing jurisdiction becomes of paramount concern.

ii. Tax-Exempt Financing

Tax-exempt financing is largely unavailable to Indian tribes for three reasons: (1) the "essential government function" threshold (required by Section 7871 (c) (1) of the Internal Revenue Code (IRC)) that tribal projects must meet to qualify for tax-exempt financing; (2) tribes' general lack of access to the investment market; and (3) the lack of a strong tax base. Barriers to accessing tax-exempt finance pose a significant inequity for tribal governments and their citizens but also negatively impact surrounding rural and regional economies.

The "essential government function" analysis has restricted the use of tax-exempt financing for Indian tribes only to those development projects which lack any commercial component (e.g., schools, roads, sewer systems, hospitals). In contrast, states and local governments are able to use tax-exempt financing to develop projects which may or may not contain a commercial component—e.g., marinas, convention centers and golf courses —as long as the majority of either the use of the facility or the funds used to secure the bond are governmental in nature. We recommend eliminating the essential government function test in favor of treating tribes like states and local governments.

In addressing the second and third concerns—lack of access to the investment market and lack of a strong tax base—we propose the Indian Finance Act and the Internal Revenue Code be amended to allow federal guarantees to back tribal bonds on the market. Traditionally, states and local governments secure their bonds through their tax base. This tax base consists of property tax, income tax, sales tax, and other taxing streams which generate enough revenue to use as collateral for bond security purposes. Most tribes exercise a modest sales tax, a hotel tax and gas taxes, but are constantly competing with neighboring states over the right to tax transactions within the tribal jurisdiction. Currently, the Indian Financing Act prohibits federal guarantees as a source of security for tax-exempt bonds.[4] Ensuring federal guarantees are available to back tribal bond offerings will allow tribes to use their bonding authority and capability more effectively and frequently, creating jobs and business development on the reservation.

Additionally, the IRC currently prevents tax-exempt treatment of any bond backed by federal guarantees.[5] We recommend bonds guaranteed by DOI for tribal tax-exempt bond issuances be added to the exceptions listed within Internal Revenue Code, 26 U.S.C. § 149 (b). Taken together, these proposed amendments to the Indian Financing Act and the IRC would expand the tax-exempt financing realm beyond wealthy tribes to include tribes with moderate capital resources to leverage.

Currently, both IRS and Treasury are seeking comments from tribes regarding the reallocation of Tribal Economic Development (TED) Bond funds. TED Bonds were authorized under the American Recovery and Reinvestment Act (ARRA). The purpose of the TED Bond component of ARRA was to boost economic development projects in Indian Country and to serve as a pilot project, whereby tribal governments would be able to issue tax-exempt bonds on a level of parity with state and local governments. The TED Bonds have largely remained underutilized due to a variety of factors, including the national economic climate which has been dismal for the overall bond market. One suggestion we offer is that the $30 million cap on TED Bond allocations be raised, or eliminated altogether, to ensure tribes have access to better financing options. Tribes do not want to obtain two debt sources for one development project. As it stands, if a tribe wants to finance a $50 million hotel using TED Bonds, they must seek the additional $20 million from another source. Tribes would like the opportunity to develop these types of projects within a single finance obligation. The Treasury Department needs to reallocate the remaining funds for another bond offering with suggestions such as this in mind. The TED Bond component of ARRA presents a great development opportunity for tribes and should be maximized under existing resources.

*B. Facilitating Capital Investment for Tribal Development Projects*

Also, tribes need better access to capital investment tools to help facilitate economic development projects. The New Markets Tax Credit (NMTC) is an increasingly important catalyst for private sector investments that create jobs and enhance access to capital for small businesses and community development, especially in distressed communities like Indian reservations. While the NMTC has limitations concerning what activities qualify, as well as what types of communities are targeted as beneficiaries, the IRS has issued guidance that identifies an Indian tribe as a

[4] *See* **Indian Financing Act, 25 U.S.C.** § § 1451.
[5] *See* Internal Revenue Code, 26 U.S.C. § 149 (b).

targeted population,[6] meaning that tribal corporations are qualifying businesses for project financing through the use of NMTCs. However, because of the complicated nature of utilizing NMTCs, tribes have generally steered clear of them as a potential financing option. Under the NMTC program, the actual credit is passed through a Community Development Entity (CDE) to potential investors. Tribes need assistance in locating CDEs that are willing to contribute towards economic development projects in Indian Country through the use of NMTCs. Furthermore, tribes should have the ability to monetize existing credits, such as accelerated depreciation and the Indian Employment Tax Credit, which currently only benefit non-Indian businesses operating on tribal lands.

The Treasury's 1603 grant program provides cash grant incentives for renewable energy projects. However, this funding is not available to governments, including tribal governments. We recommend policy changes that would allow tribal governments, through Section 17 Corporations, wholly owned tribal entities, or ANCSA corporations to use Section 1603 grants.

Allowing tribal governments to use Section 1603 grants to finance energy projects will help alleviate the taxation issues which often stagnate energy development in Indian Country and, in turn, deny the nation access to a critical renewable energy source while undermining tribal economic development potential. Policies that encourage tribes to partner with outside entities have also been used to penalize that same partnership through dual taxation (as established in case law). By allowing tribes to use Section 1603 grants for energy development projects, tribes would be encouraged to take an ownership interest in these projects, expediting tribal energy projects and supporting their success.

Next, expansion of the BIA's guaranteed loan program will reduce the perceived risk that insurance companies associate with tribal governments due to the doctrine of sovereign immunity. It will also increase insurance industry access to infrastructure and other construction-related projects, and generate job opportunities and business growth during difficult economic times at no, or very limited, cost to the Federal Government.

A change that would assist tribal business development is the use of existing authorities to provide surety bond guarantees for tribal construction businesses. Lack of surety bonding for tribes is one of the largest barriers to entry and growth in federal contracting construction in a highly competitive and capital intensive sector. Construction is also an area with a much higher probability of providing direct employment for tribal members and ANCSA shareholders. From a regulatory standpoint, this facility could be made available, but limited to businesses meeting certain goals such as tribal member employment opportunities or other metrics.

i. Promoting Public-Private Partnerships

In a time of constrained federal resources, the Administration can contribute significantly to economic growth in Indian Country by using its convening power to draw the attention of private sector and philanthropic investors to the opportunities presented by tribal nations. As an example, financial institution access could be enhanced by convening a strategy session with large financial institutions, small and medium banks, Native Community Development Financial Institutions (NCDFIs), and tribal leaders to develop innovative partnerships. Also, to address surety bonding utilization, the Administration could convene tribal enterprises with surety bonding companies. Using the White Horse Rural Council as a framework, the Administration could draw particular attention to the underinvestment by philanthropy in tribal nations and convene large foundations to seek commitments to coinvest in Indian Country. There are many other opportunities with respect to labor programs and broadband deployment as listed below.

There are additional areas where small changes could have large, lasting effects. With respect to energy efficiency, revision of DOE weatherization regulations and policies to include tribal programs would enable tribes to receive funding directly, without needing to prove that state programs do not serve their members. Tribal governments should be exempted from the registration and disclosure rules set forth in the Securities Act of 1933, as are state and local governments (Securities Act of 1933, 15 U.S.C. 77c (a) (2), (b)). As a result of this disparity, tribes must either bear the registration costs or issue bonds into the private placement market, which generally provides inferior terms.

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[6] *See* IRS Publication: New Markets Tax Credit, Chapter 1: *Introduction to New Markets Tax Credit*, 1; Chapter 2: *Issues at the CDE Level*, 14, May 2010; Adopting the definition of "targeted population" within the American Job Creation Act of 2004, IRC § 45D(e)(2).

*C. Promoting Financial Stability and Entrepreneurship on Tribal Lands*

As tribal economies begin to grow, local financing needs for businesses, individuals, and tribes, increase and are exacerbated by the lack of financial institutions serving their communities. The Administration can help support the development of tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to help tribal members.

i. Supporting Development of Tribal Financing Institutions

Currently, there are more than 60 certified Native CDFIs located in 18 states serving Indian country, Alaska, and Hawaii. The majority of these operate in low-income rural communities. CDFIs provide a wide range of financial products and services including microenterprise loans, small business loans, consumer loans, mortgage financing, financial education courses and credit repair. As such, Native CDFIs play a vital role in developing financial security within tribal communities, many of which have little to no access to local banking institutions.

In a recent nationwide survey of Native CDFIs, 90 percent of respondents indicated receiving federal funding in the last 10 years. However, when asked about their experiences and utilization of funding from six federal departments that commonly fund community development, 58 percent of the programs were used by less than 3 NCDFIs. Ten of the 31 listed federal programs were not used by any of the participating NCDFIs.[7] This demonstrates a clear need for better agency outreach and coordination to ensure the success of Native CDFIs.

Also, as with other economic success stories in Indian Country, effectively "telling the story" to ensure other tribes can benefit from lessons learned is invaluable. The Administration should direct the Native Initiative of the CDFI Fund to gather best practices in CDFIs serving Native and other rural and disadvantaged communities. Since Indian Country is severely under banked, it is critical that these successes be shared with tribal governments in appropriate regional and national settings.

The few Native communities that do have bank branches on their reservations are afflicted by one of two challenges: (1) being served by small or intermediate small banks whose Community Reinvestment Act (CRA) exams are not sufficiently robust; or, (2) being served by branches of large banks that can offset underinvestment in Native communities with lending activities elsewhere. It is critical for the agencies to both remove exemptions from data reporting and other tests for small banks (as was done, for example, in the Dodd-Frank Financial Reform Bill), and add a community development component to the CRA exam for large banks. We need an exam methodology that incentivizes the investment in community infrastructure to serve remote, rural, and especially, reservation communities. The current structure of large bank exams allows a lack of community focused lending to be offset by home or business lending in other communities (often urban communities).

The agencies should also impose meaningful penalties on banks that fail to receive satisfactory grades on their CRA exams. One bank in South Dakota, located in the midst of the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate, has received "needs to improve" as its grade on all five CRA exams since 1996 with no clear consequences for this ongoing non-compliance. It is also striking the degree to which Performance Evaluations (PEs) of banks that serve communities with large Native populations completely exclude analysis of bank service to tribal nations. Agencies must require that PEs that cover banks whose service areas include substantial tribal lands and/or Native populations assess the degree to which those institutions serve the Native communities in question.

ii. Encouraging Entrepreneurship on Tribal Lands

While tribal governments have made great strides in developing their economies with the financing tools available to them, individual tribal members still face the highest unemployment rate of any other minority group, and individual entrepreneurship remains largely underdeveloped among Indian peoples. Indian people interested in developing business ventures must be included within any policy promoting economic development in Indian Country.

*Buy Indian Procurement Requirements*

No single measure would do more to help resuscitate Indian Country employment, particularly in manufacturing, than an encompassing Buy Indian government procurement requirement. All infrastructure projects funded and guaranteed by the Federal Government and the proposed infrastructure bank should require purchases to be made in Indian Country rather than overseas, consistent with our international trade agreements. The Defense Authorization Bill passed in December that

[7] Native CDFI Network, *The Utilization of Federal Funding Resources by Native CDFIs: Survey of Native CDFIs*, 4, January 2011.

requires the Pentagon to buy solar panels from U.S. manufacturers is a good model. Further, to qualify as "Made in Indian Country," at least 75 percent of the content should have to be manufactured within tribal borders. To make that happen, the White House by Executive Order and Congress by legislation should require domestic content calculations to be effective and transparent.

In addition, Congress needs to enact an all-Indian successor to the 1933 Buy American Act. No regulations to implement the Buy Indian Act have been issued in 75 years. Through a combination of regulation and expanded legislation, the Administration should support long-overdue regulations and changes to the Buy Indian Act which ensure that preference is given to on-reservation Native individuals and enterprises, and ANCSA corporations, in awarding contracts, and subsequent subcontracts, with DOI, Indian Health Service (IHS) and other agencies serving American Indian and Alaska Native populations. The Buy Indian Act should also be amended to require the recipient of a contract to provide training and employment preferences to Native people. Furthermore, consultation was held, March 2010, on draft regulations for the Buy Indian Act. Yet, to date, DOI has failed to release its final regulations.

*Government Contracting*

Government contracting in Indian Country, through the tribal 8(a) program has been subject to more regulatory oversight from both the Small Business Administration and Department of Defense than most other contracting programs. The regulatory oversight combined with Congressional oversight has had a chilling effect on the very agencies that the Native communities rely on for contracting revenue. The tribal 8(a) program has already been altered in the Senate by placing a justification requirement on contracts exceeding $20 million. This is a far lower threshold than that applied to other sole source awards. Tribes use the 8(a) program to support the economic health of entire communities, and it has proven effective regardless of a tribe's location or size, making it a viable tool for all tribal governments. To support this effective incentive for tribal governments, the Administration should demonstrate their clear and unambiguous support for the program and provide certainty in the contracting marketplace.

We further recommend that the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries be expanded to all industries. This adjustment would encourage greater participation in the program at a time when Section 811 has had a chilling effect on government contractors.

Also, the Administration should support legislative language that elevates the Office of Native American Affairs (Office) within the Small Business Administration (SBA). With limited authority and resources, the Office promotes Native-owned 8(a) business development, HUB Zone empowerment and other government contracting, entrepreneurial education, and capital access. It is necessary that the Office be brought into line with other administrators at the SBA and have the capacity to provide funding for Indian-focused technical services through tribal colleges and existing service providers.

Other non-tribe specific SBA opportunities, such as the SBA 7(a) program, offer potential funding opportunities. The 7(a) program provides financial help for businesses that handle exports to foreign countries, businesses that operate in rural areas, and for other specific purposes. The loans offered to businesses operating in rural areas are smaller, yet have a more streamlined, simplified application process. Similarly, the SBA Section 504 loans operate in conjunction with community-based non-profit organizations. More information needs to be accessible to individual tribal members interesting in starting their own business ventures.

*Specific Recommendations to Expand Access to Capital*

The specific recommendations are included in the Program Flexibility Matrix which can be found at *tinyurl.com/TNC2011.*

**III. Access To Broadband**

The United Nations recently announced that access to the Internet is a basic human right because it facilitates civic engagement, assists economic development initiatives, promotes long distance learning and telemedicine, and is an invaluable source of information. However, tribal communities continue to experience low access and connectivity rates for basic broadband and analog telephone services. Where competitive forces have facilitated the build out and deployment of broadband Internet, telephone and radio access, tribal communities have experienced numerous bureaucratic and financial barriers to access. Even without competition, local service providers have not provided adequate service to Indian lands within their jurisdictions.

Analog telephone (basic telephone service) penetration rates on tribal lands are at 67.9 percent compared to 98 percent across the nation. The disparity on tribal

lands pertaining to Internet access is even higher due to the lack of infrastructure required to support standard Internet delivery over twisted pair, cable and satellite transmissions. The Federal Government, through its trust responsibility, congressional passage of the 1934 Communications Act and subsequent amendments through the 1996 Telecommunications Act, has a fiduciary responsibility to provide avenues of access for connectivity and universal service in tribal communities. The establishment of a reliable telecommunications infrastructure across Native lands is essential to the operation of tribal government, health care, education, and public safety as well as economic development.

*A. Rural Development Loan Program*

Approximately 500 rural telecommunications companies receive loans from USDA's Rural Development, Rural Utilities Service (RUS). Out of those 500, eight (8) are tribally owned/operated telecommunications authorities operating on tribal lands that have acquired eligible telecommunications carrier (ETC) designation from the Federal Communications Commission (FCC). RUS loans are provided for the purpose of providing funding for facilities and equipment to upgrade, maintain, and expand deployment of broadband services. However, these loans are not available to tribes pursuing start up initiatives for their own telecommunications companies because the USDA is unable to provide loans to entities that would provide competition with rural carriers receiving similar loans from the USDA. In reality, if the incumbent companies were providing broadband service in these geographies, there would not be the disparity or lack of broadband service that currently exists on Tribal lands. If there is no service or degraded service, then funding tribes to own/operate broadband facilities would not present *any* competition to the rural carriers. The current USDA obstacle unnecessarily prevents tribes from developing their own telecommunications abilities and providing vital services to their reservations. Additionally, the lack of competitive provision of telecommunications and broadband service to tribal lands creates a disincentive for the rural carriers to create, expand or improve services to those areas. While the USDA loan program has enabled some tribes to establish their own telecommunications, it has not been inclusive of tribes seeking these capital loans if they will provide competition to nearby rural telecommunications companies.

The eight tribal telecommunications companies that have attained ETC designation have increased broadband connectivity to their communities by 300–900 percent. Tribal ETC designations should not be halted or barred if a rural telecommunications company operates a service area that extends within tribal reservation boundaries. Service areas must be redefined to accommodate a tribal ETC designation. Tribes should also be given first right of refusal to access spectrum over their own lands.

We would urge Congress to reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives and to redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands. Additionally, Congress should mandate and fund a program that effectively identifies and communicates information about federal programs that offer tribes competitive financing options (e.g. low interest rates and extended repayment terms or the waiver of non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant administered by federal agencies). Congress should restore full funding for the USDA Office of Tribal Relations sufficient to support staff, education and training on USDA programs available to tribes. Finally, Congress should mandate the creation and funding of a position within the USDA RUS, to be filled by an American Indian or Alaska Native, to encourage further collaborative efforts with tribes.

*B. E–911 Upgrade Requirements*

Full access to emergency services is an essential component of a business-friendly reservation environment. Unfortunately many tribal communities across the nation lack analog and/or digital access to E–911 services. Broadband services are an essential life saving utility that should provide tribal communities with security and assurances that emergency services are available and adequately attainable through E–911.

Another critical public safety feature related to E–911 is the Automatic Location Identification data base. ALI failure occurs when a phone number is not located in the database and the Public Safety Answering Point (PSAP) operator must ask the caller of their location and redirect them to an appropriate PSAP that services that area. Since many non-tribal members are unaware of the areas/names of tribal

lands this leads to prolonged EMS and law enforcement response times that can have life-threatening consequences.

Ensuring tribes are a part of this critical piece of 21st century infrastructure requires efforts by the Congress and Administration to ensure tribes are included in HR 2629 "Next Generation 9-1-1 Advancement Act of 2011." The goal of this proposed legislation is to foster migration from analog, voice-centric 9-1-1 to a next generation IP-based model. However, many tribes across the nation currently do not have access to even basic analog telephone services and therefore this gap to access for emergency services on tribal lands will increase if tribal consideration is not given and access to broadband is not secured.

a) Urge the FCC to alter the definition of 'library' to allow eligibility for tribal libraries to receive E-Rate support.

b) Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands.

*C. Universal Service Fund*

Potential tribal access to the Connect America Fund (CAF), announced in October 2011 by the FCC,[8] would offer significant improvements to the current broadband coverage deficit. The CAF is designed to provide funding for access to a network that will be capable of providing high-quality voice-grade service and broadband in the most remote areas of the nation. We are encouraged that the FCC has stated its intention to rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible. However, we are concerned that exclusions of "extremely high cost areas" from some requirements and 2–3 year phase-in following additional rulemaking on the tribal Mobility Fund, combined with potential delays while the FNPRM responses are analyzed and incorporated into an Order, may result in Indian country being the last area of the United States to begin to have access to broadband service foreseen by this latest universal service effort. As the history of "Universal Telephone Service" displayed, communities that remain unserved and underserved when Congress and the Agencies change focus and funding away from Indian country will thereafter continue to be unserved and underserved. Additionally, as the nation begins its transition from analog to digital services there needs to be an assurance that tribes will have timely and increased ability to own, access, develop and enhance digital services within their respective communities.

To achieve the maximum potential of voice and broadband implementation in tribal areas, Congress and the FCC need to focus on three interrelated areas—all of which need to be addressed concurrently:

- Infrastructure and Technology Support;
- Workforce Development and Member Education; and
- Interagency Education and Management of Grant and Loan Support.

*Infrastructure and Technology Support*

Leg one of this triad includes building out the infrastructure—from the first shovel to the installation of network hardware and software. This leg may also include starting up the business operations to support the new broadband facilities. In addition to creating local jobs and economic stimulus in architectural and planning, contracting, construction and technology businesses, this phase requires additional access to capital and technical training. Following the initial construction, tribal networks will continue to support a workforce both to maintain the network operations and manage the financial side of the network business. Tribes need access to loans, grants and other capital infusions to benefit quickly and efficiently from new broadband and communications capabilities on their lands.

*Workforce Development and Member Education*

The second leg of the triad—workforce development and tribal member education—is necessary to allow the tribe to fully realize the capabilities of access to broadband services. Additional training and training and workshops will be needed to prepare medical professionals and facilities, schools and educators, safety and enforcement teams and businesses for broadband capabilities relevant to their fields. This training needs to go far beyond software upgrades and new computers because it needs to be designed for professionals who have not had the most basic Internet

[8] *See Connect America Fund et al.*, WC Docket No. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11–161 (rel. Nov. 18, 2011) *(USF/ICC Transformation Order and FNPRM).*

services until now. Of course, once businesses have established an Internet presence, they will need to learn and establish processes for fulfillment, both domestic and international. Individual tribal members are also likely to need increased training in basic Internet skills, privacy protection, protection from hacking and viruses and special precautions applicable to their youngest and older populations. For all new users, the learning curve of the Internet is steep, especially when combined with ongoing technical changes in hardware and software.

*Interagency Education and Management of Grant and Loan Support*

The third, supportive base of the triad on which both of the other legs rely is access to capital. Capital will be required to obtain spectrum, finance infrastructure, acquire network routers and other technology, train tribal members, build websites and generally stand up businesses, medical systems, school systems, enforcement and emergency support and other broadband-dependent access. While other areas of this paper focus on the variety of challenges tribal governments have to capital, there are federal programs currently available that could provide financing alternatives from the first shovel of construction through opening day of the local business.

Properly coordinated, the loan and grant programs operated through the Federal Communications Commission, the Department of Agriculture, the Department of Commerce, the Small Business Administration, the Department of Justice and the Department of the Interior should be coordinated to ensure that all three elements of the broadband triad are being supported simultaneously. Toward this end, Congress should continue to recognize and allocate funding specifically for the FCC Office of Native Affairs and Policy, the USDA Office of Tribal Relations, the Department of Commerce Economic Development Administration, the Small Business Administration Office of Native American Affairs and other federal organizations that manage funding programs into Indian Country. Finally Congress should fund an inter-agency program with responsibility and funding to coordinate educational material (that is not reliant on Internet dissemination) and provide face-to-face training to tribal governments, social services organizations and businesses on all federal funding sources, regardless of the funding agency.

*D. Tribal Lands Bidding Credit*

The Tribal Lands Bidding Credit (TLBC) was introduced by the FCC to provide an incentive for telecommunications companies to expand broadband services to tribal lands that have a penetration rate equal to or lower than 85 percent. These credits were awarded to winning bidders and were meant to offset infrastructure deployment costs but have failed to expand broadband services to tribal communities. Some of the shortfalls surrounding the TLBC program include:

- tribal communities unable to acquire spectrum licenses;
- lack of increased coverage to unserved and underserved tribal populations and geographic areas;
- commercial providers unable/unwilling to include tribal provisions for service; and
- limited support for tribal public safety efforts including the enhancement of wireless Public Safety Answering Points in tribal communities.

Additionally, this Committee should inquire why the TLBC has been available for use thus far in 32 auctions (covering as many as 18,791 licenses), but only 16 license applications (involving a total of only 51 geographic area licenses) have been fully compliant with the Commission's TLBC certification requirements.

The TLBC program needs evaluation of its application process and oversight/enforcement provisions that provide for the reallocation of spectrum allocated to entities who fail to serve their designated tribal lands with first priority to obtain these licenses given to tribes at reserve or discounted prices.

*Transition Concerns*

As the nation begins its transition from public switched telephone network (PSTN) to new technologies, Congress and the FCC need to be able to assure tribes they will have timely increased ability to own, access, develop and enhance digital services and new technologies within their respective communities. Due to the lag in the actual build out of broadband services and the establishment of related business and service operations, Congress should mandate the continuation of vital analog services such as Lifeline, Link-Up, and the High Cost programs during the transition.

**Conclusion**

This supplemental testimony has highlighted the unique challenges tribes and their members have faced for generations. NCAI's member tribes and their citizens face significant economic challenges—particularly in the midst of the budget reduction climate. However, as we move forward in addressing these challenges, it is critical to realize that tribal communities offer unique innovations that can make significant contributions to the policy debate regarding the economic crisis and the prospects for a fair and equitable recovery for all Americans. Indian tribes recognize the challenges of developing their local economies and providing jobs without the access to funding and basic business tools, like broadband access, that are available to much of the United States outside of tribal lands. NCAI looks forward to partnering with the Committee, as critical members of the federal policymaking community, to ensure tribes are included in developing and paving a way for economic development and job creation in Indian country.

The Program Flexibility Matrix and the Program Flexibility to Create Jobs and Grow Tribal Economies discussion document have been retained in Committee files and can be found at:

*http://www.ncai.org/resources/policy*__papers/2011-tribal-nations-conference-tribal-leader-briefing-book

*tinyurl.com/TNC2011.*

The CHAIRMAN. Thank you very much, the Honorable President Jefferson Keel, for your testimony.

President Keel, in your testimony, you mention the importance of self-governance programs in promoting economic development and spending Federal dollars efficiently. Are there ways we can expand this program to increase its impact?

Mr. KEEL. Yes, Senator, thank you for that question. Tribes have proven, many Tribes that have entered into self-governance compacts with the Federal Government have proven over and over that they are more adequately prepared to provide and manage programs at high levels, improve and raise the quality of services with less money. Primarily because they don't get full funding for the administrative costs that are associated with those contracts. Yes, and the answer to your question is yes, that could be expanded across the board.

There are agencies within the Federal Government that Tribes could operate more efficiently, closer to home, with probably less resources and less funding that is available, and they have proven that over and over again. There are some efforts to include that and expand the Title V Self-Determination and Self-Governance in the Health and Human Services to all agencies within HHS. And there are some others within the Department of Interior that could also benefit.

We look at other areas that could be expanded, and we look forward to working with you in helping to develop that process.

The CHAIRMAN. Thank you, President Keel.

Workforce development is tremendously important as Tribes build and grow their local economies. How can the Federal Government better support workforce development so that it meets the needs of the Tribal communities?

Mr. KEEL. Thank you again. If you look at Indian Country, there are many reservations and areas that have had high unemployment rates for years. The problem with many of our local areas is that many of our young people don't even know how to work. So we need to teach them job skills. There are vocational and technical institutions around the Country in different States and dif-

ferent areas that are more than adequate in terms of teaching those job skills, whether it be in developing a trade or higher education.

The problem is access to funding for some of those. And again, it comes back to transportation. We have to transport these students and get them from one area to another to be able to engage in some of these activities. Including the Tribal technical colleges and some of those institutions in that process would greatly enhance those opportunities.

The CHAIRMAN. Thank you very much.

Let me call on Senator Udall for his questions.

Senator UDALL. Thank you, Chairman Akaka, and thank you, President Keel, for your testimony.

I notice one of the areas you focus on is how we could expand domestic energy production working with the Tribes. And I am wondering, since we passed the Energy Bill in 2005, in those energy provisions that were in there, there was a Tribal title. Where do you see the biggest need for improvement? What has worked there, what hasn't?

Mr. KEEL. I may not be qualified to answer that fully, and I may have to get back to you. But it seems to me that when you talk about domestic energy production, there are Tribes that have tremendous resources available to them located within their Tribal areas. Many times the difficult part is accessing those resources. And I know that several years ago, there were some administrative requirements that were eliminated in order to allow some Tribes to develop resources on their own lands.

Another instance is, there are Tribes within the Northwest and the Great Plains that have significant coal resources. It is a matter of helping them to access those resources and get them to market in order to really see a return on investment.

Senator UDALL. President Keel, the Vice Chairman here, Senator Barrasso, has introduced an energy bill. I know this may not be your area of expertise, but I think it is S. 1684, what improvements would you suggest? Does the bill go far enough to really make a difference in energy for Indian Country? And how does that compare with, there was a bill in the last session of Congress, I think, that Chairman Dorgan had. And I am wondering what your thoughts are there.

Mr. KEEL. Senator, could I ask that, I have the Executive Director of NCAI who has worked with that——

Senator UDALL. She is a very capable woman.

Mr. KEEL. Could I ask her to help answer that question?

Senator UDALL. Yes. Give her name for the record. I know Jackie.

Mr. KEEL. Jacqueline Johnson-Pata, who is Executive Director of the National Congress of American Indians.

Ms. JOHNSON-PATA. Thank you for the question about energy. Obviously it is a high priority for NCAI and for Tribes across the Country. And when speaking to the first question and to this question, actually I think they are both related. The Energy Act of the past helped us to address things like we wanted the TARA [phonetically], for example, to help streamline process. But TARA hasn't worked, there have been some things that we still need to

do. We still need to deal with the leasing issues, we are hoping that some of the new regulations that DOI just announced and the streamlining might be able to help us in addressing those. But we want Congress, like you, to be able to monitor that, to be able to ensure that happens.

Another area that is really important for us is building technical capacity. I think that goes with part of the workplace development component. But if Indian Country is going to get into the energy industry, we have to develop a workforce and the knowledge and the skills around that. And we have been working with AFN of Canada in addition to the Tribes here, so that we can do some cross-border training. I think that is an important component.

I have to say that there are great pieces in the Barrasso bill. Some of the places which we know are more difficult and they are not necessarily the jurisdiction of this Committee, but the jurisdiction of Finance, is taking a look at some of those tax incentives that could be useful for energy development. We have talked about things like transferable tax credits, so that the energy partners of Indian Country, we could get greater incentives for those partners to want to work with us to be able to develop those energy resources. And those are important pieces.

Another pieces that is a gap, not in the bill, not addressed directly in the bill, and I recognize it has a strong, we need strong support with the Administration, is access to the grid. So we develop energy, what do we do next? If we develop energy, what we need to be able to do is stockpile, storage, have storage units for that energy and then transfer them to the grid or be part of the grid. And there are panels and commissions on the grid that Indian Country doesn't have representation on. So with your urging, we could ask the Administration to make sure Indian Country has fair representation in those dialogues around grid build-out and development.

Senator UDALL. Thank you very much. The Committee is very aware that Secretary Salazar is moving through these DOI leasing issues and things like that. But we need to know, when they come out, your response to them. And President Keel, I am sure you are going to stay on top of that. But as things develop, we want to know whether they are working, whether they are not, so we can work with our Chairman to make sure there is a legislative side to this that will make it work better.

Thank you very much. You can see from her excellent testimony why you hired such a capable person.

The CHAIRMAN. Let me say thank you very much, Jackie Johnson-Pata, the Executive Director of NCAI. Good to have you with us.

Let me call on Senator Franken.

Senator FRANKEN. Yes. Don't leave.

[Laughter.]

Senator FRANKEN. Mr. Keel, I mean no disrespect but——

Mr. KEEL. I get it.

[Laughter.]

Senator FRANKEN. Ms. Johnson-Pata, you may have noticed that in the first panel, I talked a little bit about biomass. That is something we have in abundance in Minnesota. I really would love to

work with you and have my office work with you on helping our Tribes and our bands develop their biomass, so that we can be using it as a renewable energy source.

Ms. JOHNSON-PATA. Thank you. You may not know, but I come from the great State of Alaska, and from the southeast, where biomass is also an important opportunity for us. And we have found that even with the energy subsidies and development for, or maybe energy grants that we get for testing and developing some of those prototype fuels and other kinds of things that there is still this gap. What we really need to be able to do is to strengthen the ability of Indian Country to evaluate those acceptable practices and industry components, so that we can make good, strong decisions about long-term feasibility. I think that is one of those, which again I say is capacity-building. We have to know what we are getting into. We don't want to create an environment where we get part way there but we can't get those biofuels to market in a way that is feasible for a longer term usage.

Senator FRANKEN. Well, the biofuels or biomass energy industry has lots of promise. But in many ways, it is not there yet.

Ms. JOHNSON-PATA. Right.

Senator FRANKEN. But when it does get there, we want you to be part of it. Because that is something you have, there may be lack of infrastructure, there is no lack of biomass, certainly, in Minnesota. And then there is, in many cases, there is wind as well.

I will go to Mr. Keel, but you can feel free to answer this, because we talk about individual development projects, we talk about broadband and that is incredibly important, and all these individual areas are very important to economic development. But I want to, in a holistic way, when you think about, you think of Indian Country and some of the barriers that are there, and there are barriers in workforce training, job training, certainly in education, certainly in health care, certainly in the devastating problems of domestic violence and drug abuse and alcohol abuse and law enforcement.

Can you give me, when we are talking about economic development, can you tell me, has there been something that is, in a more holistic way, that has worked? Has there been a holistic approach to all of these problems, or has every success story been a unique story? In other words, I am trying to find a way in, when you look at these legacy problems that exist, have there been successful models that we can look to as a way of approaching this kind of systemic problem in Indian Country?

Mr. KEEL. Let me start first, and I will ask Jackie to fill in. The Indian Self-Determination Act in 1975 provided Tribes the opportunity to enter into many types of activity, to start contracting with the Federal Government and start taking programs and doing things. It also allowed Tribes to move forward in terms of developing their gaming industry. The result of that was the Indian Gaming Regulatory Act. And the Tribes, there are some Tribes around the Country that have been extremely successful in those types of initiatives. They have taken those monies, the revenue stream, that has provided then an opportunity to diversify their economies. Now they are providing, they are entering into other types of businesses with that funding stream.

So now we see Tribes that are involved in banking, they are involved in a number of other types of activities instead of just gaming. So whether you are a proponent of gaming or not, it has provided the impetus for Tribes to diversify and grow.

There are other things in terms of education. What I see in the outgrowth of that is some of our younger people are now becoming professionals, they are CPAs, they are lawyers, they are doctors, they are other types of professionals who are coming back. And they will be coming back and bringing that knowledge and that expertise back to Indian Country. They are actually showing us and teaching us and helping us to develop that infrastructure that we desperately need.

But the real problem is the infrastructure needs in Indian Country. So as far as a holistic approach, obviously, more funding, obviously, allowing Tribes to develop their own resources is a way to help with that.

Ms. JOHNSON-PATA. I just want to add on, I think President Keel is absolutely right. The Self-Determination Act set the framework for doing something that changed Indian Country substantially. And that began, the very beginning, I think, of building business acumen.

There are a couple of other pieces to that. I think with building that business acumen, it really is about when Tribes are at the table making decisions, I will use a good example, housing development, NAHASDA. When Tribes were at the table to develop programs and systems that would work with their own community, they also were looking at the financial revenue returns of those. So building a business acumen that is going to help them for the future.

Another good example, Southern Ute is going to be testifying here in just a few minutes, being able to get people that are out in the industry learn the industries and bring them back at home. That is being able to invest not only in the post-educational component of that, but reaching out to industries that we need to learn from and see if we can't create fellowships, internships, those kinds of programs, so that we can learn with each other.

A good example of that is really the mentorship program under 8(a) government contracting. Because that is another way of building business acumen. Every time we can do that we strengthen Indian Country's ability to be more economically sovereign.

Senator FRANKEN. So building on success is certainly part of that story. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator FRANKEN. Thank you both.

The CHAIRMAN. Thank you very much, Senator Franken.

Let me complete your name as Jackie Johnson-Pata. It is good to have you with us, Jackie. And I want to thank the Honorable Jefferson Keel for being here and for your remarks as well as your answers to our questions. And it certainly will be helpful to the Committee. So thank you so much for being here.

Mr. KEEL. Thank you, sir.

The CHAIRMAN. Now I would like to invite the third panel, the Honorable Ben Shelly, President of the Navajo Nation; and the Honorable Cedric Cromwell, Chairman of the Mashpee

Wampanoag Tribes; and the Honorable Pearl Casias, Chairman of the Southern Ute Indian Tribe. Welcome, all of you, to the Committee.

President Shelly, please proceed with your testimony.

**STATEMENT OF HON. BEN SHELLY, PRESIDENT, NAVAJO NATION**

Mr. SHELLY. Good afternoon, and thank you, Mr. Chairman. Ya'at'eeh, good afternoon. I am Ben Shelly, President of the Navajo Nation.

My testimony will cover three topics. The first, I would like to emphasize major efforts between the Federal Government and the Navajo Nation to create jobs through the broadband development. Second, I will touch on the Environmental Protection Agency's regulatory impact on job creation. And third, I will discuss further economic development efforts specifically to tourism.

The Navajo Nation is committed to providing quality broadband service to the Navajo people through the Navajo Nation's Middle/Last Mile Project. One of the keys to our initial development was that we got a $32.2 million project grant funded under the ARRA, American Recovery and Reinvestment Act to the Navajo Nation, to the Navajo Tribal Utility, NTUA. NTUA is an enterprise of the Navajo Nation.

This project highlights successful collaboration between the Navajo Nation and the Federal agencies to administer and manage large projects. The Navajo Nation has completed an environmental assessment for the entire project. The initial one included a superhighway. We will be laying down 550 miles of fiber optics, which half of it might have been laid already, and it will be erecting 32 new microwave towers and a data center. This is happening, this is not just a story, it is happening.

Hundreds of jobs are being created in construction and maintenance of the network. The broadband network will provide 4G connectivity and high speed internet service, similar to the broadband application in urban areas. The project is a first step to cover the entire Navajo Nation. Further, the projects will bring telemedicine, public safety, education to a majority of the entire reservation.

Our project is making a large dent in the digital divide on the Navajo Nation. But further efforts are needed. NTUA is further addressing the connectivity issue on the Navajo Nation and has also formed an NTUA Wireless. NTUA Wireless has petitioned the Federal Communication Commission as an eligible telecommunication carrier. While the success of the block grant projects are to be celebrated, the Navajo Nation will still face significant challenges to job creation and economic development by Federal regulation. For example, a recent action of the United State Environmental Protection Agency to impose costly and unnecessary regulation on power plants on the Navajo Nation will effectively kill Tribal energy development and rob the Navajo Nation of much-needed jobs and revenue.

The Navajo Nation will continue to work with the State and the Federal Government to adopt reasonable and achievable standards that respect the Navajo Nation's local economy.

Another regulatory concern involves an FAA flyover exemption. The Navajo Nation seeks to exempt air tour operators flying to or off the reservation from having to use allocations required for commercial air tour at the Grand Canyon. A similar exemption was extended to the Hualapai Tribe. The Navajo Nation is committed to working with the Federal Aviation Administration and the National Park Service to create such an exemption which will support economic development on Navajo Nation land.

In conclusion, Congress, through the ARRA funding, has helped us develop broadband efforts that will bring positive economic change and future business Development on the Navajo Nation. We have given you a picture of what works and does not work on the Navajo Nation. Congress should continue to close monitor EPA and FAA regulations and the impact on economic development in Indian Country.

Ahe'hee, thank you.

[The prepared statement of Mr. Shelly follows:]

PREPARED STATEMENT OF HON. BEN SHELLY, PRESIDENT, NAVAJO NATION

Mr. Chairman and Members of the Committee,

*Ya'at'eeh.* Good afternoon. I am Ben Shelly, President of the Navajo Nation. There are several efforts taking place on the Navajo Nation regarding job creation. Since there are multiple topics for discussion, I will first provide testimony with an emphasis on our mutual efforts between the Federal Government and the Navajo Nation to create jobs through our Broadband development. Additionally, I will touch on the Environmental Protection Agency regulatory impacts on job creation and further tourism efforts over the Grand Canyon.

**ARRA Support**

The Navajo Nation has a long range, sustainable Broadband plan for all regions of the Navajo Nation. The official project name is the Navajo Nation Middle/Last Mile Project: Quality Broadband for the Navajo Nation. One of the keys to our initial development of the project was funding provided under the American Recovery and Reinvestment Act (ARRA) through a $32.2 million grant to the Navajo Tribal Utility Authority (NTUA). NTUA is an enterprise of the Navajo Nation. NTUA also provided a $14 million co-match on the ARRA grant.

The Nation understood that the ARRA grant required a sophisticated internal financial management system and strong experience with environmental compliance review before construction could begin, especially given the context of tribal lands. That is why the Navajo Nation chose NTUA to spearhead the project, with its decades' long experience in building utility infrastructure and providing critical utility services to the Navajo People. NTUA's performance under the ARRA grant has demonstrated to various federal agencies, and Congress, that the Navajo Nation has the capacity to administer and manage a massive broadband project.

**Project Progress**

The territory of the Navajo Nation lies across the three states of Arizona, New Mexico and Utah. Although we are a sovereign Nation, as a project on Navajo trust land, and where the build out was initiated with federal funds, rights-of-way, and even tower permits, require federal approval and compliance with NEPA. The project therefore required Environmental Assessments (EAs) for the entire project, a project covering over half of the Nation's entire 27,000 square mile territory (approximately the size of West Virginia). The initial line includes a 550-mile Fiber optic route, with 20 miles of lateral lines; 32 new microwave towers; multiple sites housing technical equipment; and an NTUA Data Center built to house electronic equipment and software.

NTUA has worked hard to meet all of the U.S. Department of Commerce's requirements and has also worked successfully with the Department of Interior, Bureau of Indian Affairs, to complete the EAs. Recently, the Department of Interior issued a finding of No Significant Impact (FONSI) for this project. NTUA is now constructing the project and has made significant progress on the overall construction of the project, including the installation of 14 new microwave towers, construction of the Data Center, and installation of over 150 miles of fiber.

The project will build upon NTUA's existing microwave network and provide broadband access to 15,120 square miles within the Navajo Nation. Hundreds of jobs are being created in construction and maintenance of the network. The broadband network will provide 4G connectivity and high-speed Internet services, similar to broadband applications in urban America. The project is a first step to cover the entire Navajo Nation, but will initially support fixed and mobile services to 30,000 households and many businesses in 15 of the largest communities on the Navajo Nation. Additionally, the project will provide an additional capacity to connect 49 tribal communities.

**Health, Public Safety and Education Benefits of Broadband**

The project is critical to the Navajo Nation's anchor institutions, and will bring telemedicine services to physicians and health care personnel at schools, hospitals and tribal agencies throughout the entire Navajo Nation. Public Safety will benefit through the additional 911 notification network. Educators will reach digitally to areas not feasible in the recent past. Our project will make a large dent into the digital divide on the Navajo Nation, but further efforts are needed.

**Eligible Telecommunications Carrier**

NTUA has recently formed a last mile telecommunications carrier, NTUA Wireless, with a minority partner, Commnet Wireless. NTUA Wireless has petitioned the Federal Communication Commission (FCC) for Eligible Telecommunications Carrier (ETC) status for the entire territory of the Navajo Nation, as a majority owned tribal telecommunications carrier. Through the Navajo Nation Telecommunications Regulatory Commission (NNTRC), the Navajo Nation formally participates in proceedings before the FCC, and is in support of the NTUA Wireless' petition. Importantly, NTUA Wireless understands that it must fully comply with the regulatory authority of the Navajo Nation and the NNTRC. The Nation therefore greatly appreciates and fully supports the FCC's recent Order to ETCs operating in tribal territory that they will hereafter be required to fully engage with tribes and certify, on an annual basis, that they have complied with tribal licensing and other jurisdictional requirements. It has been particularly galling to the Navajo Nation, and to its sovereignty, that there are licensees of radio spectrum on the Nation who do not meet their responsibilities to the Navajo People. Carriers operating on the Nation must engage the sovereign Navajo Tribe in determining appropriate build out on the Nation, in order to serve its vital institutions and community needs. Those licensees who completely fail to build out infrastructure and to provide services on the Nation should be required to turn radio spectrum over to the Nation.

**Future Efforts**

A recent housing needs assessment found that the Navajo Nation has a 52 percent unemployment rate. Accordingly, many households cannot afford access to the new broadband efforts. The Navajo Nation supports Lifeline and Linkup programs ($1 dollar phone for low-income participants) for future ETCs to help bridge the digital divide. The Nation would also like to participate in any pilot efforts by the FCC to add broadband services to these programs.

**Tribal Energy Development**

The Navajo Nation is blessed with abundant natural resources and cursed with unemployment levels reaching 52 percent. Our natural resources can help to alleviate unemployment on the Navajo Nation while we preserve our air, water and land. Unfortunately, the recent actions of the US Environmental Protection Agency to impose costly and unnecessary regulation on power plants would effectively kill tribal energy development, and deprive the Navajo Nation of economic stability and much needed jobs and revenue.

The *Clean Air Act* was designed to improve air quality while promoting a strong American economy. That balance was essential to the bill's passage 40 years ago. Today that balance is at risk in New Mexico and Arizona. The Clean Air Act's Regional Haze Rule set a long-term, achievable timetable for improving visibility in national parks and wilderness areas, including those in and near New Mexico, Arizona and the Navajo Nation. Under the Regional Haze Rule, States are tasked with developing implementation plans to limit emissions from major contributors to regional haze. Importantly, states are allowed to consider many factors in determining what is the best available retrofit technology (BART) for existing coal plants, including non-air impacts and the costs of compliance on critical local and regional industries.

In accordance with the Rule's requirements, New Mexico considered these factors, and approved and submitted to US EPA a thoughtful, comprehensive plan that addressed a variety of contributors to haze while minimizing the negative impact to

our already vulnerable economy. However, instead of approving the state plan, EPA ignored it and put forward its own plan, one that calls for technology that is significantly more expensive than is required by law.

EPA's first implementation plan in New Mexico is for the San Juan Generating Station west of Farmington, and would impose the most expensive technology available, selective catalytic reduction or SCRs. This is not necessary technology for phase one of the Regional Haze Rule, which only requires reasonable progress to the goal of pristine conditions by 2065. . Moreover, in finalizing its own plan, EPA mistakenly asserted that its more expensive approach would not adversely affect the Navajo Nation—a finding that ignores reality. While San Juan is not located on Navajo land, that does not mean there will not be negative impacts to our economy and people. On the contrary, hundreds of our people are employed at the plant and the mine next door that produces its fuel. The wages they earn help to feed, house and clothe an even greater number of Navajo people.

Concerned about the EPA's rule impact on Navajo workers, contractors and subcontractors as well as the entire region, we have held government-to-government consultation with EPA to urge them to reconsider their plan and instead adopt the state plan. That plan would improve visibility through new controls on San Juan Generating Station, and it would meet federal standards for a fraction of the cost of EPA's plan. Unfortunately, these meetings have not yet convinced EPA to reconsider its decision.

The Navajo Nation is now facing similar edict from the EPA concerning BART for both the Four Corners Power Plant, on the Navajo Nation in New Mexico, and the Navajo Generating Station, located on the Navajo Nation in Arizona. US EPA again intends to impose harsh new standards on both plants, which together, utilizing Navajo coal, provide most of the revenue of the Navajo Nation's general funds, and further jeopardize economic development and sustainability on the Navajo Nation.

The Navajo people care deeply about our natural world; and the Navajo Nation has worked through our Navajo Nation Environmental Protection Agency to preserve the air, the water, and the land around us. We also understand the need to balance environmental considerations with the economic impact on our people and our neighbors.

Where the Navajo Nation has a substantial interest in an off reservation project, the Tribe and the State should work together under the Clean Air Act and the Regional Haze Rule to set standards that are achievable and reasonable. On the Navajo Nation, until the Tribe has established its own tribal implementation plan for its coal plants, US EPA should be working with the Navajo Nation in a government-to-government relationship, and considering its trust responsibility, in setting standards that are reasonable and achievable, and not threatening to destroy the Nation's already extremely fragile local economy, or to empty its government coffers.

**FAA Flyover Exemption**

A recent resolution was passed by the Navajo Nation Tribal Council seeking to exempt air tour operators flying to or from the reservation from having to use allocations required for commercial air tours at the Grand Canyon. A similar exemption was extended to the Hualapai Tribe. The Navajo Nation is committed to working with the Federal Aviation Administration and the National Parks Service to create such an exemption, which would support economic development on Navajo land.

The Navajo Nation faces difficulties trying to attract businesses and extreme economic hardships. It is because of these problems that the Navajo Tribal Council is taking a proactive stance to serve the interests of the Navajo people, looking to draw in more business and opportunity as a means to assist in the future total self-sufficiency of the Navajo Nation.

**Conclusion**

Congress' federal support, through ARRA funding, has been a catalyst to develop broadband efforts that will bring positive economic change through future business development on the Navajo Nation. In addition, Congress' support for tribally owned or controlled carriers achieving ETC status and gaining additional incentives and access to licensed spectrum on tribal lands is of critical importance to tribal sovereignty and self-determination, as well as meeting the mandates of the Universal Service Fund for the equivalent of urban communications services reaching all rural Americans as well. Current FCC regulatory reform that requires meaningful engagement by telecommunications carriers with Tribes will ultimately provide better services to the Navajo people and facilitate economic development. Tribes have the potential to greatly benefit from the recent actions of the FCC, and we hope that

Congress will be fully supportive of the FCC's efforts to revamp the Universal Service Fund to meet all of our contemporary communication needs.

We have given you a picture of what is working and what is not working on the Navajo Nation. Congress should continue to support NTUA efforts regarding broadband development. Congress should continue to closely monitor EPA and FAA regulatory authority to foster greater economic development.

We appreciate the Senate Committee on Indian Affairs for holding this worthwhile hearing on this important topic.

*Ahe'hee,* thank you.

The CHAIRMAN. Thank you very much, President Shelly, for your statement.

And now I would like to call on the Honorable Cedric Cromwell, Chairman, for your remarks.

**STATEMENT OF HON. CEDRIC CROMWELL, CHAIRMAN, MASHPEE WAMPANOAG TRIBE**

Mr. CROMWELL. Aloha, Chairman and Committee. Thank you for all the good work you do for Indian Country. For that I thank you. We really appreciate it, and you are loved by Indian Country, so thank you.

As Chairman of the Mashpee Wampanoag Tribe, I am honored to speak with you today about job creation and what can be done at a Federal level to allow us to create jobs for not only our Tribal members, but also our citizens of the State of Massachusetts.

The single most effective measure that this Congress can take to spur job creation and economic development is to end the uncertainty caused by the controversial *Carcieri* decision. That uncertainty impedes trust land acquisition, denies access to funds and funding opportunities and creates a continuing threat of litigation that casts a cloud over all of our economic development plans.

As you know, despite our Tribe's long history, including being the Nation that met the Pilgrims back in 1620, we were only reaffirmed as a federally-recognized Tribe in 2007. As a recently reaffirmed Tribe, we have much work to do. We have to recover from centuries of neglect in which we lost control of our homes, our homelands, our natural resources, and the ability to protect our way of life. Despite all those losses, my community is strong and working to overcome the difficulties that the *Carcieri* decision poses to our efforts to restore a piece of our homeland and fulfill our obligation to provide for the Mashpee Wampanoag people.

After centuries of neglect, my people's needs are crushing. Over 50 percent of our adults are out of work. Less than half our adults have high school diplomas. Not coincidentally, half of our population lives below the poverty line. Our elders and families struggle to find affordable housing in one of the most expensive housing markets in the Country, Cape Code, on lands that were allotted away from us in the 19th century. And our people suffer from poverty-related health issues like heart disease, diabetes, cancer, abuse and depression.

The Tribe's needs, although starker, are not much different from the rest of the Country. My people need housing, and we are working to build our first Tribal housing development, aided by NAHASDA funding. And certainly, no access to the other funding, based on the fact that our lands are fee-based lands and not trust lands.

But the delay in restoring our trust land base means that we are burdened by State as well as Federal regulation, and progress is slower and more expensive. Job creation and home construction is stalled, meaning that those jobs just aren't going to happen.

We are about to celebrate the opening of the Tribe's health clinic, funded by Indian Health Services, and operating near our Tribal headquarters, in our traditional homeland, but still not on our trust land. We wish that we could build bigger and better and create more economy through this effort, and more jobs, but we are providing the much-needed services to our people on fee-based lands.

We have a high value on teaching our children and working to improve the quality of education for young people who are now surrounded by a much larger non-Tribal community that has come to occupy our Mashpee homeland. To our great pride, our children and adults are learning in Wampanoag again. We are not waiting to build our dreams, but wish that the few Federal programs that we can now access could be supplemented by the others that are outside our grasp, because we have no trust lands. We wish that the minimal funds that we receive as a recently reaffirmed Tribe were more closely tracked by the centuries of unmet needs we must remedy. The Federal programs now in place that benefit Indians are a fragile lifeline, not enough, but certainly not a fair target for budget cuts.

We want to do more with our homeland, but we cannot yet build on trust land, because we don't have it yet. So we must confront State assertions of jurisdiction and taxation. It would be great if we had economic development zones. So our costs go up, jobs and programs are delayed and deferred.

We want to do more than just catch up, we want to restore the power house of Indian Country to Tribal free trade zones and Section 17 corporations. That way Tribal trust land can support good jobs with competitive wages in manufacturing, distribution, goods and services, a true GDP.

Indian Country can develop a high performing gross domestic product as gateway to stabilizing the American economy. Nearly 500 years ago, roughly 490 years ago, my people controlled it. They controlled all their natural resources. If you think about it in today's terms, a high performing economy. None of our Tribal people left behind, so in the words of today's language, we were very rich. We can be rich again, but with a hands-up, not a handout. By allowing these trust lands to create an economy in which we can build these economic structures through free trade zones in which we can provide employment with competitive wages and build all these good services and products.

America probably does 4 percent of economic development today. In the 1950s, it was 80 percent. In Indian Country, we are the answer to the economic boon of America. So we can compete with corporate America, they get their tax breaks, they go offshore, they give jobs away and will promise renewable new energy jobs. And it just hasn't happened in America. So I guarantee that with trust lands, Indian Country is the answer. It is the investment answer to provide those jobs in the uplift of our Indian nations. It also con-

tributes to a high performing GDP and will again provide natural resources and an economy that will lift this Country back.

I thank you for your time.

[The prepared statement of Mr. Cromwell follows:]

PREPARED STATEMENT OF HON. CEDRIC CROMWELL, CHAIRMAN, MASHPEE WAMPANOAG TRIBE

Good afternoon Chairman Akaka and members of the Committee, and thank you for your efforts on behalf of so many issues affecting Indian Country. As Chairman of the Mashpee Wampanoag Tribe, I am honored to speak with you about job creation, and what can be done at the federal level to allow us to create jobs not only for tribal members, but also our neighbors in Massachusetts.

The single most effective measure that this Congress can take to spur job creation and economic development is to end the uncertainty caused by the controversial *Carcieri* decision. That uncertainty impedes trust land acquisition, denies access to funds and funding opportunities, and creates a continuing threat of litigation that casts a cloud over all of our economic development planning.

As you know, despite our Tribe's long history, including being the Nation that met the Pilgrims back in 1620, we were only reaffirmed as a federally recognized Tribe in 2007. As a recently reaffirmed tribe, we have much work to do. We have to recover from the centuries in which we lost control of our homes, our lands, our natural resources and the ability to protect our way of life. Despite all those losses, my community is strong, and working to overcome the difficulties that the *Carcieri* decision poses to our efforts to restore a piece of our homeland and fulfill our obligation to provide for the Mashpee people.

After centuries of neglect, my people's needs are crushing. Over 50 percent of our adults are out of work. Less than half have a high school diploma. Not coincidentally, half of our population lives below the poverty line. Our elders and families struggle to find affordable housing in one of the most expensive housing markets in the country—on lands that were allotted away from us in the nineteenth century. And our people suffer from poverty-related health issues like heart disease, diabetes, substance abuse, and depression.

The Tribe's needs, although starker, are not much different from the rest of the country. My people need housing, and we are working to build our first tribal housing development, aided by NAHASDA funding. But the delay in restoring our trust land base means that we are burdened by state, as well as federal regulation, and progress is slower and more expensive. Jobs are slower in coming, as are our homes.

We want to do more with our homeland. We are planning to build a tribal government and community center, assisted by a low interest loan from USDA—with the goal of concentrating our governmental programs in one site, serving our population more efficiently, and without paying for outside rental. But we cannot yet build on trust land, because we don't yet have it. So we must confront state assertions of jurisdiction, including zoning and taxation. So our costs go up, jobs and programs are delayed and deferred.

We are about to celebrate the opening of the Tribe's health clinic, funded by IHS, and operating near our tribal headquarters, in our traditional homeland, but still not on trust land. We wish that we could build bigger and better, but we are providing much needed service to our people.

With funds from DOI and EPA, we are working to restore the natural resources of our home area by introducing conservation efforts, shellfish cultivation, and other programs to strengthen and restore our cultural heritage, all in areas of our traditional homeland, but without the protections that could be much more intense were we to have clear jurisdiction over a trust land base.

We have a high value on teaching our children, and are working to improve the quality of education for our young people who are now surrounded by a much larger non-tribal community that has come to occupy our Mashpee homeland. To our great pride, our children—and our adults—are learning in Wampanoag again.

We are not waiting to build our dreams, but wish that the few federal programs that we can now access could be supplemented by the others that are outside our grasp because we have no trust land. We wish that the minimal funds we receive as a recently reaffirmed tribe more closely tracked the centuries of unmet needs we must remedy. The federal programs now in place to benefit Indians are a fragile lifeline, not enough, but certainly not a fair target for budget cuts.

Finally, and beyond just catching up, we would look move beyond the present and into the future Indian economy of free trade zones and the many jobs that we could create were we to be able to so develop our trust land base.

I urge, again, that this Congress swiftly enact a fix to the Supreme Court's erroneous ruling in *Carcieri*. Once that uncertainty is resolved, we will be able to more speedily restore a land base, access funding, reconstruct portions of our homeland, and create jobs and opportunities for us and for the communities among whom we now live.

Thank you.

The CHAIRMAN. Thank you. Thank you very much, Chairman Cromwell.

And now I would like to call on the Honorable Pearl Casias, Chairman of the Southern Ute Indian Tribe, for your testimony.

## STATEMENT OF HON. PEARL E. CASIAS, CHAIRMAN, TRIBAL COUNCIL, SOUTHERN UTE INDIAN TRIBE

Ms. CASIAS. Good afternoon, Chairman Akaka and Mr. Udall, distinguished members of this Committee of Indian Affairs.

I am Pearl Casias, and I thank you giving me audience this afternoon. I have been Tribal Chairman of the Southern Ute Indian Tribe located near Ignacio, Colorado. I thank you for your assistance in the past. That is one of the reasons why we come to the Hill, to request your assistance once again.

Today we wish to discuss obstacles that are hindering job creation and economic development in Tribal communities. So it not only affects Southern Ute Indian Tribe but also affects other Indian Tribes across the Nation. You received my written testimony regarding for some of the changes that we would like to see. We appreciate your leadership in this Administration and we want to thank you for Senate Bill 1684. We would like for the Committee to consider marking up some of the Sections within that bill.

Also we would very definitely like to, since you already have my written statement, if you are ready to ask questions, I am more than happy to proceed with the questions that you may have for me.

[The prepared statement of Ms. Casias follows:]

PREPARED STATEMENT OF HON. PEARL E. CASIAS, CHAIRMAN, TRIBAL COUNCIL, SOUTHERN UTE INDIAN TRIBE

**Introduction**

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee on Indian Affairs.

I am Pearl Casias and I am the Chairman of the Tribal Council of the Southern Ute Indian Tribe, located near Ignacio, Colorado. Thank you for the opportunity to appear before you today to discuss legal and regulatory obstacles that are hindering job creation and economic development in tribal communities.

**Background on the Southern Ute Indian Tribe**

As the Committee knows, in the late 1980s the Southern Ute Indian Tribe (Tribe) embarked on a strategy of taking control of its natural resources for the benefit of our tribal members. In the interim, the Tribe has become a major producer of natural gas in the United States, and along the way has earned "AAA" ratings from national credit rating agencies.

With $15 trillion in national debt, $1.2 trillion in annual deficits, and unemployment holding steady at 9 percent, our nation faces the most serious economic and political challenges since the 1930s. At the same time, tribal communities have been plagued by jobless rates much higher—as high as 80 percent on some reservations—for generations.

Clearly, bold action is needed to unlock the economic potential of Indian tribes which will provide jobs, income and hope to tribes and their members, as well as to surrounding communities who will also benefit enormously from stronger tribal economies.

In January 2011, President Obama issued an Executive Order on regulatory reform with the stated aim of revisiting existing and future regulations to make sure they pay due regard to their effects on job creation and development.

With this hearing, this Committee is taking the necessary steps to hear from Indian Country about the many obstacles to job creation and stable economies.

**Themes and Ideas for Committee Consideration**

To create more business-friendly environments in Indian Country, I offer the following items for your review. It is important to note that these are not only applicable to energy-oriented development efforts, and in many cases apply to any development project a tribe might wish to pursue.

*1. Indian Energy Bill*

Before discussing some of the generally applicable reforms and other ideas, I want to commend the Vice Chairman and the Chairman for their leadership in developing and introducing S.1684, the Indian Tribal Energy Development and Self Determination Act Amendments of 2011. This bill contains very good, pro-development amendments to existing law that the Tribe believes will be helpful in more efficient and effective energy development on tribal lands.

I urge the Committee to schedule a legislative hearing and markup of this important bill before the year is out, with the goal of passing it and sending it to the President before the 112th Congress expires.

*2. Leasing Reforms*

For development projects that occur on surface lands as well as subsurface lands, the Federal leasing process can be time-consuming, costly and in the end, uneconomic. The Department of the Interior's recent announcement of a proposed regulation to reform and streamline the trust land surface leasing statutes is a very welcome development and we applaud the Secretary for taking the leadership on this issue.

We also laud Vice Chairman Barrasso for introducing the "Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011" (the HEARTH Act, S.703), and the Committee for approving the bill and sending it to the full Senate for its consideration. If enacted, the HEARTH Act will provide tribes with greater autonomy over surface leasing of their trust lands and will help tribal entrepreneurship as well as attract outside investment to tribal economies. We fully support efforts reflected in that legislation that would authorize tribes to enter into surface leases without secretarial approval.

*3. Appraisals*

Another area in need of this Committee's attention is the appraisal process. For any transaction involving tribal trust land or trust assets, an appraisal is required to be performed to ensure that not less than fair market value is being offered as part of the transaction. Legislative proposals that would provide time limits on the Secretary's consideration of appraisals and estimates of fair market value have been made in recent years. We support those concepts, but believe it important for true appraisal reform to offer tribes the option of developing their own tribal methodologies and processes to make value determinations and to manage their own appraisal regimes. The substantial delays and inflexible appraisal standards associated with the Federal appraisal requirement must be reformed.

*4. NEPA.*

Mr. Chairman, the Southern Ute Indian Tribe is both a prolific energy producer and a careful steward of our natural environment. As such, we know the value of striking the right balance between development and natural resources protection.

Because so many of the approvals necessary for a development project on tribal lands require the involvement of the Secretary of the Interior or other Federal officials, the National Environmental Policy Act (NEPA) often applies to these decisions. For instance, the act of the Secretary approving a surface lease of tribal trust lands triggers NEPA. Needless to say, this requirement often causes unnecessary delays and, in some cases, can cause viable economic opportunities to be lost to tribes and their members. We believe the Committee should review tribal environmental processes and capacity and investigate ways to make the tribes the primary stewards of environmental protection when it comes to their own lands.

*5. Fees for Applications for Permits to Drill*

Beginning with the FY 2007 Interior Appropriations Act, the Congress authorized the Bureau of Land Management (BLM) to levy and collect a $6,500 fee for every Application for Permit to Drill on Federal lands. The Department of the Interior in-

terpreted "Federal lands" to include Indian lands, and in the intervening years, the BLM has collected these fees from operators on Indian lands.

These fees, taken together with the impediments mentioned above, provide a significant comparative disadvantage to energy development on Indian lands because these factors do not come into play on privately-owned or state lands.

*6. Raising the Comfort Level of Investors and Developers*

There are numerous issues the Committee might also wish to investigate that would improve the attractiveness of tribal economies to investors. These include:

a. Providing certainty in the creation and perfection of security interests related to personal and interests in trust property on tribal lands;

b. Clarifying the power and authority of a ⧫17 Corporation to grant interests in tribal trust property to financial investors; and

c. Improving the Land Title Records Office tribes must use for purposes of land records or, alternatively, authorizing tribes to use state land recordation offices.

We intend to provide additional detail and rationale for these items for the record.

In conclusion, I want to again thank the Committee for holding this hearing and for its leadership in recognizing that there are many problems that can be addressed without spending money and which, in the end, will have profound effects on the health of tribal economies nationwide.

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

Thank you.

The CHAIRMAN. Thank you very much. I do have questions for all of you.

President Shelly, you highlighted a large number of new homes and businesses that Navajo plans to connect to broadband. How do you expect this new broadband to create jobs in the Navajo Nation and its surrounding communities?

Mr. SHELLY. Thank you for the question, Chairman. It creates hundreds of jobs, they are being created in construction, in maintenance of our fiber optic, as I earlier mentioned. And also putting up towers, it is going to create a lot more jobs. And to maintain it will create more jobs.

And by building more homes, it also will provide hookup to all of those homes, to provide the service connectivity. And then people that are in the house, that are living in there, all the wiring that has to be done to make the connectivity, it creates other jobs. So an electrician, technical people will be around that house and hooking the connectivity and using that broadband. That would be my answer.

As history shows also, connectivity by broadband brings along later commercial options too. It really brings a lot of stuff in. Connectivity is the answer for us. I would like to see my grandkids, my children that stand on top of that world, the world itself, stand on top and see the world through all of this internet and technology that we have. I want my Navajo kids and my people to have that power like every one of you have. That is what I want for them.

The CHAIRMAN. Thank you so much for your response.

Chairman Cromwell, what are some of the economic opportunities that your Tribe will be able to pursue in the future if you are able to rebuild your homeland?

Mr. CROMWELL. Thank you, Chairman Akaka. I want to point out something that has just happened in Massachusetts that I have been working very diligently on the last two and a half years. The State of Massachusetts passed an expanded gaming bill with Section 91 with Native American priorities. So it is the first State that

has ever written Federal law which supports trust lands which supports my Tribe from a federally-recognized perspective. They are very supportive, the Governor wants to do this with our Tribe. We have strong relationships. That trust lands is a component of that. They believe that we will get a compact together, which is very meaningful for my Tribe and provides protection for both the Tribe and Commonwealth.

But the next step is that we need that trust land to fulfill that economic opportunity. So the foundation of that is, number one, who we are as a distinct, unique political entity within the United States Constitution, all us Indian people, 565 Tribes. And the State recognizes that and wants to work with us. So we need those trust lands, it is very important to us.

As you know, Cape Winds was a big impact on the Wampanoag Nation, the Mashpees and the Aquinnas. And so pre-Section 106 consultation, it should have been a proactive planning with the Ocean Management Board to include the Mashpees and the Aquinnas in that planning process, because where they staked out the renewable wind energy was on sacred, historical, religious cultural properties land, which was proven by the Massachusetts Historical Society and also the Federal level, the Park Services. But they still moved forward with that. When you look at that, that was above water, we think of it as building windows on somebody's cemetery.

So we look at those opportunities, but we want to be part of the planning process, we want to be part of that solution. Because we do believe in those renewable energies, and we understand how to work this ocean management plan. We have expertise and we want to do it, but we are not included. So we look at those renewable energy opportunities, not only with that, we also look at land renewable energy projects on our land. But we need trust lands to access those funding opportunities to be able to move forward.

The CHAIRMAN. Thank you for your response.

We will have a second round on questions. Let me call on Senator Udall for his questions at this time.

Senator UDALL. Thank you, Mr. Chairman.

President Shelly, let me just say again how proud I am of the work you are doing on the Navajo Nation. You have only been President for a short time, but I think you have brought excellent leadership to the Navajo Nation. It is good to see that the first lady, Martha Shelly, is accompanying you. She is back there in the audience, and we are happy to have her here.

President Shelly, in your testimony you talk a lot about the projects that have come out of collaboration with the FCC and then also the American Recovery Act, ARRA. Could you share a little bit more on the human impact of these programs with the Committee, like what do these new lines and towers mean for the Navajo people? What is the sentiment of the Navajo Nation about broadband development? What kind of local support and interest is there for these projects? And have these created jobs out there on the Navajo Nation?

Mr. SHELLY. Thank you for the question, Senator. Our model of what broadband is, commercial, education, government, public safety, medicine, and as we all know, the Navajo Nation is the size of

West Virginia. We don't live elbow to elbow up there. We have a large, remote area. A lot of connectivity needs to happen in medicine, public safety and other areas, just communicate. It is hard right now, we don't have that.

I would like to also say that the answer to whatever else, for the other thing that I wanted to say, I kind of lost that, the rabbit goes in the hole, as they say. But we like to say that there is a lot of interconnectivity. Without that, we really, at this point, to be honest with you, the Navajo Nation is lost, because there is no connectivity.

And when you go into your remote area, your health is at risk, your life is at risk. But with all of this, and the more we open this up in our connectivity, it also creates jobs, like marketing, your commercial and marketing. Business can now be capable of going online to do commercial. You have increased bandwidth to establish a new business. Merchants can conduct online sales more easier, Navajo-owned business. So on and on, it adds on to more stuff, because you can do a lot of stuff online. We can get medical help and emergency assistance, health care, where elders can call in online, emergencies help online. Because all of our emergency services are a distance away. Somebody's choking, they can be done online to save a life. Everything can be done online.

So if we have connectivity, we are a lot safer, we get things done quicker to help each other out.

Senator UDALL. President Shelly, your model has been working collaboratively on the Navajo Nation on this project. I think you call it in our testimony, Navajo Nation Middle/Last Mile Project, Quality Broadband for the Navajo Nation. And it is a very ambitious project, and it is an admirable project. The thing that is very apparent by it, as you just said, it connects all the Navajo people together even though there are such broad areas that are covered, on a very rural reservation.

The other thing it does, as you well know, is telemedicine. You have the clinics, you have the Indian hospitals. But to be able to get the best experts to be able to consult on patients, that takes broadband, that takes the internet. And that is going on out there.

So there are significant things happening. I am wondering, in your collaborations and consultations, have you run into any problems in terms of sovereignty? Or have you been able to work well with all the partners and get things in place and working for the Navajo Nation?

Mr. SHELLY. Thank you for the question, Senator. We are very fortunate with telecommunication director, Brian Tekaban. He is a member of the United States SEC Commission. And we asked for authority that we are now, we went to the SEC, the discussion was made and there was a decision that came out, a lot of wireless carriers didn't want Navajo to have this authority. We now have the authority, if anybody wants to come on the reservation, they have to come to the Navajo Nation for permit. The wireless vehicle, any service, it comes to the Navajo Nation. We issue permit now, we have that authority.

A lot of people like AT&T and Verizon fought us, but we won that. So with that, it also gives us an open door to have our own wireless service. So it provides us an opportunity that if we love

the Code Talker like we do, I would like to maybe change our airspace to Whispering Wind, Wind Talker, right along with AT&T, Verizon. We also found that we had been cheated a lot. There is such a name as spectrum. There is some money being collected when these airspace and the wireless services are using, those monies are collected and guess where it is going? It is going back to the U.S. Treasury.

But what I would like to do by naming the air space to whatever it is, Whispering Wind or Wind Talker, that would set up an account for the Navajo Nation so if they do anything, it will go back to the Navajo Nation when we are using that fund.

Senator UDALL. Thank you, President Shelly. And thank you for your courtesies, Mr. Chairman, I know I ran over a little bit. I don't think I have a need for a second round. I think this is an excellent panel. Thank you.

The CHAIRMAN. Thank you very much, Senator Udall.

I have a question here for Chairman Casias. The Southern Ute Tribe is the largest employer in LaPlata County. What businesses are the largest creators in your Tribe, what will create the most jobs in the future?

Ms. CASIAS. Thank you, Chairman Akaka, for the question.

We established our own energy department in 1980 and in 1992, we developed Red Willow Production Company, which we drill natural gas on our reservation. Based on that, we increased the employment for our company by hiring citizens within LaPlata County. We also established a community center in 1971 and in 1993, we converted that to a casino, primarily to employ Tribal members of the Southern Ute Tribe. It was not an establishment that would provide revenues to the Tribe. It was, the foundation for the casino was to provide jobs for our people. And it still remains in that category that it provides jobs for our people.

Then in 1999, we created a financial plan for the Southern Ute Indian Tribe. As a result of that, we developed the Growth Fund Entity, which is a business arm of the Southern Ute Indian Tribe. It is a separate arm of the Tribal government to diversify the revenues that we receive from natural gas drilling and transmission off of the Southern Ute Indian Reservation.

In 2003, we built a new Tribal administration building. And we named it after our honorable Chairman, Mr. Leonard C. Burch. That building now houses all of our administrative staff. So we have three separate entities on the Reservation that employ 1,500 people from LaPlata County. There may be also some employees that live just across the State line in New Mexico. That has been the reason why we are the largest employer in LaPlata County.

We continue to increase our employment simply because with the diversification of the Southern Ute Indian Tribal revenues, we have gone off-reservation and we have purchased real estate, we have purchased other businesses. We employ those individuals off-reservation in order to create a revenue stream for our people. So that is the methodology that we have created to make us the largest employer.

The CHAIRMAN. Thank you very much.

I want to thank you for mentioning S. 1684. It is an energy bill that I co-sponsored with Vice Chairman Barrasso. I just want you

to know that we intend to have a hearing on energy and particularly on that bill early in the second session of this Congress. So we are not done with energy yet. It is a growing concern, and it is an answer to economic problems, not only for the Indian Tribes but for the rest of the Country. We want to be sure that you have the tools that are needed to move in this direction.

So thank you, and I just wanted you to know that we think it is an important area we have to work on. Thank you.

I want to thank this panel and the other witnesses as well for all you have done for the Committee. You have been very informative. You know that our intention today was to know all the activities that are happening out there and what we need to continue to do in this particular area. I look forward to working with you on that.

The Tribes are not on an equal playing field. And that is our concern. When it comes to economic development, Federal agencies can, however, support them through financing and infrastructure development and regulatory reform. I hope that this hearing has helped highlight Federal agencies as essential partners along with Tribes and private sector in growing and sustaining Tribal economies. We all need to work together in order to strengthen our Nation's economy and put more Americans back to work. I mention it that way because it is not only for the Tribes, and they continue to say it also helps the communities in their area as well.

So again mahalo, thank you to all of you for participating in today's hearing. I want to remind you that the Committee and its record will remain open for two weeks from today, because we certainly want to hear from others who want to comment on this hearing. So thank you very much for being here. The hearing is adjourned.

[Whereupon, at 4:05 p.m., the Committee was adjourned.]

# A P P E N D I X

PREPARED STATEMENT OF HON. CEDRIC BLACK EAGLE, CHAIRMAN, CROW TRIBE

I. Introduction

The Crow Nation welcomes this opportunity to share our views and concerns about economic development in Indian Country. We will focus our remarks on energy development, given the extent of our natural resources available for energy production. The Crow Nation's energy resources are abundant and the financial stability of our Tribe is wholly dependent upon them. The Crow Nation is uniquely positioned to contribute to the energy independence of our country.

We applaud this Committee's leadership in reviewing how federal agencies' rules and regulations impact Tribes' ability to develop our resources – natural and personal. Over the years, Congress has attempted to make investing in tribal business attractive to private business, for example, in 1993 Congress provided tax incentives to help "level the playing field" for tribal projects to compete with similar off-reservation projects. We see a necessary role for legislative intervention to ensure that Tribes can use our resources to the benefit of our people and all Americans by creating jobs directly and indirectly by providing raw materials and energy. The vast energy opportunities in Indian Country and the economic value of such resources not only to the Tribes that own them, but to the nation as a whole must be freed from needless regulatory burdens. Eliminating obstacles to energy project development, along with providing incentives to create jobs in Indian Country to produce energy resources, will build additional national capacity to create even more jobs in the national economy. This is an opportunity that cannot be missed.

In this testimony, we describe the extent of the Crow Nation's coal, oil, natural gas, hydropower and wind energy resources and the existing and planned facilities and projects utilizing these resources. We also discuss the obstacles to increasing the development of these resources and the solutions we propose to reduce the obstacles. With an estimated 3% of the nation's coal resources, as well as with preliminary estimates of significant oil, natural gas, and wind reserves, the Crow Nation is well positioned to provide the secure and dependable domestic energy resources that our national economy needs. And our energy resources will provide good jobs as we further develop them.

## II. Crow Energy Resources

*Land and Population*

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

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

According to more recent Bureau of Land Management Reports, the land statistics have shifted: 45% Crow allotments; 20% Crow Nation trust land; and 35% non-Indian fee land. In sum, the pattern of surface ownership generally is "checkerboard" with interspersed Crow Nation trust and fee lands, Crow allotments (held in trust for individual Tribal member owners), and non-Indian fee lands. The statistics show limited success of the Crow Nation in reacquiring lost lands, but the reality is a much larger pattern of continued loss.

Today, there are nearly 13,000 enrolled citizens of the Crow Nation, with approximately 8,000 of those residing within the exterior boundaries of the Reservation. Additionally, a recent study indicates that the tribal population will exceed 20,000 citizens within the next few years, which will add further stress to our fragile developing economy, and sharply increase the level of basic human services needed by our population. Our goal is to invite more of our citizens to return home to live and resume tribal relations, but we must be able to offer tribal members solid opportunities to hold stable and meaningful employment, homes, and educational opportunities. According to the most recent BIA statistics, our unemployment rate is 47%. The Crow Nation has always emphasized higher education and we currently have more than 400 annual applications for higher education assistance. Because of federal funding limitations and internal budget constraints, however, we can only fund 90 students each year.

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

expanded job opportunities, including vocational-technical courses to support energy development.

*Minerals, Past and Present*

The Crow Nation has an opportunity to develop tribal resources because the 1920 Crow Allotment Act, as amended in 1968, reserved all minerals, oil and gas on any lands allotted under that Act for the benefit of the entire tribe in perpetuity. Today, although some checkerboarding of mineral rights also exists on the Crow Reservation, subsurface mineral acres are owned primarily by the Crow Nation. For example, in the southeast corner of the Reservation, 1.3 billion tons of recoverable coal are wholly owned by the Nation. The larger portion of natural resources within the Reservation boundaries are recognized but remain largely untapped.

The Crow Nation has developed a limited amount of its resources, typically with royalty (and some tax) revenue received as the lessor. Although the Crow Nation pursued some oil and gas development between the 1920s and 1950s, more recent natural gas development has been hampered by lack of pipeline infrastructure and the Federal Application for Permit to Drill (APD) fee. Most of our governmental revenue is derived from our 37-year relationship with Westmoreland Resources, Inc. Over that period, the Absaloka mine has produced over 170 millions tons of coal and is the largest private employer within the Crow Reservation.

The Crow Nation has very substantial undeveloped mineral resources. It is estimated that we own 3% of the nation's coal resource, exceeding 9 billion recoverable tons. We have been exploring our oil and gas reserves, and preliminary estimates indicate that they are significant. In addition, we have large deposits of industrial minerals, such as limestone and bentonite. Finally, preliminary data suggests that we have class 5 / 6 wind energy as well as other renewable resources. The Nation is currently in talks with various companies regarding the development of these untapped resources, but barriers have slowed or prohibited significant progress.

*III.* Crow Energy Projects

*A. Absaloka Mine*

The Absaloka Mine, owned and operated by Westmoreland Resources Inc. (WRI), is a 15,000-acre single pit surface coal mine complex located near Hardin, Montana and the Crow Indian Reservation. WRI mines coal leased from the Crow Nation pursuant to two different coal leases. The mine shipped its first coal in 1974, and has been a steady and reliable source of coal to its customers, and revenue to the Crow Nation for a continuous 37 year period. The Absaloka Mine was expressly developed to supply Powder River Basin coal to a group of Midwestern utilities, including Xcel Energy's Sherburne County Station near Minneapolis, Minnesota. The mine also enjoys a proximity advantage to these customers relative to its main competitors. Over the years, it has also sold coal to several other upper Midwest utilities as well. Coal is shipped via a 38-mile rail spur to the main line of the Burlington Northern Santa Fe Railroad near Hysham, Montana. WRI is currently evaluating a substantial investment in the construction of a

westward bound railroad connection to facilitate coal transportation to explore west coast and export coal sales opportunities.

The Absaloka Mine can produce up to approximately 7.5 million tons of coal annually, and has produced over 172.6 millions of tons over its life. WRI annually pays substantial production taxes and coal royalties to the Crow Nation; $9.9 million of taxes and $9.1 million of royalties were paid in 2010. These fees and taxes amounted to 23% of the gross revenue on the mine last year. These taxes and royalties are representative of the mine's financial contribution over the past several years. The significant portion of the Crow Nation's non-Federal revenues come from the Absaloka Mine. In 2010, these revenues accounted for approximately two-thirds of the Nation's non-federal budget. WRI employs a variety of skilled, managerial, professional, and hourly employees, with an annual average salary of over $62,000 and a total annual employment expense of approximately $16 million dollars. The Absaloka Mine is the largest private employer of Crow Tribal members on a reservation that struggles with an unemployment rate that exceeds 47%. More than 70% of the mine's 163 member workforce consists of Crow Tribal members and affiliates. Without question, the Absaloka Mine is critical to the Crow Nation's financial independence now, over the past 37 years, and well into the future.

The Absaloka Mine continues to struggle financially with competition from the larger Powder River coal mines, and with the competitive advantage provided to Powder River coal through the impact of a price differential created by sulfur (SO2) emissions allowances under Title IV of the Clean Air Act. The competitiveness and the continued operation of the mine has been significantly facilitated by the tax benefits made possible by the Indian Coal Production Tax Credits ("the ICPTC") included in the 2005 Energy Policy Act and beginning in 2006. The ICPTCs neutralized the coal price differential related to the SO2 emission allowances. Without the ICPTC, the Absaloka Mine would have ceased to operate, thereby ending a substantial revenue source for the Crow Nation. Continuance of the ICPTC is critical to the future of the Absaloka Mine and the stability of revenue to the Crow Nation.

The Crow Nation is proud of its 37-year partnership with Westmoreland on the Absaloka Mine. The Crow Nation seeks to ensure the continued economic viability of the Absaloka Mine, as the Tribal revenue and jobs that it provides are an overriding imperative for the Nation and its citizens.

*B. Many Stars CTL Project*

The Crow Nation has been working since 2008 to develop a very significant Coal-to-Liquids (CTL) project within the Crow Indian Reservation called the Many Stars CTL Project. The Project will consist of a new surface coal mine and a proven direct coal liquefaction process plant that sequesters CO2, uses less water and is more efficient than conventional indirect coal liquefaction projects operating in the world today. This clean-coal technology based project offers the best long-term opportunity for the Crow Nation to monetize our lower-quality coal assets and is a critical economic necessity for the Nation. The CTL project will also provide a critically needed key domestic energy source to the United States and help reduce America's dependence on foreign oil.

However, due to the recent economic downturn and investor concerns about future government policy towards CTL and uncertain permitting requirements to allow carbon sequestration, this project has been struggling to move forward. Even with the currently robust commodity market for transportation fuels, project risk due to historical uncertainties with such commodity markets is still a deterrent to investors.

The Many Stars CTL Project will target conversion of up to 2 billion tons of Crow coal over the life of the project, initially producing 6-8,000 barrels of liquid products per day and ultimately expanding to produce up to 50,000 barrels or more of liquid products per day. The Crow coal would be converted to ultra-clean fuels, such as synthetic jet fuel and diesel fuel at an estimated yield of 1.5 to 2 barrels of liquid product per ton of coal. Thus, when considered in traditional oil and gas terms, this project has the opportunity to responsibly develop and monetize a world-class 3-4 billion barrel oilfield. Its ability to supply high-quality jet and other fuel for the U.S. military will also contribute to national security.

For the Crow people, the success of the Many Stars Project is absolutely critical to end decades of poverty and create the long term economic viability of the Crow Nation. The first phase of the integrated surface mine and CTL plant will create up to 2,000 jobs during an initial three year construction period with the expectation that a significant portion of these jobs would continue as the plant is expanded during the subsequent 10-15 years. The number of permanent operations jobs is expected to grow from 250 to 900 upon the commencement of initial operations of both the mine and plant. The jobs created by this project would include high level positions, such as engineers and managers, as well as skilled trades (mechanics, electricians, welders). In addition, income generated by the project could serve to support the Nation's severely underfunded education and health care programs and support the development of key infrastructure on the Crow Reservation to improve the lives of its citizens.

*C. Other Crow Coal Development*

For many years, members of the Crow Nation have watched a nearly continuous stream of unit trains cross the Reservation every day on the BNSF Railway, carrying someone else's coal to market. The Nation has active plans to develop several billion tons of ultra-low-sulfur coal located in the southeastern portion of the Reservation, for markets that the Absaloka Mine is not well-positioned to serve. These markets could include exports to Asia, which are currently constrained by port terminal capacity on the west coast as well as difficulty in permitting new coal terminals generally.

*D. Oil and gas Development*

During 2005-2008, the Crow Nation leased substantial areas of the Reservation for oil and gas exploration and development, using Indian Mineral Development Act agreements. Unfortunately, the independent oil and gas companies who leased these lands did not discover any conventional oil plays like the Bakken formation in northeastern Montana and North Dakota. Instead, the conventional oil exploration work under these agreements resulted in dry holes.

This leasing activity did prove the existence of substantial shallow natural gas reserves on the Crow Reservation. In August, 2009, Ursa Major (an independent oil & gas company from

Oklahoma) began delivering the first Tribal natural gas into the interstate pipeline system from the northeastern portion of the Reservation. Further full-field development of Ursa Major's gas field has been slowed by low natural gas prices, coupled with the $6,500 per well APD fee charged by the BLM.

Following the crash in oil prices and the credit markets in late-2008, the industry's interest in leasing Crow oil and gas lands evaporated, and most development plans were suspended. Recently, we have begun to see some renewed interest, as evidenced by drilling plans for this year on a heavy oil prospect in the Pryor area on the western portion of the Reservation, but the $6500 APD fee currently in place reduces the interest of potential developers.

The Nation will continue to pursue oil and gas development, knowing that there are substantial natural gas resources on the Reservation, trusting that the current heavy oil prospect will prove economic, and hoping that our luck will improve on locating other conventional oil resources.

*E. Wind Energy*

The Crow Reservation encompasses areas with a significant potential for wind energy development. The Crow Nation has, with the assistance of the Division of Energy and Mineral Development through Department of Interior, compiled wind data for the past several years, which indicates a steady and reliable Class 5/6 wind resource in several areas of the Reservation. The most significant resource areas are also located in direct proximity to existing transmission lines, and are relatively easily accessible using existing paved highways and secondary roads. The wind resource areas encompass lands held in a variety of ownership patterns, including tribal trust, individual tribal member allotments (many of which are highly fractionated), and non-Indian fee lands.

In conjunction with the Tribe's hydropower resources (discussed further below), Crow wind energy can also reduce the net carbon footprint of the Tribe's CTL and other coal and fossil fuel project by generating power from renewable resources.

*F. Hydropower*

In 1958, the United States condemned over 5500 acres of Crow Reservation lands for building Yellowtail Dam. Yellowtail Dam became operational in 1966. The dam generates over a half billion kilowatt hours of power per year, even during drought conditions. To date, the power generation revenues have exceeded $600 million dollars. Although the Crow Nation did receive a few million dollars for the land taken to create Yellowtail Dam, the Crow Nation has never received any payment from the ongoing revenue from power generation.

The recent Crow Water Rights Settlement Act of 2010 grants the Nation exclusive rights to develop and market hydropower from the Yellowtail Afterbay Dam (immediately downstream from the main Dam). Based on previous Bureau of Reclamation studies, the Yellowtail Afterbay should support the economic development of a small, low-head hydropower facility with an estimated capacity of 10-15 Megawatts. The Nation is currently commissioning a feasibility study to confirm that potential, and to evaluate transmission and marketing opportunities. Our

study should be complete in a few months, and provide the necessary information to finance and construct the hydropower facility within the next two years.

The Nation is considering using this hydropower production to supply the local rural cooperatives that provide electric power to the Reservation, to replace their current supplies of low-cost Federal hydropower which will no longer be available in a few years. It also appears that the Afterbay hydropower development could improve water quality in the blue-ribbon trout fishery on the Big Horn River.

## *IV.* Obstacles to Continued Development of Crow Energy

### *A. Laws and BIA Procedures Impeding Energy Development.*

Despite the fact that the Crow Nation has substantial resources, numerous practical problems arise from the previously described history. The Crow Nation and our energy development partners have experienced, and continue to experience, systematic problems in trying to create energy development and the new jobs that would be associated with that development. The Bureau of Indian Affairs ("BIA") rules and procedures consistently create barriers and delays to resource development.

For example, for an oil and gas lease approved by the Nation in January of 2005, development did not begin until September of 2007 because of an extremely slow BIA approval process. Within the approval process of that lease, an inventory of Tribally-owed net mineral acres was reported as 94,000 acres. However, after the lessee expended large amounts of time and money reexamining mineral title information, an additional 50,000 net Tribal mineral acres was identified and confirmed. An error of this magnitude would be simply unacceptable in many contexts, but in our experience it is not surprising and is far from unique.

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

Recent BIA procedures have made it increasingly difficult to carry out exploration programs for energy and other minerals on the Reservation. For example, coal exploration involves drilling core holes to verify the quantity and quality of coal, which take only a few days to drill, are accessed by existing undeveloped roads, and are fully reclaimed after completion. The BIA now requires full appraisals approved by the Office of the Special Trustee prior to obtaining consents from the allotted surface owners to drill the core holes and even to cross other allotments to reach the drill sites. These procedures, along with environmental assessments, result in long delays in exploration programs that could otherwise be completed in a matter of months.

The obstacles posed by these procedures are even more prohibitive for other mineral exploration, such as bentonite, which require a large number of auger samples that have even less environmental impact and involve much smaller amounts of recoverable minerals.

Finally, apart from the costs and delays caused by BIA staffing shortages and unnecessary procedures, laws that limit the duration of commercial leases on Tribal lands also impede development of large long-term projects such as the Many Stars CTL project. Many of these obstacles could be addressed by Congressional legislation such as the Indian Energy bill developed last year by the Senate Committee on Indian Affairs and introduced last session.

*B. Inability to Plan on Continued Availability of Federal Income Tax Incentives*

There are several current federal tax incentives for economic development in Indian Country, including an accelerated depreciation provision, an Indian wage tax credit, and the Indian Coal Production Tax Credit. However, the accelerated depreciation and wage tax credit both have substantial limitations that severely limit their usefulness for major Tribal energy development projects.

More importantly, all of these tax incentives will expire again within the next 2 years, and in the past they have been extended only one year at a time. For major Tribal energy projects, such as a coal mine or a CTL project with 6-10 year development lead times, the inability to rely on the continued availability of these incentives means that they cannot be factored into the economic evaluations that are necessary for investment decisions.

As further explained below, permanent extensions and appropriate modifications to these existing tax incentives would facilitate jobs and economic development, particularly energy development, on the Crow Reservation and for all of Indian Country.

*C. The BLM "APD Fee"*

Beginning with the FY 2008 Appropriations Act for the Department of Interior, Congress required the Bureau of Land Management ("BLM") to charge a $4,000 fee to process every Application for Permit to Drill ("APD") on the federal and Indian lands on which it supervises oil and gas development activity. The APD Fee has since been increased by subsequent appropriations legislation to $6,500 for each new well. The Crow Nation has continually protested the application of this fee to tribal lands, and has sought relief in numerous ways, but to date, no solution has been reached.

This $6,500 fee compares to drilling permit fees of less than $100 off the Reservation in the State of Montana. Obviously, it is a disincentive to explore for oil and gas on Indian lands compared to off-reservation State and fee lands. As indicated above, it has been a major factor in the suspension of additional natural gas field exploration and development on the Crow Reservation by our partner, Ursa Major, who also holds leases outside the Reservation. The APD fee is a particular burden for the type of shallow (less than 1500' deep), low-producing gas wells being drilled by Ursa Major. The cost of completing those types of wells is less than

$150,000 each, so the APD Fee represents a large portion of the capital investment necessary to bring additional wells into production.

The APD Fee also discourages efficient development and slows exploration efforts. For exploratory "wildcat" drilling where success is not a sure thing, the developer can only afford to get permits for a couple of wells at a time, see if they hit gas, and if so, file APD's for a couple more and repeat the cycle. Without the high APD Fee, the developer would be able to obtain many permits and immediately drill additional wells if the first ones are successful. Considering the lead time for issuance of the drilling permits (60-90 days), the APD Fee causes delays of up to a year developing a handful of new wildcat wells, in addition to adding tens of thousands dollars of non-productive costs that limit the Nation's ability to charge taxes and royalties on the future production.

## V. Proposed Solutions

### *A. Federal Tax Incentive Legislation*

#### *1. Indian Coal Production Tax Credit*

The 2005 Energy Policy Act provided the Indian Coal Production Tax Credit beginning in tax year 2006, based upon the number of tons of Indian coal produced and sold to an unrelated party. "Indian coal" is coal produced from reserves owned by an Indian Tribe, or held in trust by the United States for the benefit of an Indian Tribe, as of June 14, 2005. The tax credit is calculated by totaling the number of tons of Indian coal produced and sold, then multiplying that number by $1.50 (for calendar years 2006 through 2010). For tax years between 2010 and December 31, 2012, the total number is multiplied by $2.00.

The origin of this production tax credit began with the goal of neutralizing the impact of price differentials created by sulfur ($SO_2$) emissions allowances, thereby keeping Indian coal competitive in the regional market. Without the credit, the Crow's Absaloka mine would have lost its supply contract and likely been closed in 2005, which would have had a devasting impact on the Nation given that this mine provides a significant portion of the Nation's government's operating budget. The tax credit has worked to keep the mine competitive and open. Now, in 2011, this tax credit remains critically important because, without it, the mine's economic viability would be in serious jeopardy. This tax credit remains critical to the current operation of the existing Absaloka Mine and provides sufficient incentive to help us attract additional investment for future energy projects. In order to protect existing operations and encourage growth, the Indian Coal Production Tax Credit should be made permanent, should be allowed to be used against alternative minimum tax, and the requirement that the coal be sold to an unrelated person should be deleted to allow and encourage facilities owned, in whole or in part, by Indian Nations to participate and benefit from the credit.

2. *Accelerated Depreciation Allowance*

Included in the *Omnibus Budget Reconciliation Act of 1993*, Pub. L. 103-66, 107 Stat. 558-63, codified at 26 U.S.C. 168(j), 38(b), and 45(A), are two Indian reservation-based Federal tax incentives designed to increase investment and employment on Indian lands. The theory behind these incentives was that they would act in tandem to encourage *private sector* investment and economic activity on Indian lands across the United States. Neither incentive is available for gaming-related infrastructure or activities. The incentives -- an accelerated depreciation allowance for "qualified property" placed in service on an Indian reservation and an Indian employment credit to employers that hire "qualified employees" – expired on December 31, 2003, and have been included in the short-term "extenders packages" of expiring tax incentives since that time.

Energy projects require significant equipment and physical infrastructure, and involve the hiring of large numbers of employees. Crow is not alone in our resource holdings; for several Indian nations, estimates of proven and undeveloped energy resources on Indian lands suggest that revenues to tribal owners would exceed tens of billions in current dollars. As the energy development market improves and the federal programs enacted in the 2005 pro-development energy law, the *Indian Tribal Energy Development and Self Determination Act* (Pub. L. 109-58), energy-related activity on Indian lands will increase substantially in the years ahead.

Unfortunately, one-year or two-year extensions of the accelerated-depreciation provision do not provide an incentive for investment of new capital in Indian country for significant energy projects. Development of major projects generally takes a decade or longer. Investors need certainty that the benefit will be available when the project initiates operations in order to factor that benefit into their projected economic models, as well as investment decisions. A permanent extension would address this problem, making the incentive attractive to investors in long-term energy projects on Indian lands.

As currently written, the depreciation allowance could be interpreted to exclude certain types of energy-related infrastructure related to energy resource production, generation, transportation, transmission, distribution and even carbon sequestration activities. We recommend that language be inserted to statutorily clarify that this type of physical infrastructure expressly qualifies for the accelerated depreciation provision. In proposing this clarification, it is not our objective to eliminate non-energy activities that might benefit from the depreciation allowance. Indeed, if adopted, the language we propose would not discourage other forms of economic development in Indian country.

By providing this clarifying language and this permanent extension, the accelerated depreciation provision will finally accomplish its purpose - enhancing the ability of Indian nations to attract energy industry partners to develop long-term projects utilizing the vast Indian resources available.

### 2. *Indian Employment Wage Credit*

The 1993 Act also included an "Indian employment wage credit" with a cap not to exceed 20 percent (20%) of the excess of qualified wages and health insurance costs that an employer pays or incurs. "Qualified employees" are defined as enrolled members of an Indian tribe or the spouse of an enrolled member of an Indian tribe, where substantially all of the services performed during the period of employment are performed within an Indian reservation, and the principal residence of such employee while performing such services is on or near the reservation in which the services are to be performed. *See* 26 U.S.C. 45(c)(1)(A)-(C). The employee will not be treated as a "qualified employee" if the total amount of annual employee compensation exceeds $25,000.

As written, the wage tax credit is completely ineffective and does not attract private-sector investment in energy projects within Indian country. The provision is too complicated and private entities conclude that the cost and effort of calculating the credit outweighs any benefit that it may provide. We therefore propose that the wage and health credit be revised along the lines of the much-heralded Work Opportunity Tax Credit, which is less complicated and more likely to be used by the business community. We propose retaining the prohibition contained in the existing wage and health credit against terminating and rehiring an employee and propose to alter the definition of the term "Indian Reservation" to capture legitimate opportunities for employing tribal members who live on their reservations, even though the actual business activity may be off-reservation. This amendment would allow the Indian Employment Wage Credit to more effectively fulfill the purpose for which it was originally enacted.

### B. *Eliminate the BLM APD Fee on Indian Lands*

The current APD fee of $6500 is a hindrance to the Crow Nation's goal of developing its oil and gas resource. The disparity between the cost for drilling on tribal lands under federal jurisdiction versus lands under state jurisdiction prevents any meaningful economic development of the reserves existing on the Crow Reservation. The federal government should not, through its trust responsibility, charge administrative fees that prohibit or render economically inefficient, the development of tribal trust assets. Indian lands should be exempted from BLM's APD fee.

### C. *Need for Government Support for the Many Stars CTL Project*

Several CTL projects have been announced in the U.S.; however, all of those projects are struggling due to the high financial commitment needed to plan and implement these projects in an uncertain economic and energy policy environment. Investors and banks are reticent to fund "first of a kind" projects, even though the technology has been proven commercially in other countries and in demonstration plants here in the United States. As a result, the Nation is currently working to find a new industry partner to sponsor and develop the Many Stars project, and remains committed to using clean-coal technology to monetize Crow coal resources over the long term while minimizing carbon dioxide emissions.

By way of comparison, China is moving forward rapidly in the CTL sector, with 12 sites already producing at commercial demonstration scale of 4-8,000 barrels per day with four commercial projects nearing start of construction at capacities up to 80,000 barrels/day.

Based on the foregoing, the following key actions are crucial for the viability of the Crow's Many Stars CTL Project:

- Grant the Department of Defense and other federal agencies the ability to enter into long-term, guaranteed fixed-price contracts that will underpin the commercial framework needed for these types of long-term CTL projects;

- Extend the expiration date of the current 50-cents per gallon alternative fuel excise tax credit for a definitive time period rather than year-to-year extensions as has been done recently. Since it could take roughly 6-10 years for these types of projects to become fully planned, implemented, and operational, investors are concerned that the incentives will expire before the plant starts up. Consider providing the tax credit for a period of 10 years following start-up for those projects starting construction prior to 2015.

- Support a twenty percent (20%) investment tax credit for each CTL plant placed in service before the same future date, and/or allow 100 percent (100%) expensing of investments in the year of capital outlay for any CTL plant in operation by the same future date.

- Support DOE and DOD alternative fuel development programs as part of a comprehensive energy policy that supports the full spectrum of energy technologies and provides a level playing field for developing new innovation in clean coal technology to meet national environmental goals.

- Remove general uncertainty in energy policy that will provide investors confidence to support new innovation and major investment in the clean coal sector. Our observation is that policy uncertainty with respect to clean coal support equates to paralysis in trying to move the Many Stars CTL Project forward with its investors.

**VI. Conclusion**

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

We respectfully request your assistance in setting the foundation to make our vision a reality. We have been working to develop our energy resources and to remove obstacles to successful development. We hope to build a near-term future when our own resources, in our own hands, provide for the health, hopes and future of our people.

It is critical that Congress act to protect Indian nations' sovereignty over their natural resources and secure Indian nations as the primary governing entity over their own homelands. This will have numerous benefits for the local communities as well as the federal government. The Crow Nation has been an ally of the United States all through its history.

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

It is time for the Crow Nation to become an energy partner. However, our vision can only become a reality with your assistance. We strongly feel that the vision starts today.

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