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ENERGY DEVELOPMENT IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 16, 2012

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ENERGY DEVELOPMENT IN INDIAN COUNTRY

THURSDAY, FEBRUARY 16, 2012

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. I call this hearing of the Committee on Indian Affairs to order.

Aloha, and thank you all for being with us today and taking the time to be with us today. Welcome to this oversight hearing entitled Energy Development In Indian Country.

Native lands hold great potential for energy development. We all know that. Collectively, Tribal nations, Indian Tribes, Alaska Native, Native Hawaiians, are the third largest owners of mineral resources in the United States. Native lands are estimated to contain 3 percent of the known oil and gas reserves, as much as 30 percent of the coal west of the Mississippi and up to a third or more the Nation's uranium.

Native lands are also geographically situated to become great producers of renewable energy resources, such as wind, solar and biomass. In Hawaii, we have been focusing on developing renewable energy resources to reduce our dependence on imported energy resources. I anticipate that the State of Hawaii Department of Hawaiian Home Lands will be sharing some of their innovative strategies to develop these resources on Hawaiian trust lands. Harnessing these vast energy resources means great economic development prospects for all, especially for Native communities. And the United States has a trust responsibility to ensure they can participate fully.

Many Native communities are located away from major population centers where other forms of economic development are not feasible. Energy production provides jobs for Native and non-Natives alike. Developing energy resources at home also decreases our dependence on foreign energy sources.

Like other areas of Indian policy, Congress has attempted to address energy development issues with limited success. Some barriers include administrative delays in permitting processes, State taxation of energy development on Tribal lands, and poor access to

the transmission infrastructure to bring energy resources to market. Helping Tribes and Native communities develop their energy resources means a better quality of life for Native peoples and others living in the surrounding areas. Especially for insulated communities, energy self-sufficiency is key.

I look forward to hearing from our witnesses about their ideas, concerns and solutions to increase the ability of Native communities to participate in energy production to meet their needs. Vice Chair Barrasso, my good friend from Wyoming, is my partner on this Committee. I am happy that we are able to work together on the important work of this Committee. When he comes, I will call on him to give his opening remarks. I want you to know I am proud to co-sponsor his bill on energy.

So let me then call on our members here for any opening remarks that you may have. Senator Johnson?

STATEMENT OF HON. TIM JOHNSON,
U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Mr. Chairman, for holding this hearing.

I would like to welcome several witnesses who have ties to my home State of South Dakota. Welcome to all of the Administration officials, each of which is from the Great Plains region.

In addition, I would like to welcome President Rodney Bordeaux, from the Rosebud Sioux Tribe.

As you know, Mr. Chairman, in South Dakota we have several large land-based Tribes where unemployment can be as high as 80 percent. For the Tribes in my region, energy development is economic development. We must do all that we can to assist our Tribes to navigate the Federal Government to bring economic and energy development to our Indian communities.

I look forward to the testimony today, and thank you again, Mr. Chairman, for holding this hearing.

The CHAIRMAN. Thank you very much, Senator Johnson, and for your leadership here in the Senate.

Senator Jon Tester?

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

Senator TESTER. Thank you, Mr. Chairman. I thank you for holding this important hearing and I want to welcome our witnesses.

A special welcome to Stoney Anketell, thank you very much for coming all the way from the Fort Peck Assiniboine and Sioux Tribes based in Poplar, Montana. It is a long trip, indeed, and I want to thank you for taking the time to travel out here. We look forward to your testimony on the second panel, and your experience, particularly as it applies to the Bakken formation, what you have seen so far and what you anticipate seeing into the future. I know there are other Montanans here today, and I appreciate those as well as everybody here to hear this testimony. This is a very, very important issue.

This hearing is important because energy development in Indian Country has the potential to improve lives for everybody that lives in Indian Country and indeed, the entire United States. It has the

power to provide badly-needed economic development in many reservations that need economic development, and it will help America wean ourselves off of our dependence on energy from outside our borders.

However, as with any powerful tool, it has the potential to be used for both good and bad purposes. I want to make sure that our Tribes have the opportunity to take advantage of the traditional forms of energy and the emerging renewable energy markets. I want to make sure the Tribes are not negatively impacted by those activities in terms of public safety or wear and tear on infrastructure, housing, cultural and environmental degradation, and the list goes on.

By communicating with each other and by working together, we are going to be able to use this powerful tool of energy development to empower Indian Country to be strong, self-sufficient, while maintaining important individual cultural identities. Once again, I just want to thank you, Mr. Chairman, for holding this hearing. I look forward to the testimony of the people who are on the panels.

The CHAIRMAN. Thank you very much, Senator Tester.

Senator Tom Udall.

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

Senator UDALL. Thank you. We really appreciate, Chairman Akaka and Vice Chairman Barrasso, your holding this very important oversight hearing.

I would also like to recognize and give warm welcome to two individuals who will be joining us on the second panel: the Honorable Levi Pesata, President of the Jicarilla Apache Nation, and he is accompanied by several of his council members; and the Honorable Rex Lee Jim, Vice President of the Navajo Nation. Both of these men lead Tribes that have been very successful in a range of energy development activities. I urge our Administration witnesses to listen to their testimony and concerns closely and be as responsive as possible.

I would also like to thank the Department of Energy for the Tribal energy grants announced today worth close to $1.3 million to jump start renewable energy projects on Tribal lands within New Mexico. The Navajo-Hopi Land Commission is receiving $347,000 for feasibility studies for renewable energy on Navajo lands, where up to 4,000 megawatts of solar can be developed. Tahaduli Economic Development, Inc. is receiving $300,000 to conduct pre-construction activities for 30 megawatts of solar. Jemez and Zia Pueblos are also receiving funds for solar and biomass development and construction projects.

Tribal lands have great energy potential, both renewable and traditional fossil fuel resources. The Department of Interior holds a very serious trust responsibility to Tribal nations in this regard. They are charged with protecting Tribal nations' interests in their rightfully-owned resources.

However, those protections should not be burden to responsible development. This hearing is urging the Department to make Tribal development more efficient in order to spur economic development.

Tribal nations also know the importance of protecting the environment. New Mexico Tribes have felt a legacy of contamination from uranium mining and sacred sites are still at risk. I believe that Tribal nations can become leaders in responsible energy development. But the Federal Government must fulfill its trust responsibilities to allow this to happen.

Thank you, Mr. Chairman. I notice this poster here that talks about did you know. Those four or five facts on there are so important to what the Tribes have to offer to the Nation and to themselves as to the potential for energy development.

Thank you, Chairman Akaka.

The CHAIRMAN. Thank you very much.

Let me save Vice Chair Barrasso and call on Senator Al Franken for your opening remarks.

Senator FRANKEN. Save the Vice Chair for last, good choice.

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

Thank you, Mr. Chairman, for this important hearing. Energy development in Indian Country is a top priority for me. Our Country is in the midst of a major transition in the way we produce and the way we use energy. There is no doubt that clean energy development is a powerful tool to create jobs and foster economic development in communities all across the Country. And nowhere is that more urgent than in Indian Country, where unemployment rates can be 40, 50 percent or higher, and where vast energy resources are going untapped.

Tribes in Minnesota fully understand this potential. The White Earth Band of Ojibwe in northern Minnesota erected a 750 kilowatt wind turbine. And they did actually get a feasibility grant today from the Energy Department on a combined heat and power facility that would run completely on biomass. So I want to thank the DOE for that.

In northeastern Minnesota, the Fond du Lac Band of Ojibwe has built a biomass pilot project that uses waste woody mass from surrounding forests. It is a very wooded area of Minnesota.

And just this January, I toured the Shakopee Sioux community and they have built a 12.5 megawatt, again, combined heat and power plant that runs on waste agricultural biomass from the local area. Electricity from the plant is sold on the open market and the excess heat is captured and used in a nearby malt manufacturing plant.

There are more examples like this from Tribes in Minnesota. They are a testament to the fact that Tribes are engaged in energy development and looking for ways to scale up these projects. But most Indian energy development successes have been on a very small scale. Broader energy development on Tribal lands is still a missed opportunity, as that chart so well shows.

As I have talked to Minnesota Tribes about energy development, I keep hearing the same issue over and over again: lack of access to financing, regulatory hurdles and administrative delays. I look forward to discussing these issues in more detail today and hearing from all the witnesses who I want to thank for your presence. I

want to thank again the Chairman and the Vice Chairman for holding this important hearing. Thank you.

The CHAIRMAN. Thank you very much, Senator Franken.

And now I would like to call on my good friend from Wyoming, Vice Chair Barrasso, who is my partner. We have worked well together and I want you to know that he has taken a lead position on Indian energy development. I am proud to co-sponsor his bill and look forward to doing that.

Senator Barrasso, will you please.

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

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

I want to thank you personally for the cooperation we have had and for your co-sponsorship of the bill that I have been working on. I know we have additional hearings scheduled for next month on the specifics of that bill.

When I meet with the Tribal leaders in Wyoming, I am reminded of how important energy development is to our Indian communities. As Senator Franken just said, there continues to be hurdles, challenges, and delays. There have been successes, but they have been too small. We need to do more.

Both on and off the reservation, energy development means jobs. Energy means royalty income for individual Tribal members and for Tribal governments. That is true not just in Wyoming but all over the Country.

Energy development, of one sort or another, translates to jobs and income on many of our Country's Indian reservations. This Committee can address key issues relating to energy that will improve Tribes' abilities to develop their own energy resources.

What we need to do is remove unnecessary regulatory barriers to energy development. That would actually help in a couple of important areas: it will bring jobs and economic prosperity to our Country's Indian reservations and it will help our Country achieve energy independence.

Not surprisingly, the Federal Government is often at cross purposes with itself, and we see this, certainly in this community and in this Committee. By over-regulating energy development in Indian Country, the Government inhibits the creation of desperately needed jobs, and it puts an unnecessary barrier in the pathway to energy security. NEPA can do that, as can some of the EPA's rules and regulations.

It is my hope, Mr. Chairman, that we can address these and other impediments to development on Indian lands. With that said, I want to thank our witnesses for being here today and thank you, Mr. Chairman, for your continued leadership.

The CHAIRMAN. Thank you very much, Senator Barrasso.

As Chairman, it is my goal to ensure that we hear from all who want to contribute to the discussion. So the hearing record is open for two weeks from today and I encourage anyone interested to submit their comments through written testimony.

I want to remind the witnesses to please limit your oral testimony to five minutes today.

Serving on our first panel is Ms. Tracey LeBeau, Director of the Office of Indian Energy Policy and Programs at the Department of Energy; and Ms. Jody Gillette, Deputy Assistant Secretary, Indian Affairs for Policy and Economic Development at the Department of Interior. Ms. Gillette is accompanied by Mr. Mike Black, Director of the Bureau of Indian Affairs at the Department of Interior.

I want to welcome our panel here and look forward to your testimony. Ms. LeBeau, will you please proceed with your testimony?

STATEMENT OF TRACEY A. LEBEAU, DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, U.S. DEPARTMENT OF ENERGY

Ms. LEBEAU. Thank you very much.

Good afternoon, Chairman Akaka, Vice Chairman Barrasso, members of the Committee. I thank you very much for the opportunity to appear before you today to discuss the Department of Energy's energy programs and initiatives to support Indian energy development.

My written submission, of course, goes into much more detail about the array of programs that DOE is leading to support Indian energy development. In the time I have today, I am going to update you on the status of this new office as well as focus more narrowly on the new and ongoing initiatives led by this new office.

Since my appointment and taking office approximately one year ago, the Office of Indian Energy has been stood up and is now a formal program office within the Department, which now sits alongside our other sister offices, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, Office of Nuclear Energy and the Office of Electricity Delivery and Energy Reliability, all of whom report to DOE's Undersecretary.

The U.S. Department of Energy's Office of Indian Energy is statutorily charged to direct, foster, coordinate and implement energy planning, education, management, conservation and delivery of programs, to assist Tribes with energy development, capacity building, energy infrastructure, energy costs and electrification in Indian Country.

Since joining DOE a little more than a year ago, I have been committed to undertaking the following strategic programmatic and administrative activities. First, reaching out into Indian Country to understand really what the high priority needs are for energy development and how this office can help address those needs, based on feedback from Indian Country directly and develop programs and policies to fill gaps in current departmental programs.

Second, to work within the Department to leverage many of our resources, financial as well as technical, to promote Indian energy development throughout the Department and to institutionalize Indian energy development within the Department.

Third is to develop programs to provide Tribal leader education, strategic targeted technical assistance for Tribes on energy project development, information on transmission and electrification, innovative project development and best practices for Tribes.

And finally, to coordinate resources across the agencies to promote Indian energy development generally.

In doing so, one of the things we wanted to point out and jut remind is that the Administration is committed to safely and responsibly harnessing America's domestic energy resources to power our national economy. Our office's charge is very broad in terms of the scope of energy development we are directed to facilitate for Tribes, ranging from conventional energy to cutting edge energy development. So our approach is an all-out, all of the above strategy, which does include clean energy resources such as wind and solar, but also traditional energy resources such as coal and natural gas, as well as improving infrastructure needed to deliver this energy.

It is a fact that Tribes have shown a very high motivation to pursue expanded clean energy development. So our office initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of Tribal energy development.

Our priority is in designing and implementing new programs in very close collaboration with Tribal leaders and Tribal experts that will accelerate energy development in Indian Country by providing reliable and accurate information, quality training and technical assistance. We are seeking to further empower Tribal leaders to make informed energy decisions and promote community economic development and job creation and advance Tribal clean energy ventures.

Shortly after I was appointed, I asked the National Renewable Energy Lab to update all of our renewable energy estimates for Indian Country. Based on the 2011 data provided by DOE's lab, NREL, using updated analysis and modeling tools, the estimated maximum renewable energy resource potential in Indian lands is in the millions of megawatts of nameplate capacity.

Solar and wind are the primary energy resources that contribute to this potential. Although it would not be realistic to blanket Indian Country with solar panels or wind turbines, those numbers certainly illustrate the vast amount of resources potentially available. When combined, it is clear that further development of these resources in Indian Country provide an incredible opportunity not only to increase Tribal energy reliability and self-sufficiency but also provide an opportunity for Tribes to contribute to the Nation's energy security goals.

There are many critical factors to building sustainable economies around energy. Key amongst those factors are policy support, strong collaborative partnerships and understanding of issues affecting the hoped-for outcomes and of course, designing appropriate response.

Some of the areas that we have been focusing most of our programmatic activities on is in technical assistance. We have initiated a strategic technical assistance program for Tribes, which we are in the process of making final selections for applications that have been received in the last two months.

Interestingly enough, that was one of the primary areas, when we went out to Indian Country and spoke directly to Tribal leaders across the Country, the most requested thing from the Department

of Energy was our technical assistance. And that is where we are focusing most of our activities and our funding on right now.

I just want to finish up by also mentioning, and you all also acknowledged it today, that we have traditionally, our Office of Energy Efficiency and Renewable Energy's Tribal Energy Program, since 2005, has been implementing the Office of Indian Energy's Title V grant authority and has been providing funding related to renewable energy and energy efficiency. This program has been a really valuable investment in Indian Country and since 1994, DOE has funded a total of 210 Tribal energy projects and invested over $45 million in Indian Country. Today, we are proud to announce, as prat of the Obama Administration's commitment to strengthening partnerships with Tribal nations and supporting Tribal energy development, Secretary Chu announced today that 19 clean energy projects will receive more than $6.5 million. These competitively-selected projects will allow Native American Tribes to advance clean energy within their communities by assessing local energy resources, developing renewable energy projects to their next level, and for installing clean energy technologies on Indian lands.

These projects selected reflect a very innovative and exciting way to approach clean energy development and deployment and will help Tribal communities across the Country save money and create new jobs and business opportunities.

I am going to conclude my remarks there and thank you again for asking me to be here today. I am available for questions.

[The prepared statement of Ms. LeBeau follows:]

PREPARED STATEMENT OF TRACEY A. LEBEAU, DIRECTOR, OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS, U.S. DEPARTMENT OF ENERGY

Introduction

Good afternoon, my name is Tracey A. LeBeau, Director of the Office of Indian Energy Policy and Programs at the U.S. Department of Energy (DOE) and a member of the Cheyenne River Sioux Tribe. Thank you Mr. Chairman for extending the invitation to testify before the Committee on energy development in Indian Country. I am honored to be here to testify before the Committee on behalf of Secretary Steven Chu.

Background and Executive Summary of Accomplishments to Date

The U.S. Department of Energy Office of Indian Energy is charged by Congress to direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs that assist Tribes with energy development, capacity building, energy infrastructure, energy costs, and electrification of Indian lands and homes. This Office has four statutory goals:

- Promote Indian tribal energy development, efficiency, and use;
- Reduce or stabilize energy costs;
- Enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and
- Bring electrical power and service to Indian land and the homes of tribal members.

To accomplish these goals, Title V of the Energy Policy Act of 2005 (EPAct) conferred my Office the authority to provide grants, including formula grants or grants on a competitive basis to eligible tribal entities. Grants may be used for establishing programs to assist consenting Indian Tribes in meeting energy education, research and development, planning, and management needs, including:

- Energy generation, energy efficiency, and energy conservation programs;
- Studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in promoting electrification of homes and businesses on Indian land;

- Planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land;
- Development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities;
- Developing a program to support and implement research projects that provide Indian Tribes with opportunities to participate in carbon sequestration practices on Indian land; and
- Encouraging cooperative arrangements between Indian Tribes and utilities that provide service to Tribes.

Since joining DOE a little more than a year ago, I have been committed to accomplishing four strategic programmatic and administrative goals:

1. Fully implement Congressional stated goals for energy development in Indian Country, as found in Title V of the Energy Policy Act of 2005;
2. Reach out to Indian Country to understand what the high priority needs are for energy development and how this Office can help address those needs, and based on feedback from Indian Country, develop policies and programs to fill gaps in current Department programs;
3. Work within the Department to leverage the many resources—financial and technical—to promote Indian energy development throughout the Department and to institutionalize Indian energy development; and
4. Coordinate resources across agencies to promote Indian energy development.

In that same time period, the DOE Office of Indian Energy has:

- Conducted a major outreach initiative to Indian Country through eight roundtable discussions with tribal leaders around the country to discuss current needs and priorities related to Indian energy policy and programs;
- Established the Indian Country Energy and Infrastructure Working Group, an informal group of tribal leaders that provides input and recommendations to the DOE Office of Indian Energy on issues related to energy development and opportunities in Indian Country;
- Developed programs that provide tribal leader energy education, strategic and targeted technical assistance for Tribes on renewable energy project deployment, information on transmission and electrification, innovative project development, and best practices forums for tribal leaders; and
- Supported interagency coordination efforts to promote energy development in Indian Country.

More details about these efforts, as well as future plans are provided below.

My testimony today will touch on some of our efforts to fulfill congressional and Administration goals. My written testimony goes into considerably more detail regarding these activities.

Pursuing Sustainable Energy Development in Indian Country

The Administration is committed to safely, responsibly harnessing America's domestic energy resources to power our economy—from oil and gas to clean coal to nuclear energy to renewable energy and energy efficiency. Our Office's charge is also broad in terms of the scope of energy development we are directed to facilitate in Indian Country—including renewable energy sources such as wind and solar and traditional energy sources such as coal and natural gas, as well as improving the infrastructure needed to deliver this energy. However, Tribes have shown a high motivation to pursue expanded clean energy development. It is our strong belief that the new DOE Office of Indian Energy initiatives that are taking root in Indian Country are a direct reflection of the innovation and the promise of the next generation of tribal energy development. Our priority is in designing and implementing new programs in close collaboration with tribal leaders and tribal experts that will accelerate energy development in Indian Country. By providing reliable and accurate information, quality training, and technical assistance, we seek to further empower tribal leaders to make informed energy decisions that promote community economic development and job creation, foster energy self-sufficiency and self-determination, and advance tribal clean energy visions.

Shortly after being appointed, I asked the National Renewable Energy Lab to update all the renewable resource estimates in Indian Country. Based on 2011 data provided by DOE's National Renewable Energy Laboratory using updated analysis and modeling tools, the estimated maximum renewable energy resource potential on

Indian lands is millions of megawatts (MW) of nameplate capacity. Solar and wind are the primary energy resources that contribute to this potential. These estimates do not, however, take into account cost, transmission access, or other critical constraints on renewable energy deployment, and they assume that all land that is not protected, impervious to (or too small for) system installation, or clearly ill-suited for the technology is used for generation. Most of these resources will not be economical to access and there are competing land-use constraints. Although it would not be realistic to blanket Indian Country with solar panels or wind turbines, these numbers certainly illustrate the vast amount of resources potentially available. These resources are generally regional and geographic in nature: solar in the southwest, wind in the plains, biomass in the northwest and east, and geothermal in the West.

When combined, it's clear that further development of these energy resources in Indian Country provide an incredible opportunity to not only increase tribal energy reliability and selfsufficiency, but also provide an opportunity for Tribes to contribute to the nation's energy security goals.

Energy Economies in Indian Country that are Built to Last

There are many critical factors to building sustainable economies around energy. Key among those factors are policy support, strong collaborative partnerships and understanding of issues affecting the hoped for outcomes, and of course designing appropriate responses to meeting the challenges identified.

Policy Support

President Obama and Secretary Chu have been extremely supportive of improving the economy of Tribal communities through enhanced energy development.

At the 2011 White House Tribal Nations Conference, the President stated:

> "While our work together is far from over, today we can see what change looks like. It's the Native American-owned small business that's opening its doors, or a worker helping a school renovate. It's new roads and houses. It's wind turbines going up on tribal lands, and crime going down in tribal communities. That's what change looks like."

At DOE's Tribal Summit, held May 2011, the Secretary reaffirmed his commitment to Indian energy development. The summit provided a historic opportunity for the Department and tribal leaders to discuss a broad range of critical energy and environmental issues in Indian Country. Secretary Chu said, "By working together, we can promote economic development and help many more tribes and villages seize the clean energy opportunity."

In support of this commitment, Secretary Chu announced three key initiatives to support DOE's goals of promoting Indian energy: (1) the creation of the previously mentioned Indian Country Energy and Infrastructure Working Group (ICEIWG); and (2) intent to issue policy guidance to the Department to implement the Title V provision on giving preference to tribal majority-owned businesses for DOE acquisition of electricity, energy products, and by-products. DOE also supports a number of programs that provide technical assistance to Indian tribes, including the Strategic Technical Assistance Response Team (START) initiative to help advance clean energy development in tribal communities, as described later in this testimony.

The Indian Country Energy and Infrastructure Working Group was established in August 2011. The working group provides advice and recommendations to the Director of the DOE Office of Indian Energy Policy and Programs and to the Secretary of Energy on the strategic planning and implementation of the Department's energy resource, energy technology, and energy infrastructure development programs. To provide the most relevant and up-to-date perspectives, the ICEIWG is comprised of five (5) elected tribal leaders from Tribes that are actively developing or have established energy projects, or can demonstrate business interest in energy development. This composition of tribal leaders enables ICEIWG to provide technical and experienced analysis and feedback to the Office of Indian Energy and DOE on complex energy development issues.

We also have been working since May 2011 with several DOE offices, including the Office of Procurement, Federal Energy Management Program, Office of Policy, Office of Economic Impact and Diversity, Western Area Power Administration (WAPA), and the Bonneville Power Administration (BPA) to implement Secretary Chu's directive to develop policy guidance to implement the Indian energy procurement preference provision. Section 503 in Title V of the Energy Policy Act of 2005 (codified at 25 U.S.C. 3502(d)) grants DOE new authority to give preference to tribal majority-owned business organizations when purchasing electricity, energy products, and energy by-products. This procurement preference is intended to promote energy

development in Indian Country by providing federal agencies the discretion to give tribal majority-owned business organizations preferred access to the Federal Government marketplace for electricity, energy, and energy by-products.

Promoting tribal renewable energy development further enables economic development in Indian Country, and also helps meet the Administration goals on the acquisition and use of clean energy.

Strong Partnerships and Common Challenges

I began my appointment by meeting with tribal leaders in their communities to hear first-hand about the obstacles, issues, and opportunities for energy development in Indian Country. During the eight roundtable discussions with tribal leaders that I mentioned earlier, we learned about these as well as the needs, priorities, and possible solutions related to: conventional and renewable energy development; transmission and infrastructure; public-private partnerships; energy efficiency and management; education and workforce development; funding and tax incentives; and leveraging, coordinating, and optimizing federal resources and programs. The feedback from tribal leaders and organizations fed into Secretary Chu's Tribal Summit in May 2011 and the program initiatives developed by the Office of Indian Energy to fulfill its statutory mandates and the Administration's energy policy priorities.

We also have taken time to evaluate the thrust of many of our programs to date, including the grants offered through the Office of Energy Efficiency and Renewable Energy's Tribal Energy Program. Below are important lessons learned we would like to highlight:

1) There has been considerable focus on commercial-scale projects—both by DOE and in Indian Country. Commercial-scale projects are typically developed to sell the electricity generated into the marketplace. This focus is understandable, given the revenue potential of these large scale projects. In our view, however, there is a considerable opportunity in community-scale and facility-scale energy generation, as well as energy efficiency. Community-scale and facility-scale projects are developed to provide electricity to the local community (housing) or on-site (government buildings, community buildings). These types of projects allow tribes to marshal their resources to generate their own energy and electricity; reduce and/or stabilize their energy costs; create jobs in the construction, operation, and maintenance of these systems; promote energy reliability and self-sufficiency; and promote reservation economic development.
2) Key obstacles to commercial-scale energy development in Indian Country include:
   a. Cost to build projects and the financing and funding options available for construction projects;
   b. Access to transmission and the grid, and distribution of the electricity generated from projects; and
   c. Securing buyers who are willing to purchase renewable energy at the cost to produce the energy.
3) The current commercial-scale energy development in Indian Country has been almost exclusively in the purview of third-party developers who lease land from Tribes to build renewable energy projects in Indian Country. There are three primary reasons for this: (1) the current projects under consideration cost hundreds of millions to build; (2) tax credit incentives (which reduce the net private-sector cost to build projects, and thus reduce the cost to produce electricity) promote third party development and ownership by taxable entities, and (3) extensive expertise—everything from siting, to transmission, to finding a buyer, to negotiating a power purchase agreement—is needed to build commercial-scale projects.
4) Tribes have become more interested in community-scale, facility-scale development for a number of reasons, including the success of the EECBG program, state and utility companies' incentives that pay for on-site generation, and reducing or stabilizing costs.
5) The level of energy education and knowledge is still lacking. This is not necessarily based on capacity; even some Tribes that are very sophisticated in business practices and investments lack a fundamental understanding of how the renewable energy industry works. But, the impact can be most challenging for Tribes that lack financial, human, and technical resources to evaluate and develop energy projects on their lands.
6) We have focused some of our efforts on the unique energy situation for Alaska Native villages. Those challenges include remote locations, no grid connec-

tion (for most Alaska Native villages), and a harsh environment (weather and location). However, Alaska possesses a large amount of renewable resources, especially wind, tidal, hydro, and biomass. Unfortunately, because of the environment, much of these resources are "stranded," meaning we cannot get them to market.

7) In many respects, there are several issues shared between Alaska Native villages and smaller tribes in the contiguous states, including: remote locations (cannot access transmission grids), small land bases (insufficient for commercial-scale and even sometimes community-scale development), small populations (they lack the human resource capacity for comprehensive energy development), and scarce financial resources.
8) Lastly, given this information, our primary short term goal has been to develop several programs to respond to the issues, obstacles, and opportunities in Indian Country so that we can see more implementation of successful, cost-effective projects.

Designing Programs to Meet the Challenges

The topic of Indian energy development has been contemplated since the first oil wells were drilled on Indian lands in Oklahoma. Since that time there have been numerous attempts through laws and programs to add greater value to Indian economies through the use of energy resources. Today, the Department of Energy is arraying a number of resources and types of expertise to strengthen American Indian and Alaska Native economies through energy development.

DOE Office of Indian Energy

My Office has recently launched several programs and initiatives to promote energy development in Indian Country.

START Program. The Strategic Technical Assistance Response Team (START) initiative is a DOE Office of Indian Energy project aimed at advancing next-generation energy development in Indian Country. The START initiative is focused on the 48 contiguous states and Alaska. It is led by a technical assistance team comprised of experts from DOE and its National Renewable Energy Laboratory (NREL). For the 48 contiguous states, early-stage project development technical assistance will be provided through the START program to selected projects. DOE and NREL experts will work directly with community-based teams and tribal legal/finance specialists to further develop market feasibility assessments; due diligence research, analysis, and documentation; and early pre-development work to prepare site control, verify resource, prequalify off-take agreements and strategy, and produce a permitting plan.

In Alaska, we have teamed up with the Denali Commission to specifically assist in the development of tribal energy planning for Alaska Native entities. This includes a competitive technical assistance opportunity aimed at:

- Reducing the cost and price of energy for Alaska Native consumers and communities;
- Increasing local energy knowledge capacity, energy efficiency, and conservation through training and public education; and
- Increasing clean energy deployment and financing opportunities for communities and utilities.

We announced the START initiative in December 2011 at the White House Tribal Nations Conference, with an application deadline of January 15, 2012. We received 24 applications for Alaska, and 22 applications for the lower 48 states. We currently are reviewing those applications.

Tribal Leader Training. The Tribal Leader Energy Education Initiative is the DOE Office of Indian Energy's training program and curriculum for tribal leaders on renewable energy project development and financing, including how to build a framework for tribal project development and ways to identify likely projects. We piloted initial curriculum at the National Congress of American Indians Annual Convention in November 2011, and we continue to provide training to Tribes online via webcasts and in person at tribal conferences. In addition to the training curriculum, we also initiated a series of Tribal Leader Forums to bring tribal leaders, federal agencies, and industry together to have in-depth discussions about particular aspects of energy development. We have already held two forums—one on solar energy development in the southwest and one on transmission and clean energy integration. We are planning several more, including a conventional energy forum and a forum on investment and project finance opportunities.

Education and Capacity Building. In addition to the tribal leader training curriculum, we are expanding our curriculum to address the need for expanded understanding by tribal financial officers, attorneys, and executives on project development and project finance. This in-depth training is designed to build capacity for the tribal professionals who support tribal leaders in making the key decisions on energy development projects.

We also have an effort underway to create a document library and to put more of our training and education programs online and make them available on demand.

Transmission and Electrification. Understanding the transmission grid, interconnection issues, and issues related to distribution of electricity also are critical for successful development of energy projects, whether commercial or community scale. We are working with our partners in DOE to ensure tribal participation in the transmission planning efforts DOE funds and participates in. Our transmission technical assistance program is designed to assist Tribes with preparing for participation in transmission planning, which will help them identify opportunities for their own clean energy development. As I mentioned above, we have already hosted a forum on transmission and clean energy development. We had more than 30 Tribes in attendance, with presentations from utilities, transmission planning authorities, WAPA, BPA, DOE, and other industry experts. We plan to continue to provide assistance to Tribes on transmission through a program that will focus on:

- Coordinating tribal input with national transmission planning initiatives;
- Collaborating with Office of Electricity Delivery and Energy Reliability (OE) and WAPA on a Pilot Tribal Transmission 101 Workshop;
- Collaborating with the Tribal Energy Program, OE, and WAPA through a webinar series on Transmission Basics Training for Tribal Decision Makers; and
- Working with OE and WAPA to map and create baseline studies of transmission in Indian Country, and we also will update information in a 2000 EIA report on electrification issues in Indian Country.

We also participate on the White House Rapid Response Team for Transmission (RRTT), an effort to improve the overall quality and timeliness of electric transmission infrastructure permitting, review, and consultation by the Federal Government on both federal and non-federal lands.

Tribal Energy Program

The DOE Office of Energy Efficiency and Renewable Energy's Tribal Energy Program was established under the Energy Policy Act of 1992 to implement DOE's responsibilities under that act. Since 2005, the program has been implementing the Office of Indian Energy's EPAct Title V grant authority and has been providing funding related to renewable energy and energy efficiency. In addition to competitive grants, the Tribal Energy Program offers financial and technical assistance for renewable energy feasibility studies and the initial steps toward developing renewable energy and energy efficiency projects, including strategic planning, energy options analysis, human capacity building, and organizational development planning.

Since 1994, DOE has funded a total of 210 tribal energy projects and invested over $45 million. These grants primarily have funded resource assessment, feasibility studies, and strategic energy planning. Recently, grants have been awarded for pre-development, deployment planning, and energy efficiency projects. In FY 2011, the program awarded $5.6 million to 30 tribal energy assessments and initiatives to audit more than 200 tribal buildings and initiate strategies for the reduction of 30 percent in energy use in another 13 tribal buildings. These funds also will assist Tribes in training tribal members, assessing clean energy options, and building energy organizations.

The program also offers free technical assistance to Tribes (up to 40 hours) which has focused much of its efforts on energy strategic planning, and also funds WAPA to conduct a limited number of pre-feasibility studies on transmission capacity. The Tribal Energy Program has conducted annual workshops on energy development and energy efficiency, as well as regional workshops. Finally, the program has an annual conference for tribal grantees to showcase and discuss their projects that have been funded by DOE.

Indian Country is bustling with energy development activity. Much of this activity is in the early phases and stages of development where Tribes are trying to determine next steps, understand their resources, negotiate with developers, work within their communities to develop support for energy development, and educate themselves. Some Tribes have been very successful at developing strategic energy plans and have some well-formed plans for energy development. Many also have begun actual deployment. Examples of how DOE has helped some Tribes include:

- Strategic energy planning with the Mescalero Apache and Gila River Tribal communities provided by DOE's Sandia National Laboratories.
- Forest County Potawatomi Tribe facility-scale development through the Community Renewable Energy Deployment grant funded by DOE through the American

Reinvestment and Recovery Act of 2009 (Recovery Act) and the Energy Efficiency and Conservation Block Grant (EECBG).

- Delaware Nation facility-scale development through EECBG and DOE state funds.
- Oneida Nation of Wisconsin Seven Generations waste-to-energy project—in Green Bay with DOE state energy funding (and Bureau of Indian Affairs loan guarantee).

Recovery Act Funding

Through the Recovery Act, Congress appropriated billions of dollars for energy development and energy efficiency efforts. The largest effort was funding $3.4 billion dollars for the EECBG program. By statute, there is 2 percent set aside for Tribes within the EECBG formula grants. Under this set-aside DOE awarded $54 million in grants to more than 533 Tribes to create long-term energy plans, reduce energy use, and install clean energy projects within their communities. Original estimates from the Tribes indicate that under these 3-year projects, these funds will support more than 2,129 building retrofits, the installation of 1.4 MW of new wind and solar energy generation, and the development of more than 140 energy strategies.

In addition, Tribes received Recovery Act funding through other programs. For example, the Forest County Potawatomi Tribe (mentioned earlier) received $2.5 million through the DOE Community Renewable Energy Deployment effort to help communities implement long-term renewable energy technologies, create jobs, and provide examples for replication by other local governments, campuses, and small utilities. The Forest County Potawatomi Tribe was the first community to complete their project—a rooftop solar photovoltaic installation on the Tribe's administration building in Milwaukee. It now serves as a showcase not only for Indian Country, but for other communities across the nation.

Two Tribes—Pyramid Lake Paiute Tribe in Nevada and Pueblo of Jemez in New Mexico—received $5 million in grants under DOE's geothermal program. Both Tribes are using these funds to explore geothermal potential on their lands.

Finally, the Navajo Tribal Utility Authority received a $6 million Smart Grid grant from OE to implement smart meters and upgraded grid technology.

Other DOE Office Support

As stated earlier, one of our primary goals is to leverage existing DOE resources to promote and implement energy development in Indian Country. To that end, we have started coordinating discussions with several DOE offices and entities. For example, we currently are working with the Office of Energy Efficiency and Renewable Energy to incorporate Tribes into the Solar America Communities and Wind Powering America programs. We hope this coordination enables us to leverage the considerable technical assistance mechanisms developed by these programs for government and community leaders. These programs also have created educational materials by working with and learning from government leaders on implementing renewable energy policies and programs at the community level. It is our goal to leverage those lessons and best practices in Indian Country, so that we do not have to recreate the wheel and can apply proven techniques and technical assistance.

To further support Tribes in clean energy and infrastructure development, WAPA and BPA continue to provide technical assistance and make training opportunities available to the Tribes in their regions. In conjunction with the DOE Office of Indian Energy and the Tribal Energy Program, WAPA is conducting a series of webinars that promote tribal energy sufficiency and foster economic development and employment on tribal lands through the use of renewable energy and energy efficiency technologies. The webinars will:

- Discuss methods for Tribes to evaluate and develop their renewable energy resources;
- Help Tribes build the knowledge and skills essential for sustainable energy projects;
- Outline a process of strategic energy planning for Tribes interested in improving their energy sovereignty and local economy;
- Provide renewable energy and energy efficiency information for tribal decision makers; and

- Offer ways for Tribes and utilities to partner in renewable energy and energy efficiency development.

Through funding support from the Tribal Energy Program, WAPA also provides technical assistance to Tribes that request pre-feasibility studies on transmission capacity for potential commercial-scale development. WAPA also has worked with more than 100 tribal preference customers, receiving a total of 1.2 million MWh in generated electricity annually, ranging from 60 MWh to 182,000 MWh for different Tribes. WAPA has conducted two studies to specifically help Tribes overcome barriers to receiving federal allocation and integrate wind generation.

BPA provides technical assistance to Tribes in the northwest. It has hosted Electric Utility System Operations training for regional Tribes that are developing tribal utility departments, marketing tribal energy resources, or developing tribal strategic energy plans. BPA also partners with Tribes to host a fall and spring tribal weatherization workshop to provide technical training assistance and networking opportunities for tribes who participate in the BPA low-income weatherization and energy efficiency program. Tribes who are served by public utility customers of BPA are eligible to participate.

In June 2011, DOE announced a unique multi-year partnership between the American Indian Higher Education Consortium and the American Indian Science and Engineering Society (AISES) to bring science, technology, engineering, and mathematics (STEM) research and education funding to students at our nation's tribal colleges and universities (TCUs) and mainstream institutions. This partnership will provide a record-high amount of funding from the DOE to Indian students and tribal college faculty. DOE and its national laboratories' science resources will be integrated into the national American Indian STEM educational infrastructure, providing a significant contribution to the science education experience of American Indian students, particularly those pursuing careers in disciplines relevant to the DOE and its national laboratories.

Through this 3-year program, American Indian students will be recruited to join student/faculty teams to participate in community energy projects on tribal lands, with the mentorship of DOE's national laboratories. Courses and workshops will be offered through a new 2-week Energy Institute hosted by TCUs and the national laboratories, and a mentor pool of national laboratory personnel will be on hand to guide American Indian Research and Education Initiative (AIREI) faculty and student participants on education, research, and career topics. Each year for 3 years, AIREI will fund two student teams from TCUs and two student teams from mainstream institutions with active AISES chapters to work with DOE's national laboratories on energy research projects.

The National Nuclear Security Administration's (NNSA) national laboratories have utilized their expertise to partner in scientific education initiatives and research projects in collaboration with tribal government partners. Just last week, Lawrence Livermore National Laboratory (LLNL) entered into a Memorandum of Understanding (MOU) with the Navajo Nation to provide technical assistance on the nation's efforts to develop renewable energy resources, clean coal technology, and carbon sequestration.

Setting Priorities in Fiscal Year 2013 Budget and Future Efforts

The President's budget reflects his commitment to making the tough choices to reduce the deficit while investing in priorities that make America stronger. It's clear from the budget that America's nuclear and energy security are major priorities for the President. Within our budget we made choices and found ways to get the best value for the taxpayer.

President Obama's budget for FY 2013 includes $2.5 million for the Office of Indian Energy and $7 million for the Tribal Energy Program. For the Office of Indian Energy, which is funded at $2 million in FY 2012, this increased amount will allow us to maintain key initiatives while building on initiatives developed and executed in FY 2011 and FY 2012. For example, we will continue to support the Indian Country Energy and Infrastructure Working Group. We will continue the START program to provide strategic and in-depth technical assistance to more Tribes in the continental U.S. and in Alaska. The additional funding will also allow us to expand our energy education efforts, including enhanced curriculum and delivery mechanisms, such as online and on demand e-learning education. The funding also will support more local or regional workshops and forums for tribal leaders and provide additional technical assistance on tribal energy development projects.

We also intend to build on the many relationships and coordination efforts we have initiated with other federal agencies that provide support for energy development. Those agencies include the Department of the Interior (DOI), Department of Agriculture, Denali Commission in Alaska, Environmental Protection Agency, and

the Department of Commerce. We have been working closely with DOI and the Department of Agriculture to better coordinate our grant and technical assistance efforts. We are participating with DOI on an interagency working group tasked with working on rural energy issues in Alaska. DOI also has joined our Alaska START program as one way to work on these issues together with the Denali Commission.

Conclusion

Thank you for the opportunity to share the exciting things we are doing in collaboration and in partnership with Indian Country to promote energy development on Indian lands.

The CHAIRMAN. Thank you very much, Ms. LeBeau.

I want to tell the panel that your full statements will be placed in the record.

Ms. Gillette, will you please proceed with your testimony?

STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MIKE S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS

Ms. GILLETTE. Good afternoon, Chairman Akaka, Vice Chairman Barrasso and members of the Committee. Thank you for the opportunity to provide the Department's statement today on energy resource development in Indian Country.

The Department of Interior believes that environmentally responsible development of Tribal energy resources is critical to the economic viability of many American Indian Tribes and to the sustainability of many Alaska Native villages. As this Committee is aware, the Department holds in trust 55 million surface acres and 57 million acres of sub-surface mineral estates, and assists Tribes and Indian allottees in managing these lands and resources throughout Indian Country.

Within Indian Affairs, the Office of Indian Energy and Economic Development, IEED, assists Tribes and allottees in the exploration and development of their energy and mineral resources while the Bureau of Indian Affairs, BIA, is responsible for approving industry leasing and development activities on Indian lands.

In a recent report, the Department documented the critical role that energy and mineral development plays in Indian Country. For example, the BIE, Bureau of Indian Education, and IEED have an estimated economic impact of nearly $14.5 billion, 85 percent of which is derived from energy and mineral development on Tribal lands. And this economic impact creates an estimated 136,000 jobs with over 120 of those jobs directly associated with energy and mineral development on Tribal lands.

Last year, the U.S. GAO stated that the uncertainly in accruing land in trust for Tribes as a result of the Carcieri decision is a barrier to economic development in Indian Country. Since energy and mineral development is focused on Tribal lands, it is important to restate the Department's strong support for a Carcieri fix, and the Department continues to believe that legislation is the best mean to address the issues arising from the *Carcieri* decision.

In addition, the President's 2013 budget request includes language reaffirming the Secretary's authority to take land into trust status for all federally-recognized Tribes. The Department is also cognizant that outdated regulations should work for Tribes and not

serve as Federal road blocks. Thus, we have proposed new leasing regulations that streamline the process by which leases of Indian lands are approved, thereby promoting home ownership, economic development and renewable energy development on Tribal lands.

These rules constitute the most significant and comprehensive reform to Indian land leasing rules in 50 years. We expect to publish final rules by June of this year.

This reform underscores President Obama's commitment to empower Indian nations and strengthens their economies by expanding opportunities for Indian landowners and Tribal governments. In the last 25 years, Congress has provided about $83 million in funding to the Department for projects to assess and help develop energy and mineral resources information on Indian trust lands.

Our Office of Indian Energy and Economic Development is working with Tribes to provide them the technical assistance they need from feasibility studies to the development and job creation phase. Since 2008, IEED has assisted Indian mineral owners in the negotiation of 48 Indian Mineral Development Act leases. These leases have the potential to produce over $20 billion in revenue to the Indian mineral owner over the life of the leases through royalties and working interests.

Energy production on Indian lands is not limited to production from oil, natural gas and coal. There is also significant potential for renewable resource development, and we are working with Tribes that are well-situated to participate in the Administration's New Energy Frontier initiative.

To this end, the Department is also improving its coordination among the bureaus, allowing the BIA to take advantage of best practices that have been successful in developing other renewable energy projects on Federal lands. As a result, the Department has included Indian Country projects on the Department's renewable energy priority project list in 2012, including a 350 megawatt solar project on the Moapa Paiute Reservation in Nevada. These projects utilize structured, regular calls between the cooperating agencies to coordinate their various processes concurrently rather than sequentially.

The steps taken to address the increase in oil and gas activities on the Fort Berthold Reservation are another example of the Department's improved coordination. The IEED, BIA, BLM and other Department agencies have coordinated the oil and gas activity on the reservation. The overall goal is to expedite the processes within the Department and bridge lines of authority.

The lessons learned from these coordinating activities will be applied in other areas as appropriate in both conventional and renewable energy development.

This concludes my statement, and I am happy to answer any questions the Committee may have.

[The prepared statement of Ms. Gillette follows:]

PREPARED STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Mr. Chairman and Members of the Committee. My name is Jodi Gillette, and I am the Deputy Assistant Secretary—Indian Affairs at the Department of the Interior (Department). I am accompanied by Karen Atkinson who is the Director of the Office of Indian Energy and Economic Development within Indian

Affairs. Thank you for the opportunity to present testimony today concerning economic development opportunities available for American Indian and Alaska Native communities through energy resource development.

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

Overview

The Department holds in trust 55 million surface acres and 57 million acres of subsurface mineral estates and assists Tribes and Indian allottees in managing these lands and resources throughout Indian Country. In consultation with tribes, the Office of Indian Energy and Economic Development (IEED) under the Assistant Secretary—Indian Affairs have assisted Tribes and allottees in the exploration and development of 2.1 million acres of active and 15 million acres of potential energy and mineral resources. This activity includes collection of exploratory data and identification of energy resources, funding of and assisting in feasibility studies, market analyses and other resource development initiatives, as well as overseeing leases and agreements for oil, natural gas, coal and industrial mineral deposits located on Indian lands.

Under the Assistant Secretary—Indian Affairs, the Bureau of Indian Affairs (BIA) is responsible for developing, implementing and reviewing bureau-wide policies, plans, processes, environmental impact studies, industry leasing and development activities, and other functions related to development and production of energy and mineral resources on Indian lands. The Assistant Secretary-Indian Affairs is also responsible for regulations related to Indian Country.

On June 21, 2011 DOI published "The Department of the Interior's Economic Contributions." [1] This report documents the critical role that energy and mineral development plays in creating jobs and generating income throughout Indian Country. Highlights include:

- BIA, Bureau of Indian Education (BIE), and IEED have an estimated economic impact of $14.45 billion.
- 85 percent ($12.3 billion) of this impact is derived from energy and mineral development on tribal lands.
- The economic impact created by BIA, BIE and IEED create an estimated 136,761 jobs.
- 88 percent (120,934) of these jobs are directly associated with energy and mineral development on tribal lands.

Surface Leasing Regulations

The Department has proposed a new rule to remove federal roadblocks to economic development and to restore greater control to tribal governments in business and residential leasing, including wind and solar energy projects. The reform underscores President Obama's commitment to empower Indian Nations and strengthens their economies by expanding opportunities for Indian landowners and tribal governments. The Department published proposed rules for Federal surface leasing covering Indian trust lands on November 29, 2011. [2] The public comment period for the rules ended on January 31, 2012. These rules constitute the most significant and comprehensive reform to Indian land leasing rules in 50 years. We included surface leasing provisions for wind and solar energy development in addition to other business and residential leasing and streamlined the process.

Provisions for wind energy leasing include a new two-step process whereby developers first obtain BIA approval of a short term lease which covers installation of equipment to evaluate the resource. This is followed by a second step, a wind resources lease which allows installation of turbines. The environmental review conducted for the short-term lease, which would only evaluates the impacts of the equipment, may be rolled into the environmental review conducted for a lease for full development of the project. This two-step process allows for quicker review for an evaluation lease and provides a basis for further environmental review when the wind energy equipment is to be installed.

The proposed rules also set out a nationwide process for approval of mortgages, amendments and assignments to ensure consistency across BIA regions and set

[1] *See http://www.doi.gov/ppa/upload/DOI-Econ-Report-6-21-2011.pdf.*
[2] *See http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/pdf/2011-29991.pdf.*

deadlines for BIA review. Under the proposed rules, appraisals of tribal land are not required unless a tribe requests appraisal. The tribe negotiates rentals and authorizes rates and BIA defers to a tribe's valuation for fair market value, thus reducing the time period for approval of business leases.

We conducted tribal consultation meetings in Indian Country for the proposed rules, then incorporated comments and again conducted consultation for the proposed rules in Rapid City, South Dakota; Palm Springs, California; and Seattle, Washington. Following review of the comments and necessary revisions, we expect to publish final rules by June of this year.

Carcieri

The Department strongly supports Congress' effort to address the United States Supreme Court decision in *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009). In *Carcieri*, the Court's majority held that section 5 of the Indian Reorganization Act permits the Secretary to acquire land in trust for federally recognized Tribes that were "under federal jurisdiction" in 1934. The decision upset the settled expectations of both the Department and Indian Country, and led to confusion about the scope of the Secretary's authority to acquire land in trust for federally recognized tribes—including those tribes that were federally recognized or restored after the enactment of the Indian Reorganization Act. The ability to take land into trust is critical to creating an environment that is conducive to economic development and attracting investment in Indian communities. This includes energy planning and improving energy development capacity. Trust acquisitions allow tribes to grant certain rights of way and enter into leases that are necessary for tribes to negotiate the use and sale of their natural resources. In addition, acquisition of land into trust is essential to tribal self-determination.

In April 2011, the United States Government Accountability Office (GAO) stated that the uncertainty in accruing land in trust for tribes, as a result of the *Carcieri* decision, is a barrier to economic development in Indian Country.

The Department continues to believe that legislation is the best means to address the issues arising from the *Carcieri* decision, and to reaffirm the Secretary's authority to secure tribal homelands for federally recognized tribes under the Indian Reorganization Act. In addition, the President's 2013 budget request includes language reaffirming the Secretary's authority to take land into trust status for all federally recognized Indian tribes.

Office of Indian Energy and Economic Development (IEED)—Energy and Mineral Development

In the last 25 years, Congress has provided about $83 million in funding to the Department, for projects to assess and help develop energy and mineral resources information on Indian trust lands.

IEED is working with tribes to provide them the technical assistance they need to proceed to the development and job-creation phase. IEED is further defining these resources by the use of detailed exploration, market studies, business plans, economic analysis, and lease negotiations that reflect the tribes' economic, environmental and social needs.

This proactive approach has helped tribes to proceed with development and realization of economic benefits from their energy and mineral resources. Today, our major objective is sustainable resource development focusing on Indian employment and income to the Indian mineral owner. This goes further than resource assessment which is the identification of the quantity and quality of mineral resources. This proactive focus on resource development has provided an informed decision-making process for their resources that provides a springboard to the development and realization of the potential economic benefits.

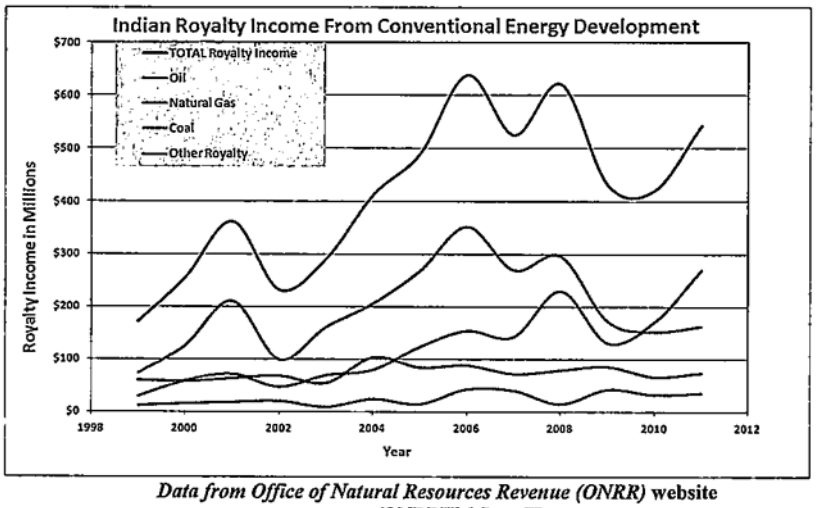
We are providing tribes with access to state-of-the-art knowledge and geo-scientific-based analysis of their energy and mineral resources to allow them to perform the following critical functions:

- strategic planning;
- formulation of economic and energy policies;
- evaluation of federal lands;
- development of sound environmental policies; and
- negotiation of sound Indian Mineral Development Act (IMDA) agreements with energy and mineral industry developers.

IEED also has accumulated a significant repository of industry-confidential exploration data (e.g., seismic data, well data). We have been actively providing technical assistance to various tribes by purchasing, reprocessing and interpreting thousands of miles of 2D seismic data as well as hundreds of square miles of 3D data. These

studies have identified numerous prospects, some of which are essentially ready to drill. Some of the prospects still require additional data collection and evaluation to more accurately identify exploratory and development targets. These evaluations yield prospects that enhance the marketability of Indian lands and results in better economic terms of an agreement.

Oil and natural gas production in Indian Country has been significant and has even greater future potential. To date, more than 2 million acres of Indian lands have already been leased for oil and natural gas development. These lands account for about 10 percent of the oil and natural gas production from federally regulated onshore acreage. Based upon the latest data available from the Office of Natural Resources Revenue (ONRR), production of energy mineral resources generated about $550 million in royalty revenue paid to Indian individuals and tribes in 2011 and the royalty income trend line is rising. As demonstrated in the chart below, since 2002, annual income from energy mineral production increased by more than 113 percent and this trend is expected to continue for the foreseeable future.



***Data from Office of Natural Resources Revenue (ONRR)* website**
www.onrr.gov/ONRRWebStats/Home.aspx

The economic potential of future energy and mineral resources in Indian land has enormous possibilities. We estimate that an additional 15 million acres of undeveloped energy and mineral resources may exist on individual Indian and tribal lands, which if fully developed could result in billions of dollars in revenue for those tribes and individual Indian landowners over the period of production.

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

For energy and mineral development in Indian Country, IEED provides advice and data concerning geotechnical, economic, and land-use issues to tribes and Indian landowners who are seeking to manage and develop their energy and mineral resources. IEED also provides assistance in negotiating beneficial working agreements with developers and guidance through the often complex and time-consuming regulatory approval process.

Since 2008 IEED has assisted Indian mineral owners in the negotiation of 48 IMDA leases for oil, gas, renewable energy, and aggregate totaling approximately 2,750,000 acres and about $45 million in bonuses (upfront payments). These leases have the potential to produce over $20 billion in revenue to the Indian mineral owner over the life of the leases through royalties and working interests.

The following chart provides additional information about the significant economic impact that energy and mineral development can have on reservation economies.

Commodity	Value ($ millions)	% of Value	Estimated Economic Impact ($ millions)	% of Economic Impact	Estimated Jobs Impact (jobs)	% of Estimated Jobs Impact
Energy	2,483	68	10,473	72	89,363	65
Minerals	635	17	1,836	13	31,580	23
SUB-TOTAL	**3,118**	**85**	**12,309**	**85**	**120,943**	**88**
Irrigation	471	13	1,330	9	12,448	9
Timber	41	1	714	5	2,637	2
Grazing	54	1	95	.7	733	.5
Total	**3,683**		**14,449**		**136,761**	

Source: Table from *The Department of the Interior's Economic Contributions – June 21, 2011*
(Note: these numbers were rounded)

As a result of IEED's approach and assistance in negotiations and technical assistance provided as part of these negotiated agreements, more Indian leases than non-Indian Federal leases are developed. As shown by the following chart, approximately 94 percent of Indian leases are productive.

Total Producing and Non-Producing Leases (as of October 28, 2010)

	Energy and Mineral Producing leases	Energy and Mineral Non-Producing leases
American Indian	4,335	285
Federal Onshore	24,202	26,114

***Data from Office of Natural Resources Revenue (ONRR)* website**
www.onrr.gov/ONRRWebStats/Home.aspx

IEED manages an annual grant program called the Energy and Mineral Development Program (EMDP) which provides grants to financially assist tribes and Indian allottees in evaluating their energy or mineral resource potential on their lands. EMDP projects may include such activities as:

- performing initial exploration activities and defining potential targets for development;
- performing market analyses to establish production/demand for a given commodity;
- providing outreach and education to tribes concerning energy or mineral development issues;
- performing economic evaluation and analyses of the resource; and
- promoting projects at industry conferences and to prospective partners.

With EMDP grants, tribes and Indian allottees have the ability to gain information and data they require to promote their lands, negotiate the best development agreement with partners or investors, and understand the economic impact to their lands. IEED solicits proposals from tribes, and through a competitive review system selects qualified projects for funding. In addition, IEED staff members provide technical assistance to tribal grantees, including geological, geophysical, and engineering reports, maps, and other data. They also interpret data and help negotiate development agreements. IEED staff also monitors those projects that receive grants to ensure that the best possible product is obtained for the funds allocated.

For 2011, IEED received 61 proposals from tribes including renewable energy projects, primarily biomass and geothermal energy, oil, natural gas, coal, and minerals. The dollar amount of these requests totaled slightly over $15.9 million. IEED issued awards for 28 projects totaling $4,173,500. Of the awards, seventeen were for renewable projects totaling $2,863,650; five were for oil and gas projects totaling $390,000; three were for coal projects totaling $437,600; and three were for mineral projects totaling $482,250. Many other qualified tribal proposed EMDP projects could not be funded this year, and those projects will be considered for funding in the next fiscal year.

IEED also manages a Tribal Energy Development Capacity (TEDC) grant program under the Energy Policy Act, Pub. L. No. 109–58 (Aug. 8, 2005). The grants are designed for projects under which tribes build their human capacity to address issues concerning the development, management, environmental review, and monitoring of energy projects on Indian lands. In 2011, the TEDC grant solicitation received 23 applications from 20 tribes, with a total funding request of over $3.5 million. IEED awarded $300,000 to four tribes.

Renewable Resource Development

Although historically energy production on Indian lands meant production from oil, natural gas, and coal, there is also significant potential for renewable resource development. Many tribes are interested in developing their renewable energy resources; however, the amount of production from renewable resources has been limited by some external factors. Many tribal lands located contiguous with the lower 48 States are well situated to take advantage of a range of renewable energy resources. However, just because an area has a significant solar, wind, biomass, or geothermal resource does not always mean that resource development—even with tax incentives or renewable energy portfolios—is economically viable. Other factors such as location of existing transmission lines and power generation stations, and distance to population centers affect the development prospects of these resources.

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

One renewable energy resource, municipal solid waste, is currently in development by the Oneida Tribe of Wisconsin. The Tribe is pursuing development of a 5 MW waste to energy power plant and recycling center that will utilize municipal solid waste generated in Brown County, Wisconsin. The project, begun in fall 2010 will create up to 30 new full-time jobs with additional training benefits. In FY 2010, the Division of Energy and Mineral Development funded this project for $333,500 to finalize the engineering design and contracts with fuel sources. The Division of Capital Investment, within IEED, is providing technical assistance to the Tribe by assisting them in developing a loan proposal to seek financing for the project through our Loan Guaranty Program.

IEED is addressing renewable energy potential in Indian Country as part of its mission to fulfill the Administration's New Energy Frontier Initiative. It is working on more than 50 projects on approximately 35 reservations. IEED has identified 267 reservations with renewable energy potential, but the resources on these reservations have not yet been adequately determined. In addition to providing an assessment of these resources, IEED works with Indian communities and tribes to bring these resources into production.

While IEED offers technical assistance and funding during pre-development stages of renewable energy projects, the BIA is also involved with respect to lease approvals. The Office of the Assistant Secretary—Indian Affairs has created a small team of individuals with the goal of improving Indian Affairs' ability to provide efficient review and approval of renewable energy projects. This team includes a staff point of contact from each of the twelve BIA regions, staff from IEED and the Office of the Secretary. If IEED becomes aware of a specific project, our coordination efforts will ensure that the BIA regional and agency offices are fully aware of project details in order to expedite any required BIA actions, including any NEPA analysis. Similarly, if the BIA is presented with a lease or other contract for approval, that will be related back to IEED for their assistance in any lease review or NEPA analysis.

The Department is also improving its coordination among the bureaus, allowing the BIA to take advantage of best practices that have been successful in developing other renewable energy projects on federal lands. As a result, the Department has included Indian Country projects on the Department's Renewable Energy Priority Project list in 2012. This includes a 350 MW solar project on the Moapa Paiute Reservation in Nevada, which is currently undergoing NEPA analysis with a final decision coming this spring. The BIA has been also able to take advantage of additional training opportunities by matching the appropriate BIA regional staff with training on the renewable resource they are most likely to encounter in their region.

Additionally, in order to encourage careers in green and renewable energy for students at BIE high schools and colleges, IEED co-sponsors the Indian Education Renewable Energy Challenge with the BIE and Argonne National Laboratory. The 2011 project challenge focused on the practical use of renewable energy resources and involved preparing bio-diesel fuel and establishing purity and performance characteristics. Southwestern Indian Polytechnic Institute college students and Oneida Nation High School students submitted the winning entries. Each team submitted a video of their projects along with samples of their bio-diesel fuels to Argonne National Laboratory. Representatives of the schools were invited to two days of meeting with Argonne scientists and an award ceremony.

Alaska Energy

Alaska Native villages have a unique energy situation. While rising energy costs present problems for those of us who live in the lower 48, the consequences for Alaska Native communities, which are mostly rural, are alarming. The energy crisis impacts rural Alaska on both the individual and community level: when communities spend more on fuel, they spend less on key services. Many residents of rural Alaska often have to make difficult decisions regarding heating their homes, putting fuel in their vehicles, and feeding their families.

Diesel fuel driven generators provide a majority of electricity in rural Alaska, especially on the Aleutian Islands where power transmission lines are non-existent. Because nearly all rural native villages generate their electricity locally using diesel generators, it is a balancing act each year for these communities. Diesel in Alaska is expensive at any time, with reported prices of around $9 per gallon.

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

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

Our second project area is on Adak Island, which formerly housed a large Department of Defense facility. The island's electrical generation facilities are powered by inefficient diesel powered generators to supply the electric needs of the 70 residents.

There is a part-time cannery operation on the island supported by a small fishing fleet. In addition, the military left a 2.8 million gallon fuel supply tank that could potentially be used to fuel ships in the area and provide some job potential. The addition of geothermal generation would greatly reduce energy costs in the area. Numerous steam vents line the coast in the harbor near Adak. In addition, they have an extensive power line grid. At both of these communities, IEED proposes acquiring and processing seismic data in an effort to locate the ideal site for a rig to drill an exploration borehole to help identify the optimal site for a future power generation facility.

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

IEED is a co-chair with the Department of Energy's Office of Indian Energy Policy Programs (IE) on the Alaska Native Village Sub-Group which is part of an interagency group established to implement the President's Executive Order, Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska (July 12, 2011). The primary focus of the sub-group is to evaluate and determine appropriate federal efforts to support energy development in rural Alaska and Alaska Native Villages. IEED has done an inventory of assistance that our office has provided in Alaska and is in the process of reviewing these efforts to see if any projects would benefit from increased coordination or technical assistance from the Department or our federal partners. IEED has provided technical assistance to Alaska Natives by assessing potential energy projects which include wind, hydro-electric power, geothermal, tidal, and waste-to-energy. Through the Alaska Native Village Sub-Group, IEED will coordinate with the other sub-groups—hydroelectric power, biomass, and Federal facilities—to coordinate technical assistance to Native communities, thereby leveraging our resources and expertise to provide assistance to Alaska Native communities through this initiative.

Fort Berthold

In 2009, IEED implemented steps to address the increase in oil and gas activities on the Fort Berthold reservation. A "One-Stop-Shop" coordinating office was setup in New Town to oversee all oil and gas activity on the Reservation and coordinate the various procedures and processes that cross Bureau lines. The overall goals of IEED were to oversee and expedite the processes within the Department related to oil and gas development on Indian land and bridge management lines of authority to accomplish the office mission through the office of the Assistant Secretary—Indian Affairs.

IEED's Division of Energy and Mineral Development (DEMD) continued to support the concept with technical expertise on a part time basis. Geographic Information System (GIS) and data management support is also provided by DEMD through the implementation of the National Indian Oil and Gas Management System (NIOGEMS) at tribal offices, BIA Agency, the Bureau of Land Management Field Office, and the Office of Natural Resources Revenue (ONRR) to ensure proper communication and coordination occurs between the various Departmental Agencies, the Mandan, Hidatsa and Arikara Nation, and individual Indian Mineral Owners. In addition, DEMD has hired two environmental surface compliance specialists, one GIS specialist, and two administrative support positions to meet the increased oil and gas development activity occurring in 2011. These positions are temporarily funded by DEMD until the BIA Fort Berthold Agency can determine the need for full time hiring.

On June 15, 2011, IEED hosted an Oil and Gas Lease Seminar at Fort Berthold attended by 47 Mandan, Hidatsa and Arikara Nation members and oil leaseholders. The seminar taught attendees how to protect their lease holdings and investments, giving them an understanding of fundamental mineral legal issues; relevant lease clauses; how to negotiate leases; joining, pooling, communalization, and unitization of leases; and, revenue and royalty distribution. IEED also sponsored an Entrepreneurial Training session at Fort Berthold conducted by Jeffrey Stamp, a professor at North Dakota University. This capacity-building session, which was attended by 37 Mandan, Hidatsa and Arikara Nation members, focused on the core skills needed by entrepreneurs and helped attendees identify emerging economic opportunities, guiding them through the process of converting product or service ideas into a successful business. In September 2011, IEED awarded the Mandan, Hidatsa and Arikara Nation a $100,000 grant to study the economic opportunities resulting from the Bakken oil boom and to develop a reservation-wide, long-term economic development plan.

DEMD's continued support of oil and gas development occurring on the Fort Berthold Reservation is required over at least the next two years. The level of drilling activity continues to increase from 150 wells drilled through the end of 2010 to 200 additional wells planned for 2011 and 2012. That represents a doubling of work load that is expected to continue through 2013, with development rate leveling off to 100 wells per year over the next 5 years. It is expected that 1000 wells will be drilled to initially develop the Bakken Formation and an additional 1000 wells to complete full development of the Bakken and Three Forks Formations over the next 10 to 20 years.

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

The CHAIRMAN. Thank you very much, Ms. Gillette.

I know that some of my colleagues are limited in how long they will be able to stay for today's hearing, so I am going to ask each of the witnesses just one question then defer to my colleagues to ask their questions. If time permits, we will have a second round. Otherwise, I will submit my questions in writing for the record.

Ms. LeBeau, are there any specific regulations or laws that Congress should review that may allow for greater collaboration between your office and other Federal agencies to promote the development of vast energy resources in Indian Country?

Ms. LEBEAU. Chairman, I am not currently aware of any that I can identify for you today. We will take a look at that and get back to you if we can identify some. But I would like to just point out that what is included in my written testimony, but what I would like to share with you now, since you bring it up, is we have man-

aged to form a close collaboration with the Department of Interior on several initiatives, also with the USDA. So we are talking pretty frequently now on how we can better align resources, our grant solicitations and the technical assistance that we all have in certain areas so we can collaborate better.

For our strategic technical assistance initiative, our START program, we have partnered with the Denali Commission for a very specific and targeted Alaska START program. So there are ways that I think we have been reaching across to our Federal partners to better collaborate and coordinate our resources.

The CHAIRMAN. Thank you very much, Ms. LeBeau.

Ms. Gillette, you mentioned, and it really caught my attention, that the Carcieri decision is holding Tribes back from developing their economies, and that you are supporting the Carcieri fix. Can you please elaborate on that point and explain how important fixing the Carcieri decision is to Indian energy development?

Ms. GILLETTE. As my longer testimony, my written testimony indicates, the ability to take land into trust is critical to creating an environment that is conducive to economic development and attracting investment in Indian Country. This includes energy planning and improving energy development capacity. Trust acquisitions allow the Tribes to grant certain rights of way and enter into leases that are necessary for Tribes to negotiate the use and sale of their natural resources.

The CHAIRMAN. Thank you very much.

Senator Barrasso, your questions.

Senator BARRASSO. Thank you very much, Mr. Chairman. This is a fascinating conversation and discussion.

Ms. LeBeau, in May of last year, your office hosted the Tribal Energy Summit and provided an opportunity for Tribal leaders to come together and discuss any barriers to energy development. What I would like to ask, in following up to the Chairman, is what were the main concerns that you heard at the Tribal Energy Summit, and what actions has your office taken to help follow up on some of those concerns that you heard?

Ms. LEBEAU. Thank you. Prior to the Summit itself, we did initiate a round of roundtables across the Country, I think we held nine across the Country, speaking directly to Indian Country, trying to get to some of that information before we actually got to the Summit. So feeding all of that information into the Summit, and then we also had specific roundtables where we had all of our principals of all of our program offices there to speak directly with Tribal leaders.

Some of the issues that came up were that, again, the most commonly requested thing from the Department of Energy was actually technical assistance. I think a lot of Tribes, especially in the areas of clean energy and renewable energy, where you have technologies that are either emerging or they are less familiar with, a lot of Tribes have asked us to kind of wade in and give them our expert opinions and help them sort through technology choice and through the very complex and difficult area of project finance for renewables, since it is so dependent on tax credits and other things. So that commonly came up.

The other thing that came up was a very strong interest, and we knew this coming into the Summit, a very strong interest by Tribes for Federal departments to take advantage of the provision of the Energy Policy Act of 2005, which allows Federal agencies to provide a preference to power produced by Indian Tribes. We are in the process of leading, at the Department of Energy, leading an effort amongst all of our, many of our offices within the Department of Energy, of coming up with procurement guidance to actually implement that provision that no Federal agency has yet to implement.

So those two were very significant

Senator BARRASSO. Thank you very much.

Ms. Gillette, first I want to thank you for how helpful you have been in the entire process and working on this area, such an important issue of energy development and economic development. Last year, the EPA enacted what was called the Federal Minor New Source Review Program in Indian Country. The rule requires that any new or modified synthetic minor source had to obtain an EPA permit prior to construction. And this pre-construction permit requirement amazingly became immediately effective. You had to have the permit, even though the process to get the permit didn't exist yet.

And I have been hearing more and more about it. I understand the process to get a permit still isn't in place, even though you have to have the permit to start. It seems that the Tribes want to follow the rules, want to obey the law, but there is no real way that they can do so because of the EPA.

Has your Department done an analysis of the impact this has had, this EPA rule, in Indian Country, and were the Tribes' concerns justified?

Ms. GILLETTE. I think that the Tribes' concerns were justified, because there was not a lot of conversation about how it was going to be implemented. But since probably the summer time, and I guess between probably this fall and now the rule has been signed and the EPA has agreed to do a phased implementation. They are working closely with affected Tribes and have agreed to do consent agreements that would ensure that energy resource development isn't interrupted.

So at this point, especially this is affecting the Fort Berthold Reservation, and right now, out of ten companies there are eight companies that have consent agreements. They have agreed to make sure that there is a phased process, and they are working closely with both the Tribes and the industry to make sure it is not going to be a cost factor.

Senator BARRASSO. It would have seemed to make more sense had the EPA come out with an application process, a way to fulfill the requirement, so that Tribes wanting to obey the law could have done it, could have done it right and then gotten back and started in time.

Another issue that I hear about is processing and approving leases and agreements for energy development on Indian lands. We have heard many complaints from the Tribes that the delays in the approval process have been a significant impediment. I was going to ask about that, as well as the BLM charging such a high fee for

an application to drill on Indian trust lands. I think $6,500 per permit, where a lot of fees at State levels are a lot less than that. Could you help us a little bit there on what you are seeing?

Ms. GILLETTE. Sure. I am going to talk a little bit about the APD fees, and then I am going to turn it over to Mr. Black to answer the leasing question.

We have engaged in discussions with BLM regarding the application of APD fees on Indian lands and options to address the fees. Congress established in appropriations the fees and the lands that they apply to. Legislation would be required to exempt Indian lands from the application of those fees. But we would be more than willing to work with the Committee and yourself and your office to look at ways to get to that end goal.

Senator BARRASSO. And Mr. Black?

Mr. BLACK. Thank you, Mr. Barrasso.

Regarding the lease approvals and some of the processes we have to go to, and yes, you are right, we have heard complaints in the past over some of the delays. A lot of them, it can vary from place to place on what is exactly the issue there. It can deal a lot with the consent requirements that are often required under some of the leases, reaching the majority consent on a highly fractionated parcel of land and getting out and getting those consents. Getting through the environmental processes in some cases can add natural delays to the process.

Some of them are built in by statute, regulation or law that cause us to have certain delays. But we have been working pretty hard over the last couple of years to look at our process overall, streamlining the process. We have the proposed Part 162 regulations that we have out for comment right now that we are looking to implement, which will go a long way, I think, toward streamlining some of the processes, and really take an outdated regulation and bring it into the modern day to deal with a lot of the situations we have, particularly with the renewable energy, wind and solar area that we are starting to experience now.

Senator BARRASSO. Thank you, Mr. Black.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Thank you very much, Senator Barrasso.

Senator Johnson?

Senator JOHNSON. Ms. LeBeau, our rural Native communities face an added burden of inadequate transmission grids. How is WAPA dealing with this continued growth and interest in renewable energy, especially in areas where gridlines do not have sufficient capacity?

Ms. LEBEAU. That is a great question. I have been working pretty closely with Western Area Power Administration on exploring ways that they could outreach more to Indian Country in the area of transmission, particularly in regard to projects that are seeking transmission access and also transmission service across their lines. In some areas, we have actually, in the Desert Southwest, we have identified opportunities where Western Area Power is using their borrowing authority to do some expansions where there could be some opportunities for Tribal projects to get interconnected and get their energy to a marketplace.

In the Great Plains, it is a little tougher. There are some identified projects I believe that have been prioritized and identified throughout the years that they are looking to do some expansions. But that is always contingent on their borrowing authority and their ability to do so through appropriations. So I know there is one case in particular where a Tribe has made their application, got in the transmission queue and has gotten all of their transmission agreements in place and executed. So we know that the process works.

It could be quicker. So we are working on that. But we do have some success stories in the Great Plains on how this has occurred for some Tribes.

Senator JOHNSON. Deputy Gillette, as you know, Tribes have been hindered by the bureaucratic process and red tape. I am glad to hear that the BIE will be improving wind energy leasing. With this new system, what is the estimated time that it will take for a Tribe to get through the approval process?

Ms. GILLETTE. The provisions for wind energy leasing include a new two-step process, whereby the developers can first obtain approval of a short-term lease which covers installation of equipment to evaluate the resource. This is followed by a second step wind resource lease, which allows installation of turbines.

The way that this works is we have designated time lines for each of those steps and the lease approval deadlines are something that hadn't been there in the past. And we do have a lot more predictability and sort of understanding of how our internal processes will work in lease approvals.

Senator JOHNSON. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Johnson.

Senator Tom Udall?

Senator UDALL. Senator Akaka, thank you very much, Mr. Chairman.

Ms. Gillette, I would like to start by asking, because I think it lays out things well in terms of looking at this overall issue of energy development on Indian lands, what is the Federal trust responsibility as it relates to mineral and energy development for Indian Tribes?

Mr. BLACK. Senator Udall, with regard to the Federal trust responsibility on, you are basically talking oil and gas and subsurface minerals, we are guided by statute and regulation, executive orders, laws that have come around through the years that govern our responsibility to manage and oversee the development of the mineral resources out on Indian lands. That is in partnership many times with our other Department partners, BLM and the Office of Natural Resource Revenues.

Senator UDALL. And when it comes down to all these problems that have been described, all the Senators talking about issues of slow movement of leases and hurdles that they are talking about, is that a part of the trust responsibility and a part of getting through all of the statutes and laws that have been laid down? Is there a way to streamline that?

Mr. BLACK. I think there are always different ways to streamline some of the processes, and we have done that in some ways. Some of the things that we don't have total control over are some of the

NEPA requirements and some of the environmental laws that we have to comply with. And there are certain time frames that are just naturally built into that process.

Senator UDALL. Could you give me a couple of examples of where you have streamlined it?

Mr. BLACK. Basically, we have worked with the oil and gas companies, and I am going to talk particularly to APD permits for that matter. That seems to be one of the biggest issues we ran into out in Indian Country in trying to expedite development of oil and gas.

Senator UDALL. Tell us all what an APD permit is.

Mr. BLACK. I apologize.

Senator UDALL. No, I am just trying to get everybody on the same wavelength.

Mr. BLACK. That is an Application for Permit to Drill. And that is a collaborative effort between, largely between ourselves and the Bureau of Land Management. Bureau of Land Management is actually the Department that would approve an APD permit out there, with our concurrence and activity and approval of the environmental documents. So we have worked with the oil and gas companies, I am looking to Fort Berthold, where we have had just a tremendous amount of activity over the last couple of years. And we have used, the oil company is working with them to identify certain processes where we could speed up working with them, having them conduct certain activities in the process that would help to speed up what we have to do on our review, standardizing some of the things that they would submit to our office.

Senator UDALL. And you all realize, I am sure, that when a Tribe makes a decision to go forward, they are doing it because they want economic development, they want to have the jobs. I hope all these Federal agencies, whether it is the Bureau of Land Management, some within Interior, some outside, like the EPA, are all working together to try to achieve that objective. Because as you know, we have serious unemployment problems. You heard from Senator Johnson talking 80 percent, I think the Navajo Reservation, Mr. Vice President, you will tell them, but I think it is ranged in the 50 percent range. Some of our Pueblos in New Mexico are also that high.

I hope, President Pesata, you will let everybody know about the unemployment on the Jicarilla Apache Reservation.

Mr. BLACK. I was just going to say, speaking to what you are talking about there, we have also developed some processes, we are developing, improving the communications largely, between all the partners that are engaged in the oil and gas activity and monitoring and oversight. That means bringing BLM and ONRR and BIA and OST and all the different departments together to really identify the issues and ensure that we are working together. We are not badgering each other here in this activity, but we are working together to try and get the process taken care of.

Senator UDALL. Great, thank you. And because Senator Tester was so generous, I am going to end a little bit early here. Thank you.

The CHAIRMAN. Before I call on the next panel, did you have a comment to make, Ms. Gillette?

Ms. GILLETTE. Yes. I just wanted to add that when it comes to conventional, that is why I have asked Mr. Black to accompany me during this session, but I am most familiar with renewable energy development, in that we are aware that we need to beef up our capacity in those areas. It is a very new part, within the Administration, it is a new part of what we do, and part of our trust responsibility. To that end, we have been working closely with the Department of Energy. Tracy and myself have regular conversations in looking at ways to get that kind of technical assistance and knowledge base to the folks within the BIA realty and environmental offices, so that those are better streamlined and better coordinated.

The CHAIRMAN. Thank you very much, Senator Udall.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

I don't know whether to ask this question of you, Jodi, or you, Tracey. But are you familiar with a policy developed in the Energy Policy Act 2005, as it gives Tribes the opportunity to develop energy by developing Tribal energy resource agreements with the Department of Interior, called TERA? Okay. One of the things I have heard since I have been in the Senate is complaint, Chairman Dorgan had some members in leadership from the Tribes in North Dakota who talked about drilling wells and have energy develop all around the Reservation, but never ever getting in. I am concerned that that is happening, not just in North Dakota, but potentially a lot of other places, Montana included.

One of the things that the TERA would allow, if they got into one of these agreements with the Department of Interior, it would allow them not needing approval from the Department of Interior. Correct me if I am wrong on that, that the Tribe would be able to address these business agreements on energy development without needing that approval from the Secretary.

My understanding is not one Tribe has entered into a TERA. That sounds like a pretty good idea to me, self-determination and all that stuff. Can you give me any idea why not one Tribe has entered into it? This is seven years plus.

Ms. GILLETTE. I think that you are right, this is a tool that Tribes can use to directly manage their energy resources and develop the renewable and non-renewable energy resources. But it also requires the Tribe to assume a greater level of regulatory authority and administrative responsibility. This may be one of the reasons that Tribes have not embraced the use of TERAs. We have had four Tribes informally discuss development of a TERA. Two of those received, through our regulatory process, formal meetings to consult on developing a TERA, and neither of those two Tribes have applied for one.

So in the spirit of consultation, I think that would be an excellent question to ask the next panel, to fill out the gaps that I may be leaving here.

Senator TESTER. We will do that. I appreciate the recommendation.

Tracey, grant programs, you talked about education and technical assistance. You must be aware of a ton of grant programs out there for Indian Country, at least some, right?

Ms. LEBEAU. Right.

Senator TESTER. I guess the question I have is, it is my understanding these grants are very difficult to get. We are austere times and I don't know if the grant programs have the kind of money they need for the demand that is out there.

Is it time to have a setaside for Indian Country for some of these grants? That would be my first question.

Ms. LEBEAU. I think one good example could be, through the Recovery Act, we had the Energy Efficiency Community Block Grant, with the $54 million setaside for Tribes.

Senator TESTER. Right.

Ms. LEBEAU. We are in the process of collecting information, just kind of doing a data call on the over 400 Tribes that we did fund through that setaside program to get a really good sense of how much capacity actually was built out there.

Senator TESTER. Okay, good.

Ms. LEBEAU. So I think as we collect and collate and analyze that data and kind of turn it around in the coming months, because some of those projects are in the process of winding down, I think that would be a great, that might be a good pilot or a good example to look at.

Senator TESTER. One of my concerns is, and I think it is quite obvious, we can have grant programs, but if Tribes, because of whatever reasons, the entity that they are, or whatever reasons, aren't eligible to get those grants, it really puts them behind the eight-ball when it comes to energy development. And I don't know if this has to be an act of Congress or if you can do it administratively, but I think we should be looking at that. That is my own perspective, as we go forward.

I want to follow up, because I only have about a minute left. Senator Johnson talked about lease approvals, and you talked about them a little bit, Jodi, and you said that there were deadlines for each step. If I am not on the same level that you two were on, correct me, but you said that there were deadlines for each step. Give me an idea what those deadlines are. What kinds of time frames are you talking about?

Ms. GILLETTE. I can guess, but I would rather not do that. Do you know what they are?

Mr. BLACK. Basically what she is talking about, this is under the Part 162 proposed regulations.

Senator TESTER. Yes.

Mr. BLACK. And we have implemented some processes that, upon receipt of the completed application and environmental documents, we, or the Bureau of Indian Affairs has 60 days to approve that lease. Otherwise, it moves forward.

Ms. GILLETTE. I just want to add that it is 20 days for the WEELs, the Wind Energy Evaluation Leases. And I think it is 60 days for the actual energy lease.

Senator TESTER. Are you familiar with an act that I have cosponsored call the HEARTH Act, that would allow Tribes to make surface leasing decisions after the Secretary approves a leasing program?

Ms. GILLETTE. Yes.

Senator TESTER. Would you support it?

Ms. GILLETTE. We do support it.

Senator TESTER. You do support it. Good. That is very, very good. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

I wanted to follow up on the TERAs. Ms. Gillette answered, but Director LeBeau, do you have any ideas on why no Tribe has decided to use a TERA?

Ms. LEBEAU. No, I don't.

Senator FRANKEN. All right, well, that is that. No more questions.

[Laughter.]

Senator FRANKEN. No, no, I will ask another one.

Ms. LEBEAU. It would be hearsay, a lot of hearsay.

Senator FRANKEN. Okay, well, maybe we will follow up with the next panel.

Director LeBeau, at the Tribal Energy Summit your office held last May, Secretary Chu announced that he would be directing the Department of Energy to be purchasing renewable energy from Tribal lands when possible. Has the Department implemented this plan? That is my first question.

Ms. LEBEAU. Thank you. We are in the process of coming up with the procurement guidance for that. So as with everything related to procurement for the Federal Government, it is not an easy question to answer. It was very helpful provision in the statute, but one provision that did not have a lot of definitions and guidance to it. So we have assembled counsel from across the Department and we have some draft guidance that we are circulating and hope to get out for formal consultation to Tribes very soon.

Senator FRANKEN. What are the obstacles there? What is that like? Why does everything have to work that way? Why does everything have to be so slow?

Ms. LEBEAU. One of the tough points for procurement officers has been that the Act allows for procurement of energy at prevailing market price, but did not define what prevailing market price was. So in some areas, in some markets where you have market that is freely traded, and/or you have energy that is primarily fossil, maybe coal or Federal hydro power, they were having to look at prevailing market prices, possibly what could we get, if I went out into the energy markets today and procured competitive energy, I might get it at 2 to 4 cents, when a solar project might be coming in for substantially more than that.

So we are providing some guidance to those procurement officers on kind of how to better zone in on what a better comparable is. That was one very sticky issue.

Senator FRANKEN. Okay, that just doesn't seem that hard to solve. It really doesn't. I mean, that seems like something, if you really wanted to solve that right away, you could solve that right away.

Ms. LEBEAU. I think part of the challenge has been from the very high level to define those and other issues in the statute for those procurement officers, because they don't necessarily have the discretion to make those kinds of calls at the field level. And a lot of the procurement that occurs at our facilities are at the field level.

Senator FRANKEN. Okay, well, if they don't have the authority to make that call, who does? You say at the field level?

Ms. LEBEAU. So the guidance is coming from the headquarter level. So they will have kind of a, I guess a better checklist and guidelines. So when these projects, these proposals do come in, it is a more accurate comparable.

Senator FRANKEN. Okay. It just doesn't seem like there is a sense of real urgency there. Is that fair for me to interpret it that way, or am I not just understanding?

Ms. LEBEAU. I think the other challenge has been, there wasn't a lot of guidance and there is a lot of other Federal acquisition rule issues. We had to walk through all of those regulatory and statutory requirements for procurement and harmonize everything. And the other issue too has been, it is not a bad issue, it is just an issue, is working with our power marketing administrations to also get their input on how to deliver some of these energy, these possible energy generation products to our Federal facilities. Because a lot of times you don't have Tribes that are really sitting on our Federal facilities themselves to directly transmit it onsite. They have to transmit it.

Senator FRANKEN. Okay. This just seems to me, and maybe I am being really unfair here, that this is a good example of how things don't get expedited that are good things in the Federal Government. And that I don't think we would have won World War II if we had behaved this way. I think it is a good thing for the Energy Department to be making sure that we are purchasing energy from Indian Country and if last May, you are announcing that you are doing that, it should be happening by now. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

I want to thank the first panel very much for your responses. It certainly will be helpful to us and to the Tribes as we move along here. So I want to thank you for being here and I would like to invite the second panel to the witness table.

Thank you very much.

Serving on our second panel is the Honorable Rodney Bordeaux, President of the Rosebud Sioux Tribe, from Rosebud, South Dakota; the Honorable Levi Pesata, President of the Jicarilla Apache Nation, located in Dulce, New Mexico; the Honorable Thomas "Stoney" Anketell, who is a Councilman of Fort Peck Assiniboine and Sioux Tribes in Poplar, Montana; Ms. Michelle Kauhane, Deputy to the Chairman of the Department of Hawaiian Home Lands in Kapolei, Hawaii; and Rex Lee Jim, Vice President of the Navajo Nation in Window Rock, Arizona.

Welcome to all of you on this panel, and President Bordeaux, will you please proceed with your statement?

STATEMENT OF HON. RODNEY BORDEAUX, PRESIDENT, ROSEBUD SIOUX TRIBE

Mr. BORDEAUX. Good afternoon, Chairman Akaka, Senator Johnson, Senator Tester.

On behalf of the Rosebud Sioux Tribe, I am very honored for this opportunity to testify on the energy development in Indian Country.

Rosebud Sioux Tribe is located in south central South Dakota and comprises over 40,000 enrolled members, and encompasses over 900,000 acres. Recent U.S. Census data measures our area as the second poorest county in the Nation.

However, what that economic data does not measure is our proud history, spirit, our resilience and tremendous potential. This is what I would like to talk about today.

Since 1999, the Rosebud Sioux Tribe has been investigating and developing our wind resources here on Tribal lands. In March of 2003, we commissioned the first ever commercial wind turbine on Tribal lands in the United States. The 750 kilowatt wind turbine, called the Akicita Cikala, which is the Little Soldier, is named after our late Tribal Chairman, Alex Lunderman.

Today we have two major projects underway in wind development. In 2003, we were awarded a $441,000 grant from the Department of Energy to develop a 30 megawatt wind farm called the Owl Feather War Bonnet Wind Farm. One of the major issues that we had at the outset was the Bureau of Indian Affairs taking 18 months to approve the lease. That is a major impediment for us.

In 2008, we engaged Citizens Energy Corporation of Boston, Massachusetts, to develop a 190 megawatt wind farm in Mission, South Dakota. We are approximately 65 percent complete on the permitting. We did a preliminary system check on the WAPA 115 kilovolt line that runs right to the project area and found out there is only 190 megawatt capacity on that line left. If we or anybody else in southern South Dakota wanted to build more wind farms in the area, we couldn't unless WAPA upgrades their existing systems.

In our land base, we have identified lands that can support up to 1,000 megawatts of wind development. But unless the grid is improved, there can be little or no pre-development work as the pre-development is very costly. The pre-development cost for the 190 megawatt wind farm was about $3 million, and of that, a DOE grant allowed us to get $1.5 million of that.

As South Dakota is known for being the Sunshine State, we have huge, huge potential for solar development also. We feel that WAPA and DOE should look at its trust responsibility with the Tribes and develop policy to purchase power at market price for Tribal projects as a priority. The taking of our ancestral homelands on the Missouri River to provide energy to a growing Nation has never, we have never really been compensated for that. This would show the world a true act of trust responsibility from the Federal Government.

From 2003, wholesale power costs from Basin Electric upon our local utilities had risen about 115 percent. And rate increases for the consumers since 2009 have risen by 47.5 percent. This, combined with the cutbacks in our Low Income Home Energy Assistance Program, has placed a tremendous strain on our people. I regret to say that we have people making decisions between having electricity or having something to eat.

Our intent is to use revenue stream from these commercial projects to assist our people in purchasing residential renewable energy devices that would assist in lowering their energy bills and also build businesses and produce jobs around this sector. We also

plan to develop a distributed generating system throughout the reservation, using community wind and hydro systems scattered throughout the reservation.

In the northern part of our reservation, thanks to a BIA grant, we have drilled two deep 3,500 foot geothermal wells, artesian water. And we are going to use that to heat our White River Health Care, which is our nursing home and our day care center, located in White River, South Dakota.

The sacred hoop of renewal exists, and we humans need to understand it and to embrace this philosophy. These are renewable energy resources that are given to us in every moment of every day, for our children's sake to the future of all mankind. This is a teaching that needs to be brought forward for all of mankind. Renewable energy is the future of all people on this earth. The United States Government needs to embrace this future fully and support programs to promote this industry.

In summary, the Rosebud Sioux Tribe makes the following recommendations. Number one, investments must be made to existing power lines so that we can use our great renewable energy resources. Number two, incentives must be made available to private energy buyers to purchase energy from Tribal energy sources. Number three, Federal buyers of energy, such as WAPA, should be made to source as much energy as possible from Tribal lands, provided the Tribe is willing to develop its energy resources.

Number four, enact legislation to expedite lease review processes at the BIA as well as enact provisions for Tribes to review their own lease agreement in the true spirit of sovereignty. And lastly, extend the production tax credit for another five years.

Again, I thank you for this opportunity, Mr. Chairman.

[The prepared statement of Mr. Bordeaux follows:]

PREPARED STATEMENT OF HON. RODNEY BORDEAUX, PRESIDENT, ROSEBUD SIOUX TRIBE

Good morning Chairman and members of the Committee. My name is Rodney Bordeaux. On behalf of the Rosebud Sioux Tribe thank you for the opportunity to testify regarding Energy Development in Indian Country.

The Rosebud Sioux Tribe is located in South Central South Dakota, is comprised of over 40,000 enrolled members, and encompasses over 900,000 acres. Recent U.S. Census data measures our area as the second poorest county in the nation. What the economic data does not measure is our proud history, spirit, resilience, and tremendous potential. This is what I'd like to talk about today.

Since 1999, the Rosebud Sioux Tribe has been investigating and developing our wind resource here on tribal lands. In March of 2003, we commissioned the first ever commercial wind turbine on tribal lands in the United States. The 750 Kw Neg Micon turbine called the Akicita Cikala (Little Soldier) is named after Alex Lunderman, a former Tribal Chairman who passed away in 2000. We sell the energy produced to the local utility and we use this money to pay off the RUS loan on the purchase of the turbine.

Today we have 2 major projects underway in wind development. In 2003, we were awarded a $441,000.00 grant from the Department of Energy to develop a 30Megawatt wind farm called the Owl Feather War Bonnet Wind Farm. We received a FONSI, Findings Of No Significant Impact in February 2008. After reviewing the lease agreement for 18 months, the

Bureau of Indian Affairs finally signed off on the Lease Agreement in August of 2008. The tribe had signed off on the lease in December of 2006. We lost valuable time and monies due to the failure of the BIA to expedite the lease. ***In the current economic environment, our developer, Distributed Generation Inc., of Lakewood, Colorado has been struggling trying to secure a Power Purchase Agreement with any large utility in the area. The main issue here is that the project is located far from any major load or city and wheeling or tariff fees impede the economics if we have to move the power for any long distance.*** This farm will supply electricity for about 11,000 homes. ***At the moment, we do have a draft PPA that is going through a due diligence review by a large investor. We are hoping for the best.*** Another issue here is that as a tribe in South Dakota we have to follow the South Dakota tax rules and if the taxes are not conducive to wind development we probably won't get a project. These taxes hinder development and infringe upon tribal sovereignty.

In 2008, we engaged Citizens Wind of Citizens Energy Corporation to develop a 190 Mw wind project North of Mission South Dakota. We are approx. 65% complete on the permitting. We did a preliminary system check on the WAPA 115 kv line that runs right through the project area and found out that there is only about 190 Mw of capacity that can fit on this line. We queued up on this line for position 1 as a 90 Mw and position 2 as a 100 Mw, which in essence has maximized the capacity on this line. ***If we or anybody else in Southern South Dakota wanted to build more wind farms in the area, we couldn't unless WAPA upgrades their existing system or a private firm builds a new line through. This is <u>the</u> biggest issue in the Northern Plains, lack of capacity on existing lines to move power.***

The tribe's land base is includes lands 5 counties. We have identified lands that can support at least 1000 Mw's of wind development, but unless the grid is improved, there can be little or no pre-development work started, as predevelopment is very costly. The cost for the pre-development of 190 Mw wind is estimated to be around $3,000,000.00 and fortunately for Rosebud, we did apply for a DOE grant which assisted RST with $1.5 million dollar grant in 2010 to help do this work. This elevated us with Citizens wind as a partner in the development stage and a 33% share of the development fee that will be charged towards the new owner of the wind farm.

We have yet to find a purchaser for the power from this 190 Mw, North Antelope Wind Farm. We have engaged the major wholesaler of electricity in the area, Basin Electric to see if they have any interest in the project and they don't as they have as much as 600Mw of renewable energy projects in their pipeline. We would like to be able to sell to WAPA but within their policy guidelines they cannot lock into any contracts for more than a period of 5 years, and investment strategies from bankers require long term contracts for energy development to be at least 12 to 20 years for a PPA.

We feel that WAPA and DOE should look at its trust responsibility with the tribes and develop policy to purchase power at market price from tribal projects as a priority. The taking of ancestral homelands on the Missouri River to provide energy to a growing nation has never really been compensated for and this would show the world a true act of trust responsibility from the Federal Government towards tribes along the river.

From 2003, wholesale power costs from Basin Electric upon our local utilities have risen by 115% and rate increases for the consumer since 2009 have risen by 47.5 %. This combined with the cutbacks on the Low Income Home Energy Assistance Program have placed a tremendous strain on our people. I regret to say that we have people making decisions between having electricity and having something to eat. As a Tribe, we want to be self supporting and we are looking towards renewable energy to help us help ourselves out of this predicament. *Our intent is to use the revenue stream from these commercial projects to assist our people in purchasing residential renewable energy devices that would assist in lowering their energy bills, and to also build businesses and produce jobs around this sector. We also plan to develop a distributed generation energy system throughout our reservation, using community wind and hydro-systems scattered about the reservation, with the thought to eventually own the local utility. In the Northern part of the reservation thanks to a BIA grant, we have drilled two deep 3500' wells to access geothermal heated artesian water for direct application of heating to the White River Health Care Center (a nursing home) and Day Care Center in White River, SD and we also plan on looking at the possibility of making electricity with this resource.*

Among our people, we believe that all things are alive or has the essence of a life energy. The term we use for this is "Wamakaskan". Life or energy from the winds that flow across our lands, to the waters that flow through our creeks and streams, to the grasses and trees that grow on our lands to the four legged, winged ones, even the rock in the earth. Before the advent of oil upon the earth, we humans lived off of the Gifts that Grandfather gave to the people. The greatest gift that was given to the Lakota Oyate was the buffalo and it was this renewable resource that fed, clothed and sheltered our people for eons, until greed took them away, but greed cannot take away what the essence of the buffalo was.

The Sacred Hoop of Renewal exists and we humans need to understand it and to embrace this philosophy. These are the renewable energy resources that are given to us in every moment of everyday, for our children's sake and the future of mankind. This is a teaching that needs to be brought forward for all of mankind. Renewable energy is the future of all people on this earth. The United States Government needs to embrace this future fully and support programs that promote this industry.

Beyond what was mentioned before, it is important to note and to encourage to Congress that the Production Tax Credit should be extended for at least another 5 years. Without a doubt, this tax credit is the driver behind wind energy and other renewable energy development in the United States today.

Finally, as we are talking about Energy Development, I must note our tribe's absolute opposition to the proposed route of the Keystone XL project. The Keystone XL project is a product of deceit and greed and cannot be allowed to go forth. Water is life and is precious, more precious than oil. The United States has an obligation to its citizenship to protect the national resources from contamination of any sort and to place our drinking water in jeopardy would be, in the opinion of the Rosebud Sioux Tribe, gross misconduct by the Congress of the United States. We are opposed to proposed legislation permitting the project, and any all efforts to route the pipeline on or near our homelands as defined by the 1851 and 1868 Ft. Laramie Treaties.

In summary, the Rosebud Sioux Tribe makes the following recommendations.

1. *Investments must be made to existing power lines so that we can utilize our great renewable energy resources.*
2. *Incentives must be made available top private energy buyers to purchase energy from tribal energy sources.*
3. *Federal buyers of energy should be made to source as much energy as possible from tribal lands, provided the tribe is willing to develop its energy sources.*
4. *Enact legislation to expedite lease review processes at the BIA, as well as enact provisions for tribes to review their own leases agreements in the spirit of true sovereignty.*
5. *Extend the Production Tax Credit for at least another 5 years.*

Again, thank you for the opportunity to testify. I'd be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Mr. Bordeaux.

The Honorable President Levi Pesata, please proceed with your testimony.

STATEMENT OF HON. LEVI PESATA, PRESIDENT, JICARILLA APACHE NATION

Mr. PESATA. Good afternoon, Chairman Akaka, Senator Johnson, Senator Tester.

My name is Levi Pesata, I am President of the Jicarilla Apache Nation. We have about a million acres of trust land in rural north central New Mexico within the San Juan Basin with approximately 4,000 Tribal members, unemployment rate of about 35 percent and median income of about $35,000.

We rely on our oil and gas resources to provide governmental services to our Tribal members and to those non-Tribal members living on the reservation. We have been involved in the oil and gas industry for about 60 years. Throughout this time, we have encouraged and fostered development of our reservation while protecting our sovereignty.

In 1982, we won a major sovereignty ruling in the U.S. Supreme Court which recognized our inherent sovereignty to regulate and tax on our own reservation. However, another Supreme Court case permitted the State of New Mexico to also tax oil and gas production on our lands. This has led to dual taxation, which I will touch on a little bit later.

Today I would like to focus on the oil and gas issues. First, on compliance and enforcement matters. With approximately 2,000 miles of gas gathering pipeline and roads servicing this industry, we have major challenges in inspecting and monitoring the wells. We have issues in measurement and pipeline system and road maintenance.

As stewards, we are paying close attention to BLM's draft rules on hydraulic fracturing. Fracking requires a large amount of water usage and the recycling of chemically treated water. Full disclosure of the chemicals used in these amount are key issues in this process.

Moving on, we have an intergovernmental advisory committee to evaluate various energy proposals. From a business perspective, we aim to maximize current lease acreages, increase drilling and pay out on existing wells successfully. We want to drill deeper wells and develop horizontal drilling opportunities. We are also strengthening our oil and gas production company. We have our own company called Jicarilla Apache Energy Company, in which we are building new opportunities to develop jobs on the Reservation.

Let me briefly make five other points. First, a truly coordinated BIA, BLM and ONRR system that works for the Tribe is critical to compliance enforcement and auditing and other collection issues that face Indian Tribes with oil and gas. This meets the Federal responsibilities owed to us as mineral owners.

Second, based on our first-hand experience with bankruptcy issues, which we have had several of them this past year, this is new to Indian Country and Congress mus clarify that any assignment or assumption of Indian oil and gas leases be reviewed, renewed and approved both by the Tribal owner and the BIA.

Third, on our split mineral estate issue, which is detailed more in the written testimony, Congress needs to make Interior obey the laws to fully review and approve leases and to secure Tribal consent, which is very important, and approval of all such leases.

Fourth, Congress needs to address the dual taxation problem. It is unfair and it cripples Tribal economies. The creation of a Federal tax credit would help fix this problem. It would stimulate Tribal economies and boost domestic production and decreases and reliance on foreign fuels. Some time back, when Senator Domenici was still here, he did introduce such a bill, but it did not pass.

Finally, my written statement addresses the weak electricity distribution system we have on our reservation. We are working toward establishing our own energy company to provide electric power to our communities, so that we can continue our development and increase opportunities on the reservation.

That completes my statement, and I will be happy to answer any questions.

[The prepared statement of Mr. Pesata follows:]

PREPARED STATEMENT OF HON. LEVI PESATA, PRESIDENT, JICARILLA APACHE NATION

I. Introduction

On behalf of the Jicarilla Apache Nation ("Nation"), I am Levi Pesata and I serve as President of the Jicarilla Apache Nation. I would like to thank the Committee for convening this hearing to discuss Indian Energy Issues. The Nation is a Federally recognized Indian Tribe located in north-central New Mexico. Eighty-five percent of the Tribal population resides on the Jicarilla Apache Reservation (Reservation), mostly in the town of Dulce, which serves as our Tribal headquarters. We have a Tribal population of nearly four thousand members and our Reservation consists of approximately one million acres of trust land. We have been blessed with abundant Natural Resources such as oil and gas, timber, water, and fish and wildlife. Fortunately, our Reservation was not subjected to the disastrous Allotment Policy initiated in the 19th Century. As a result, we do not face the difficult checkerboard jurisdictional challenges encountered by those Tribes and individuals whose lands were broken apart (and in many instances lost) as part of that Federal Policy. Certainly, this consequence has benefitted our energy development initiatives over the years. Yet, given our extremely rural location, the considerable public health and welfare needs of our people, as well as the fact that we provide governmental services not only to our Tribal members but for those living near or travelling through our Reservation, the Nation has a heightened need to generate revenue to

provide essential governmental services on our Reservation as well as to the surrounding rural region. Thus, we rely heavily on the development of our natural resources, primarily our oil and gas resources, to raise revenue to fund our government and provision of essential governmental services. Through these lens, I am pleased to be here today to discuss our Nation's primary energy issues.

II. Background

As noted above, our Nation heavily depends on our oil and gas production as the primary means of generating governmental revenue. Our Reservation is located in the San Juan Basin, a well-known prolific source of oil and gas production for over 70 years. Oil and gas development began on our Reservation in the 1950's, under the leasing authority of the Secretary of the Interior pursuant to the Indian Minerals Leasing Act of 1938 (IMLA). Throughout those early years, the Secretary negotiated and entered into oil and gas IMLA leases on the Nation's behalf, leaving us with a modest royalty interest in the development and production of our oil and gas reserves. In the 1970s and 1980s the Nation became more active in the development of our resources and won a significant legal ruling in the U.S. Supreme Court in 1982. In that seminal case, *Jicarilla Apache Tribe v. Merrion*, the U.S. Supreme Court recognized our inherent right to regulate our lands and resources within our Reservation, and upheld our sovereign authority to impose our own severance tax on the production of our oil and gas resources. That same year, Congress passed the Indian Minerals Development Act (IMDA) which authorized Tribes to negotiate energy deals directly, though subject to Secretarial approval. The tremendous impact of the *Merrion* case coupled with the enactment of the IMDA provided our Nation and other Tribes powerful resources and tools to expand on our energy development initiatives.

Today, we have approximately 377,000 acres of our Reservation under production, approximately one-third of our Reservation land base. According to our internal reports, our total hydrocarbon production consists of 302,000 Barrels of Oil and 32 BCF of natural gas, which breaks down to approximately 80 percent in natural gas production and 20 percent in oil production. There are about 2,150 active wells on our lands and 700 wells that have been plugged/and abandoned. To support development and production, there are over 2,000 miles of gas gathering pipelines and roads on our Reservation. While a sizable portion of our Reservation is subject to oil and gas production activities, the Nation has been diligent in designating and protecting pristine areas, as well as sacred sites, and spiritual and culturally sensitive areas from disturbance.

There are currently 26 current Record Title/Operators, 132 active IMLA leases, and 12 active IMDAs which accounts for approximately 550 companies with Operating Permits to conduct oil and gas business on our Reservation. Every non-Tribal employee working on our Reservation is required to register with and obtain a work permit every year from our Department of Labor (DOL). The Nation's DOL issues over 15,000 work permits annually associated with oil and gas activities. Of the estimated 15,000, it is estimated that 2–3 percent constitutes Jicarilla Tribal Members.

Presently, approximately 90 percent of the Nation's government operations are funded with revenues stemming from production of our oil and gas resources. Thus, it is imperative to maximize oil and gas resource revenue by requiring compliance with Federal and Tribal laws and regulations as well as full and timely payment of royalties and taxes. At the same time, incentives such as Federal tax credit and other Federal resources (such as additional staffing and financing opportunities) are necessary to support the development of a robust energy industry on Indian lands. Certainly, maximizing our revenues and protecting our leases will allow the Nation to continue to provide essential governmental services to Tribal Members, and others working and residing on our Reservation.

To that end, the Nation's Oil & Gas Administration (OGA) is our regulatory compliance arm. OGA is lead by a Director who manages 16 employees organized in 7 divisions. OGA also has a lead role in evaluating various proposals and energy deals submitted to the Nation. The OGA directly interacts and coordinates with the Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM) on regulatory matters. The Nation's Revenue & Taxation Department (R&TD) oversees the collection of royalties and taxes on production of our oil and gas reserves. Through the R&TD, the Nation has developed an extensive auditing program which has operated for many years in collaboration with the Office of Natural Resources Revenue (ONRR) (formerly the Minerals Management Service). Together, the agencies of the Nation have provided the Nation powerful regulatory and auditing resources to achieve the goal of maximizing revenues while protecting our lands and valuable oil and gas reserves.

In addition, the Nation established the Jicarilla Apache Energy Company known as JAECO as a Section 17 Federally chartered corporation which is wholly owned by the Nation. The Nation's primary intent in establishing JAECO was to become the Nation's oil and gas production "operating arm" that could evaluate and develop existing and new acreage for enhancement of production potential. Furthermore, the Nation also sought to provide opportunities for JAECO to evaluate existing lease acreages that come available for possible acquisition through a confirmed sale or bankruptcy proceedings. The overall intent has been a positive for the Nation, though JAECO's progress has been somewhat stymied in this process due to lack of financing. In summary, there are meaningful and viable opportunities for the Nation through JAECO especially if there are significant financing opportunities to support its initiatives.

Looking forward in expanding and enhancing our efforts to maximize revenues from production of our oil and gas resources, we intend to pursue the following initiatives:

- Continue to update, digitize and improve the Lease Record Management System so that we can more accurately and efficiently track and monitor all of the production on our Reservation;
- Update Environmental Review Documents such as Environmental Assessment and Environmental Impact Statements to address current and future potential impact from increased drilling and development;
- Maximize and expand development potential of current IMLA and IMDA lease acreages, increase drilling and payout on wells, pursue and achieve successful drilling in deeper depths, and develop successful horizontal drilling opportunities;
- Continue our collaborative efforts to provide a unilateral enforcement of lease activity by collaboration with Federal Regulatory Agencies such as BIA and BLM, as well as expedite/streamline the processing of IMDAs, assignments, plans of development, applications for permit to drill (APD), and right-of-way (ROW) agreements, for example; and
- Increase marketing of the Nation's oil & gas resources.

III. Summary of Federally Related Energy Issues

In addition, the Nation would like to bring a set of other issues to the Committee's attention which relates to our Federal partners and agencies:

A. Indian Oil and Gas Exploration and Production

The Nation continues to experience challenges with oil and gas lease compliance primarily due to the large amount of acreage under lease and/or production, the number of wells in service, the extensive gas gathering systems operating throughout the Reservation, the large number of operators and related vendor service providers on the Reservation, to name a few. Under these circumstances, there is an acute need for additional BIA and BLM regulatory oversight including enhanced Federal coordination with the Nation and increased funding to fully support Tribal regulatory needs.

As discussed above, oil and gas leasing activity on our Reservation is conducted in accordance with the IMLA or the IMDA. Through these laws, Congress created a statutory fiduciary relationship, whereby the government acts as a trustee for the Tribes in the context of mineral leasing of Tribal trust resources. Accordingly the three separate agencies within the Department of Interior ("Department") have jurisdiction over Indian leasing: the BIA, the BLM, and the ONRR. The Nation exercises concurrent regulatory jurisdiction with these Federal agencies over oil and gas leasing activities, and the Nation imposes and collects Tribal severance taxes.

Yet, though we have made tremendous progress through the years working with our Federal partners, the Nation believes there is room for improvement as far as coordination among the Nation and the Federal agencies in management and regulation. The Nation requests that Congress exercise oversight to consider a reform of current policies, procedures, practices and systems of the Department of the Interior, the BIA, the BLM, and the ONRR in order to ensure the proper and efficient discharge of the Secretary's trust responsibilities regarding oil and gas leasing on our Reservation.

B. Bankruptcy Declarations by Oil and Gas Lessees

The Nation is concerned about the bankruptcy filings involving entities that hold or assert rights to IMLA leasing interests covering thousands of acres on our Reservation. In some cases, it is apparent that these bankruptcy filings apparently have been pursued as a means to circumvent Federal and Tribal laws. The Nation has

already been involved in several bankruptcy proceedings to protect our interest in these IMLA leases. To address this alarming circumvention of Federal law and regulations, the Nation proposes that legislative or administrative fixes be put into place. Specifically, the law should be made clear that prior to any assignment or assumption of Tribal oil and gas leases, especially in the context of bankruptcy cases, both the Tribal mineral owner and the BIA must review and duly approve. A related issue is compliance by industry and enforcement by the BIA. It is important that Congress protect the integrity of IMLA leases by ensuring that Federal and Tribal oil and gas regulatory authority is not diminished through bankruptcy filings.

C. Hydraulic Fracturing

A burgeoning issue in natural gas production is the practice of hydraulic fracturing, also known as "fracking". We are also experiencing this development on our lands. BLM has provided the Nation its draft regulations on fracking, which would also apply on Tribal lands. The Nation has been involved in these discussions and is aware of both the concerns raised about environmental and water resource contamination and of overlapping and potentially burdensome Federal, Tribal, and state regulations. We continue to watch this closely and plan to file comments on BLM's draft regulations.

D. Split Mineral Estate Development

An important aspect of Energy Development on our Reservation is to protect the integrity of the Nation's sovereignty and control of its lands and the development of its resources. This aspect extends to the development of the split mineral interests on our Reservation. As noted above, our Reservation was not subject to the Allotment Policy and Law and therefore we retain 100 percent of the surface and mineral estate of our original Executive Order lands. However, the Nation subsequently purchased several large ranches adjacent to the Reservation and such lands and minerals were taken into trust and added to the Reservation. One particular ranch was taken into trust subject to a split mineral estate.

As background, in 1985, the Nation purchased a 55,000 acre ranch contiguous to our northeastern boundary. At the same time, we purchased an approximate undivided 25 percent interest in and to all oil, gas, and other minerals owned by the seller, who held 75 percent of the mineral estate. A third party entity holds the other 25 percent of the mineral interests. In November 1987, the Nation conveyed the surface lands of this property to the United States, to be held in trust. In December 1987, the Nation conveyed its interest in the mineral estate to the United States. On or about March 10, 1988, pursuant to 25 U.S.C. § 465, the United States accepted these conveyances and approved the trust status of the surface lands and the Nation's undivided interest in the subsurface mineral estate. On or about September 1, 1988, pursuant to 25 U.S.C. § 467, the United States added the surface lands and the Nation's undivided interest in the subsurface mineral estate to the Reservation. *See, Proclamation of Certain Lands as Part of the Jicarilla Apache Reservation,* 53 Fed. Reg. 37355–02 (Sept. 26, 1988).

In 2006, more than twenty years after the Nation purchased the ranch and eighteen years after the United States took into trust the surface lands and mineral interest the Nation purchased, the owner of the majority mineral interest entered into a lease with a third party for mineral development. The lease was not reviewed by the Nation or the BIA even though it purported to lease the Nation's trust lands and its undivided trust mineral interest.

Incidentally in July of 2006, the Solicitor's Office of the Department of the Interior essentially determined that neither the Nation nor the United States could "stop" development, which has led to a confusing opinion which created more questions than answers. In particular, the Solicitor's opinion ignores Supreme Court decisions, which clearly hold that Indian trust land cannot be leased or otherwise encumbered without the approval of Congress. Congress has passed statutes which provide such approval subject to important protections, such as the IMLA and the Indian Reorganization Act. The fundamental reason for these laws is that the United States holds title to Indian trust land, and therefore, the United States must protect the beneficial interest of the Indian nation. The Nation requested the Solicitor to rescind or modify its legal opinion and further requested to meet directly with the Solicitor. Our requests were not granted, though the law is clear that both Federal approval and Tribal consent are required prior to any development or encumbrance of Tribal trust minerals. Congress should exercise its oversight authority over the Department of the Interior to ensure that these important and fundamental principles are fully adhered to, especially in our case where we have worked so hard to protect reservation lands.

E. Dual Taxation of Oil and Gas Production in Indian Country.

Following our victory in the *Merrion* case, the Supreme Court considered another case arising from our Reservation which involved an oil and gas company's challenge to the imposition of the New Mexico Oil and Gas Severance Tax for activities on the Reservation arguing that those taxes were preempted by the State and Tribal regulatory schemes. In that case, States were granted permission to impose severance taxes on non-Indian activities involving the on-reservation production of Indian oil and gas reserves in the 1989 United States Supreme Court decision *Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989), which established a dual taxation burden on Tribal non-renewable trust resources.

Three years later, Congress acknowledged the problem with this type of dual taxation. In the Energy Policy Act of 1992, Pub. L. 102–486, an Indian Energy Resources Commission ("Commission") was established. Among several other objectives, the Commission was to (1) develop proposals to address the dual taxation of the extraction of mineral resources on Indian reservations; (2) develop proposals on incentives to foster the development of energy resources on Indian reservations; (3) identify barriers or obstacles to the development of energy resources on Indian reservations, (4) make recommendations designed to foster the development of energy resources on Indian reservations and promote economic development; and (5) develop proposals on taxation incentives to foster the development of energy resources on Indian reservations including, but not limited to, investment tax credits and enterprise zone credits.

In June 2001, the Nation attempted to address the dual taxation issue working with our then senior Senator, Pete Dominici, who introduced S. 1106, a bill to provide a tax credit for the production of oil or gas from deposits held in trust for, or held with restrictions against alienation by, Indian Tribes and Indian individuals. A year later, the National Congress of American Indians passed Resolution #BIS–02–060 to include S. 1106 in the National Energy Bill during conference between the United States House of Representatives and the United States Senate. However, the proposed bill was referred to the Committee on Finance, and was not passed into law.

To date, the issues the Commission was to address have not been fully addressed by either the Commission or Congress. As Tribes increase their economic development efforts, issues with dual taxation also increase. Dual taxation is an impediment and deterrent to economic development on Indian trust and restricted land. Dual taxation of Tribal oil and gas reserves creates an adverse economic environment which impedes self-determination and strong economic development in Indian Country. The United States Congress has the power to address the dual taxation of Tribal non-renewable resources by providing a Federal tax credit for the production of Tribal resources, much like the one Senator Dominici introduced in the 107th Congress.

It is important to note that the State of New Mexico enacted a state severance tax credit for producers who developed new wells after 1995. This is an important incentive to address the dual taxation issue. However, it is also important to note that many of the existing wells on the Nation's lands were placed in service prior to 1995, and that many other States with oil and gas producing Tribal lands do have similar law in place.

Thus, the enactment of a Federal tax credit for the production of oil and gas produced on Indian lands would be helpful in addressing this problem. The creation of such a tax credit would not only address the dual taxation of Tribal non-renewable resources, but would also help stimulate Tribal economies, and contribute to the United States energy policy of boosting domestic production to decrease reliance on foreign production. It is truly ironic that, as America seeks greater energy independence and undertakes hazardous energy sources such as nuclear energy and offshore drilling, Federal law burdens the development of safe Native American energy resources with dual taxation. This must end.

We respectfully request an opportunity to work with you to craft a provision outlining Federal tax credit for the production of oil and gas produced in Indian Country.

F. Electricity Transmission and Distribution Needs

The final important energy issue the Nation would like to raise with the Committee is our ongoing efforts to address the weak electricity distribution system that serves our Reservation, which has long afflicted our people with rolling blackouts and has suffered from longstanding load capacity deficiencies.

For decades the Nation has struggled with an unreliable source of electric energy. Sadly, the lack of reliable energy has had a direct impact on the quality of life of Tribal members and has slowed down and deterred the growth and business devel-

opment opportunities. Years of negotiation with the local electric cooperative that serves the Nation via a 26 mile 24.9kv distribution line has not changed this unfortunate situation. After years of study, the Nation has elected to construct its own 115kv transmission line, a line that will provide a reliable source of electric energy for years to come. Perhaps just as important, the line also has sufficient capacity to permit the Nation to facilitate the transmission of electric energy for other power providers across the state of New Mexico.

Most recently, the Nation has undertaken and accomplished the following tasks, all with an eye towards electric energy independence:

- In January of 2011 the Nation contracted with Public Service Company of New Mexico (PNM) to complete a System Impact Study to evaluate the Nation's proposed 115 kV transmission line;
- PNM completed the System Impact Study and issued its findings in June 2011. No adverse findings were noted;
- On September 9, 2011 the Nation passed a resolution authorizing and implementing the next phases of the Nation's project, including continued discussions with PNM regarding siting and interconnection agreements and authorizing the appraisal of the local electric distribution system;
- On October 18, 2011, the Nation, by Ordinance, authorized the creation of the Jicarilla Apache Nation Power Authority;
- In October 2011, the site of the physical interconnection and location of the switch station of the proposed 115kV line with PNM's 345 kV line was identified and blessed with Tribal leaders and local dignitaries;
- In November of 2011, the Nation put the local electrical cooperative on notice of its intent to acquire its electric distribution assets located on Tribal lands;
- In December of 2011, the Nation submitted its draft *Cultural Resource Survey for a Proposed Power Line Easement on the Jicarilla Apache Reservation in Rio Arriba County, New Mexico* to the BIA; and
- In January 2012, the Nation filed comments with the New Mexico Public Regulation Commission addressing the Commission's concerns about FERC Order 1000 and the planning of inter-regional transmission projects in the regional Southwest.

Going forward, the Nation continues to communicate with both PNM and the local co-op on a weekly basis in an effort to coordinate the construction and interconnection of its proposed 115kV transmission line and the acquisition of a distribution system by Spring 2014. As our project progresses, we will also continue communication with our New Mexico Congressional Delegation and this Committee regarding related Federal issues and support that needs to be addressed to bring this project to fruition.

IV. Conclusion

In closing, the Nation appreciates the opportunity to appear before this Committee and provide testimony on this extremely important subject. We look forward to working with the Committee to address these pressing Energy issues.

The CHAIRMAN. Thank you very much, Mr. Pesata.

Councilman Anketell, will you please proceed with your statement?

STATEMENT OF HON. THOMAS "STONEY" ANKETELL, TRIBAL EXECUTIVE BOARD MEMBER, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

Mr. ANKETELL. Thank you, Mr. Chairman.

My name is Thomas "Stoney" Anketell, and I serve as a member of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. In this capacity, I serve as Chairman of the oil and gas committee of the Tribal Executive Board.

Tribal Chairman Floyd Azure and my fellow Tribal Executive Board members send their best wishes and thanks to Chairman Akaka and the Committee for holding this important oversight hearing on energy development in Indian Country.

I also want to give special recognition to my Senator, Jon Tester.

I have spent a great deal of my career focused on Tribal energy development, particularly oil and gas development. Prior to serving on the Tribal Executive Board, I worked for the Federal Government, BIA oil and gas leasing, as well as in the private sector. Having viewed energy development from three sides, I have a good sense of what is and what is not working in Indian Country.

I want to share a little about Fort Peck. My reservation lies within the western part of the Williston Basin, which includes many oil-producing formations, including what is commonly known as the Bakken Formation and the Three Forks Formation. Since the 1950s, a major part of the Tribe's economy has been based on oil and gas development.

Over the last two decades, oil and gas development on the Reservation has tapered off significantly. This is about to change. The development of horizontal drilling techniques allows for better access to known oil and gas reservoirs in the Bakken and Three Forks Formations on our reservation. These reserves were previously inaccessible using conventional drilling techniques.

This represents a once in a lifetime opportunity for my Tribes: working in close collaboration with our Federal trustee to use our natural resources to create jobs and spur sustainable economic development to erase the high rates of unemployment and poverty on our reservation. Because despite our best efforts over the past decades to develop our natural resources the difficult of tapping these reserves, along with the challenges of dealing with multiple jurisdictions, have made it difficult for the Tribes to address the needs of our reservation. We can and must do better. But this will only happen if our Federal trustee works with us to avoid the mistakes of the past.

We are particularly concerned about the long delays in processing mineral leases and other critical energy development documents, which often frustrates our energy development plans and serves only to push oil and gas and other types of energy and mineral development off the reservation.

Time is money to energy producers. Federal inaction can often be as bad as wrong action, and we have fond instances where the BIA has simply failed to carry out its trust responsibility by waiting months and even years to act on mineral leases, appraisals, requests for drilling permits and other documents which require prompt action.

Just as time is money to the energy producers, money is money to energy producers. If the cost of on-reservation energy production is much higher than the cost of off-reservation energy production, energy producers will naturally locate where it is less expensive to operate. Federal permit fees and other energy development costs should not be higher on Tribal lands than they are on State lands.

To address our concerns, the Tribes ask that Congress work with Tribal leaders and the Administration to develop new legislation to, number one, establish review and approval times for Federal action on Indian Mineral Development Act agreements, leases, drilling permits and well-site permits. Number two, exempt Indian and Tribal trust lands from Bureau of Land Management drilling fees

and reduce Federal fees for other energy Development permits to bring them more in line with similar fees on State fee lands.

Number three, correct the double taxation of energy development on Tribal lands. And number four, provide special block grant funds to address the infrastructure needed for well-planned and coordinated energy development. Number five, ensure that bid deposits and other funds owed to Tribes and allottees are placed in interest-bearing trust accounts. And finally, number six, to better promote the development of wind and other renewable energy resources in Indian Country.

Finally, Tribes are entrusted with protecting their homelands for the next seven generations. Thus, as we consider positive job creation and economic development opportunities, we have a corresponding duty to ensure that these projects are carefully planned and studied to ensure that they do not put our sacred sites at risk or otherwise imperil sacred trust we have to preserve our homelands for future generations.

I thank the Committee for the opportunity to present this testimony. Thank you.

[The prepared statement of Mr. Anketell follows:]

PREPARED STATEMENT OF HON. THOMAS "STONEY" ANKETELL, TRIBAL EXECUTIVE BOARD MEMBER, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

I. Introduction

My name is Thomas "Stoney" Anketell, and I serve as a member of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. Tribal Chairman Floyd Azure and my fellow Tribal Executive Board members send their best wishes and thanks to Chairman Akaka and the Committee for holding this important oversight hearing on energy development in Indian Country. I have spent a great deal of my career focused on tribal energy development, particularly oil and gas development, and am pleased to be here today to share my testimony.

I hold a degree in petroleum land management from Rocky Mountain College in Billings, Montana. For fourteen years, I worked for the Department of the Interior in the Bureau of Indian Affairs (BIA) Realty and Mineral Development Divisions. Following my time at the BIA, I worked for several years in the private sector for Hunt Petroleum, ETO and Exxon Mobile. In this capacity, I assisted these companies in a cooperative effort with the Three Affiliated Tribes to bring major oil development to the Fort Berthold Reservation. Last but not least, I have served on the Fort Peck Tribal Executive Board for over 7 years and have experienced firsthand the challenges Tribal leaders face as we try to create jobs and increase sustained economic development on our Reservation. Having viewed energy development from the tribal, federal and private sector, I have a good sense of what is and is not working in Indian Country.

II. The Opportunities and Challenges of Energy Development on the Fort Peck Reservation

The Fort Peck Reservation consists of over two thousand square miles of land in northeastern Montana. The Assiniboine and Sioux Tribes and individual Indians own about 1 million acres of land. Over 6,700 Tribal members and non-member Indians live on the Reservation, along with over 3,200 non-Indians. We have been developing oil and gas reserves on our Reservation since the early 1950s.

The Fort Peck Reservation lies within the western part of the Williston Basin, which includes many oil producing formations, including what is commonly known as the Bakken formation and the Three Forks formation (see attached chart). Since the 1950s, a major part of the Tribes' economy has been based on oil and gas development. In the 1950s, the Tribes began to lease substantial amounts of tribal mineral lands to non-Indian companies for oil and gas development. In the oil boom of the 1970s and early 1980s, we asserted much greater control over this process, insisting on increased royalty rates for new tribal leases, entering into service contracts where the Tribes hired a private company to explore and develop tribal oil and gas for our own benefit. We also imposed a tribal severance tax on energy development. During the early 1980s, tribal revenues from oil and gas lease rents and

royalties came to over $8 million in some years. Over the last two decades, oil and gas development on the Fort Peck Reservation has tapered off significantly. This is about to change.

The development of horizontal drilling techniques allow for better access to known oil and gas reservoirs in the Bakken and Three Forks formations on our Reservation. These reserves were previously inaccessible due to the low porosity and low permeability of the Bakken and Three Forks rock formations containing the oil and gas, which made it difficult to extract the product using conventional vertical drilling techniques. The oil and gas is essentially trapped in the dense rock formation and cannot be extracted merely by drilling downward. Instead, the oil and gas must be released through horizontal drilling and a process called hydraulic fracture stimulation or more commonly "fracking." An April 2008 USGS Report determined that horizontal drilling and fracturing techniques could provide access to 3 to 4.3 billion barrels of recoverable oil in the Bakken formation alone. In 2011, Continental Resources Inc., declared that the "Bakken play in the Williston Basin could become the world's largest discovery in the last 30–40 years." Continental estimates the Bakken and Three Forks collectively hold 24 billion barrels of potentially recoverable crude oil equivalent—20 billion in oil and 4 billion in natural gas. While much of the recent Bakken play has focused on reserves in North Dakota, it is now moving back to Montana and to the Fort Peck Reservation in particular.

This represents a once in a lifetime opportunity for our Tribal government—working in close collaboration with our Federal trustee—to use the bounty of our natural resources to create jobs and spur sustainable economic development to erase the persistently high rates of unemployment and poverty on our Reservation. Despite our best efforts over the past decades to develop our natural resources in an economically and environmentally sustainable manner, the difficulty of tapping these reserves, along with the challenges of dealing with multiple jurisdictions, have made it difficult for our Tribal government to make a significant dent in the unemployment and poverty that still plague our Reservation. We can and must do better, but this will only happen if our Federal trustee works with us to avoid the mistakes of the past.

Like most reservations in Montana, our Reservation was opened to homesteaders a century ago, with trust and fee lands interspersed in a "checkerboard" ownership pattern. Consequently, the development of lands and resources within our Reservation is subject to oversight from many federal, state and tribal agencies and laws. If done properly and with respect for tribal sovereignty, Federal Government oversight and regulation should not unduly impede energy development or infringe on the proper exercise of Tribal governmental authority on our Reservation. Unfortunately, our experience has taught us that federal involvement is not always helpful, particularly in the field of energy development.

Federal and state agencies often do not coordinate well with one another or with Tribal agencies. This leads to long delays in the approval of required paperwork and in the implementation of tribally-beneficial energy development policies. While there are many excellent, highly motivated officials in the Department of the Interior (DOI) and the Department of Energy (DOE) working to provide useful technical assistance to Tribes, too often this technical expertise does not make it down to the BIA Regional Offices and Agencies on the reservations. BIA Regional and Agency staff often do not have adequate technical expertise in the complex field of energy development, and they do not always appreciate that "time is of the essence" when it comes to energy development.

The Fort Peck Agency's long delays in processing mineral leases and other critical energy development paperwork often frustrate our energy development plans and serve only to push oil, gas and other types of energy and mineral development off the Reservation. In fact, BIA approval of oil and gas leases can take so long that Indian probates have been known to open and close before any BIA action is ever taken. Time is money to energy producers. Federal inaction can often be as bad as wrong action, and we have found instances where the BIA has simply failed to carry-out its trust responsibility by waiting months and even years to act on mineral leases, appraisals, requests for drilling permits and other documents requiring prompt action.

Just as time is money to energy producers, money is money to energy producers. If the costs of "on-reservation" energy production is much higher than the cost of "off-reservation" energy production, energy producers will naturally locate where it is less expensive to operate. We have already seen this pattern in the Williston Basin and do not want to see it continue. Federal permit fees and other energy development costs should not be vastly higher on tribal lands than they are on state lands. By and large, the market should decide these costs and fees, not federal bureaucrats.

The United States must do a better job of honoring its trust obligation to all Tribal nations in the field of natural resource development. As discussed in the recommendation section below, DOI and DOE policymakers should work together to place knowledgeable oil and gas development experts at every BIA Agency where Tribes are actively working to develop oil production in the Bakken and Three Forks formations. These locally-based experts could help the BIA Agency staff improve their turn-around time for required approval of a wide-range of energy-related documents. These experts should also be qualified to aid Tribal leaders and BIA officials in planning for (and identifying funding resources for) the critical transportation infrastructure needed to support energy development in a safe manner. We have witnessed the damage created on the Fort Berthold Reservation to the tribal road systems when oil production truck traffic increased rapidly with no corresponding increase in the transportation infrastructure needed to support it. Roads were destroyed and lives were lost in preventable traffic accidents.

Congress and the Administration have important roles to play in helping all Tribes gain the benefits of sound and sustainable development of the Bakken and Three Forks formations. Congressional support for reservation-based transportation infrastructure, road maintenance and traffic safety program funding are critical to the safe and efficient development of the Bakken and Three Forks oil fields. Energy development activities also need to be coordinated with law enforcement officials, employee training center directors, environmental protection officials, school superintendent and housing programs directors so that the great crush of new people and economic activity on the Reservation does not overwhelm the Tribes' limited governmental resources in these areas. Fort Peck Tribal members must also be adequately trained and equipped for jobs in the oil industry.

Greater federal funding assistance and technical support for the tribal law enforcement, housing, environmental, career training and educational programs will help us ensure that the many positives that come from sound energy development are not overshadowed by the negative consequences of traffic congestion, traffic safety concerns and environmental damage.

Our Tribal government is entrusted with protecting our homelands for the next seven generations. We have a duty to our ancestors to ensure that the land they fought to preserve for us is maintained in a culturally and environmentally sound manner to sustain our people for generations to come. Thus, as we consider the positive job creation and economic development potential of Bakken energy development or other major projects such as the Keystone XL Pipeline, we have a corresponding duty to ensure that these projects are carefully planned and studied to ensure that they do not put our sacred sites at risk or otherwise imperil the sacred trust we have to preserve our homelands for future generations. I discuss these recommendations below in more detail.

III. Detailed Recommendations for Improving Reservation-Based Energy Develpment

This hearing is timely and important. I believe the specific recommendations set out below will ensure that Tribal nations—indeed the entire Nation—will be in a better position to capitalize on the great economic and job creation opportunity presented by the Bakken and Three Forks oil plays. These recommendations will also help Tribal nations become engines of economic growth in the broader field of energy development—including renewable energy development—for the benefit of all.

First and foremost, Congress should work with Tribal leaders and the Administration to develop new legislation to: (1) establish maximum review and approval times for federal action on Indian Mineral Development Act (IMDA) agreements, leases, drilling permits, well-site permits and other required paperwork; (2) exempt Indian and tribal trust lands from Bureau of Land Management (BLM) drilling fees and reduce fees for other energy development permits and paperwork to bring them more into line with similar fees on state fee lands; (3) correct the double taxation of energy development on tribal lands; (4) provide special block grant funds to address the transportation, housing, law enforcement, environmental and employment training needed for well-planned and coordinated energy development; (5) ensure that bid deposits and other funds owed to Tribes are placed in interest-bearing trust accounts; and (6) promote access to transmission lines to unlock the potential development of wind and other renewable energy resources in Indian Country.

Second, given that the passage of new legislation will take time and is uncertain at best in an election year, this Committee and the senior DOI and DOE policymakers present at this hearing should engage the key federal agencies, including the BIA, to take immediate action now to implement the recommendations and correct the problems I have indentified in this testimony. These corrective actions are explained below.

A. Improve Technical Capacity and Responsiveness at the Fort Peck Agency

The Fort Peck Tribes are leading the effort to prove that the Bakken Reserve is not limited to North Dakota. In the last year, the Fort Peck Energy Company (FPEC), which is the Tribes' energy development arm, has drilled two horizontal wells. We expect to fracture these wells in the next two weeks to determine their production capacity. This venture will provide much needed revenues for the Tribes and employment opportunities for our members, as well as support for America's energy independence. However, in undertaking this initiative, the Tribes and FPEC have encountered some serious issues regarding the capacity and technical expertise of BIA officials to do the job that federal law requires the BIA alone to do.

In addition to the length of time it takes for the BIA Agency to act on leases, permits and other paperwork, a great area of concern is the deficiencies within the BIA's Realty Division. Specifically, there is not a certified realty appraiser at the Fort Peck Agency. Consequently, the BIA's assessed values for rights-of-way and well-pad sites are sometimes 300 percent what they should be. For example, the FPEC paid $15,000 each for the two well-pad sites we expect to fracture soon. This price may be consistent with the amounts now paid in North Dakota, where major development activities are already ongoing, but it is inconsistent with normal appraising practices in a place where oil has not yet been located in paying quantities. FPEC paid this fee under protest because it did not have the luxury of time to dispute the BIA's actions. Available drilling rigs are in high demand and difficult to get so FPEC had to secure the well-pad sites even though it strongly disagreed with the BIA Agency assessment. This is but one example of our Federal trustee charging a tribally-owned corporation an improper assessment due to a lack of oil development expertise and appraisal experience.

We have encountered the same difficulty in securing rights-of-way ("ROW") for oil exploration activities. We are aware of one company that has cancelled its plans to develop two wells on the Fort Peck Reservation because the BIA Agency staff insisted on a ROW fee in excess of $28,000, which is far more than would be paid off-reservation. While it is of course important that allottees and our Tribal trust lands receive fair compensation for ROW usage, it is equally important that appraisals are not so unfair or arbitrary that they discourage legitimate oil exploration activities. In my view, these fees were arbitrary and were based on the unreasonable judgment of BIA personnel who are not trained appraisers. This lack of technical expertise discourages energy development on the Fort Peck Reservation because potential developers fear they will be subjected to arbitrary fees and costs they do not encounter off the Reservation.

Private business interests have often complained to the Tribal Executive Board that they do not like to deal with BIA Agency staff who too often seem uninterested in working with private companies in a fair, timely and efficient manner. I worked for the BIA for many years at the Fort Peck Agency, so please understand that I have no interest in being unnecessarily critical of the BIA Agency staff. The motives of these hard-working individuals may well be good, but more must be done to enhance the technical capacity and expertise of Fort Peck Agency staff in the areas of energy development, land use and ROW appraisals.

Senior DOI and DOE officials should work together to place highly-motivated, well-trained technical staff at the Fort Peck Agency and all other BIA Agencies located on Indian reservations within the active Bakken and Three Forks formation oil plays. These teams would be similar to the "one-stop" technical assistance team established on the Fort Berthold Agency and should include not only trained oil and gas lease specialists, but also a ROW specialist, a trained appraiser, and a geologist with oil and gas development experience. More than any other single recommendation, I believe this action will help seize this once-in-a-lifetime economic development opportunity for the Fort Peck Tribes, for other Tribes in the region and for our Nation as a whole.

To ensure rapid turnaround times for critical energy development permits and other required paperwork, I also propose the following mandatory timelines:

- IMDA agreements which now take over six months to process should be reviewed and approved within two, or at most three months.
- Oil and gas leases which currently take up to a year to process should be reviewed and approved within one month.
- Applications for a permit to drill (APDs) which currently take up to six months to process should also be reviewed and approved within one month.
- ROW documents that now take many months to process should also be approved within one month.

- Communitization agreements should be reviewed and approved within two months.

Along these same lines, I also recommend that additional federal resources and effort be provided to speed up the work on critically important cadastral surveys for the Fort Peck region.

B. Reduce BLM Drilling Permit Fees and Other Unnecessarily High Federal Fees

Another disincentive to drilling on Indian allottee and tribal trust lands is the $6,500 that the BLM charges for a permit application to drill on federal land, including Indian and tribal trust lands. In FY 2010, Congress increased this fee from $4,000 to $6,500. In theory, this fee is intended to cover the BLM's cost of processing the drilling permit application. However, the fee is highly disproportionate to the $75 that the State of Montana charges to process the same kind of permit on State fee land. I see no good reason for the BLM fee to be so high on Indian and tribal trust lands and doubt Congress even considered the potential negative impact on oil and gas development in Indian Country when it made this change in the law. I ask Congress to correct this mistake and exempt Indian and tribal trust lands from the BLM fee so that the Fort Peck Reservation does not continue to be an island of poverty and missed opportunity in a sea of prosperous oil and gas development in our Region.

C. Ensure That Lease Bid Deposits are Placed in Interest-Bearing Trust Accounts

I also seek Congressional support for legislation—or at a minimum renewed pressure for administrative action—to ensure that bid deposits for oil and gas lease sales on Indian and tribal trust lands are once again held in interest-bearing accounts. Historically, bid deposits were held in interest-bearing trust accounts and, upon Secretarial approval of the lease or contract, both the principal and interest were paid to the Tribal and individual Indian landowners. However, DOI policy changed several years ago despite our strong protests. Now, DOI holds bid deposits and other advance payments made by successful bidders in noninterest-bearing federal accounts until the lease or contract is approved by the Secretary.

As noted above, it can unfortunately take months and sometimes even years for a successful bidder to secure BIA approval of a mineral lease. Consequently, these bid deposits sit idle in federal accounts without earning interest for the beneficial land-owner, whether a Tribe or an Indian allottee. By the time the funds are finally paid to Tribes and individual Indian landowners, the value of the bid deposit has been eroded by inflation.

In my view, DOI's current practice is illegal and contrary to the federal trust responsibility. Our Tribal leadership has discussed this matter with senior BIA and DOI Office of Trust Fund Management officials, but they have responded by stating that they do not believe they have the statutory authority to place these funds at interest. At the same time, these officials agreed that bid deposit funds should start earning interest once the successful bidder is selected, and that Tribes and individual Indians should not bear the costs of the time that it takes for the BIA to review and approve leases.

Although I believe DOI has sufficient legal authority and a clear trust obligation to place bid deposit funds at interest now, legislation mandating it would solve the problem once and for all and avoid future litigation over DOI's improper handling of these funds.

D. Eliminating the Problem of Dual Taxation

The Fort Peck Tribes were one of the first Tribes in the country to institute a severance tax on oil and gas development on our Reservation. However, the 1989 U.S. Supreme Court decision in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S.163 (1989) allows States to tax certain activities by non-Indian companies on Indian and tribal trust lands. When *Cotton* applies to allow States to impose taxes in addition to Tribal taxes, economic activity on tribal lands is discouraged. Tribal and State taxes are owed for energy development activities in Indian Country where only State taxes must be paid for energy development elsewhere. This double taxation creates a serious disincentive to energy and mineral development on Tribal lands and is inconsistent with well-established federal policies designed to promote Tribal economic development and self-sufficiency.

Our Tribal government has long urged Congress to overturn the poorly decided *Cotton* decision and to bar State taxation of commercial activities on Indian and tribal trust lands, but Congress has repeatedly failed to act. Therefore, the only way we could avoid the disadvantage *Cotton* creates was either to forego our right to tax energy development on Reservation lands altogether or seek to enter into an innovative tax sharing agreement with State of Montana.

As an example of our Tribes' leadership in this area, I am pleased to report that the Fort Peck Tribes reached an historic tax-collection and tax-sharing agreement with the State of Montana on March 25, 2008. While we are pleased with this agreement and believe it presents a model for other Tribes to follow, we also continue to believe it is a poor substitute for congressional action. Simply put, the *Cotton* ruling was wrongly decided. I ask Congress once again to pass legislation returning full taxing authority to Tribal governments for commercial activities on Indian and tribal trust lands.

E. Eliminating Barriers to Wind Energy and Other Renewable Energy Projects

The Fort Peck Tribes believe further development of wind energy is an important part of America's energy independence. Montana is one of the five windiest states in the union and the Fort Peck Reservation in northeast Montana presents one of the greatest opportunities for wind energy development in the entire State. With the support of DOE and other federal agencies, the Fort Peck Tribes spent many years researching and quantifying our wind energy resources, and we know that the potential energy that can be derived from wind power is considerable. With proper support from the Federal Government and better connections to transmission lines on the national energy grid, we could attract reputable business interests to partner with us to develop commercially viable and sustainable wind energy projects on the Fort Peck Reservation.

Unfortunately, we and many others in Montana who wish to develop their wind energy resources are severely hampered by ever-changing national energy policies and by a lack of inexpensive and accessible transmission line capacity. Tribal wind energy projects cannot get off the ground if there is no commercially viable way to get our abundant wind power to energy consumers. Many of the transmission lines in Montana were built and are maintained by the Western States Power Authority (WAPA), a federal agency. In 2005 Congress directed the Secretaries of the Army and the Interior to conduct the Wind and Hydropower Feasibility Study (WHFS), which was completed in 2009, to determine the feasibility of blending wind generation with hydropower on the Missouri River, and to evaluate tribal wind generation. While the WHFS concluded that a 350MW Tribal Wind Demonstration Project was not feasible, it recommending studying facilities under 300MW and indicated that WAPA believed economic risk could be mitigated through the development of a 50MW facility, if authorized and funded prior to 2015. Unfortunately, neither WAPA, nor Congress has undertaken the development of a Tribal Wind Demonstration Project. Congress should now take action to authorize and fund a Tribal Wind Demonstration Project, at Fort Peck, and others throughout Indian country, as its next step in obtaining American energy independence.

F. Developing Environmentally and Culturally Sustainable Energy Projects

Finally, related to our interest in wind energy development is our foundational belief that all economic development projects must be undertaken in ways that protect and enhance our Tribal homelands, sacred sites and cultural resources. We fully support job-creation initiatives and economic development opportunities that allow us to develop our natural resources and improve the quality of life for our Tribal members. However, all of our development efforts must be balanced with our sacred commitment to preserve our Tribal homelands and to protect the spiritual and cultural heritage which our ancestors suffered so much to preserve for future generations. The people residing on our Reservation need clean land, water, and air in order to live and work in a healthy environment. In addition, ranching and farming are vital industries on the Fort Peck Reservation so they too must be able to coexist and thrive alongside energy development. Otherwise, we have simply promoted one important Tribal industry at the expense of others, which would make no sense, economic or otherwise.

As a Tribal government, we endeavor to support only those initiatives that are done in a manner that is backed by sound science and that minimizes potential adverse impacts to our Tribal lands and resources. We are uncertain whether the Keystone XL Pipeline falls in this category. While we realize there are many potential economic benefits to the Keystone project, we are deeply concerned that the proposed pipeline route currently runs under the Missouri River. The Missouri River is the source of our drinking water and provides countless benefits to our Tribal members and others residing on our Reservation. We are well aware of the recent oil spill in the Yellowstone River and the harm that spill caused to the surrounding area.

Moreover, while I have suggested improved technical capacity and responsiveness within the Federal Government, as well as a reduction in certain fees that I believe should be decided by market conditions, I do not suggest the elimination of federal

oversight over any projects that have an impact on Indian trust resources and sovereign Tribal governments. We ask the Committee and Congress to give careful consideration to the interests of those that may be adversely impacted by the Keystone project and to uphold the federal trust responsibility owed to Indians.

I thank the Committee for the opportunity to present this testimony.

The CHAIRMAN. Thank you very much, Councilman, for your testimony.

Ms. KAUHANE. will you please proceed with your testimony?

STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Ms. KAUHANE. Aloha, Chairman Akaka, members of the Senate Committee on Indian Affairs.

The CHAIRMAN. Aloha.

Ms. KAUHANE. My name is Michelle Kauhane, and I thank you for the invitation and opportunity to provide testimony on behalf of the State of Hawaii Department of Hawaiian Home Lands. Our State agency is responsible for the administration of the Federal land trust established by Congress through the Hawaiian Homes Commission Act of 1920, establishing approximately 203,000 acres of trust lands throughout Hawaii for the homesteading of Native Hawaiian people, similar to the trust lands established under the Indian Allotment Act for residential, farming and pastoral purposes.

Today I will provide you with a brief overview of energy development in Hawaii, highlight two of the energy development projects currently happening on our trust lands and offer four recommendations to increase energy development on these lands.

First, a brief overview of energy development in Hawaii. Hawaii is the only State within the United States that is 90 percent dependent on imported fossil fuels for its energy. Hawaii has untapped indigenous, renewable resources that can be utilized, including wind, solar, geothermal, wave energy, biomass, hydroelectricity and ocean thermal energy conversion. The lands in the Hawaiian Home Lands trust host many of the robust energy sources that can contribute to a clean energy future with a clear opportunity to be at the forefront of energy development in the State.

As a Federal land trust administered by State government, we must work with Congress, with the Department of Energy and with the Department of Interior to advance energy development to benefit the Hawaiian Home Land trust, our State and the Nation. While we have only begun to understand the vast opportunities, I will highlight two examples of energy-related projects, one that is complete and one currently underway.

First, the Kaupuni Residential Subdivision, completed last year. In January 2011, the Department of Hawaiian Home Lands hit a major milestone with the development of 19 homes in Kaupuni Village in Wai'anae on O'ahu. Kaupuni was the first LEED–Platinum single family affordable housing subdivision in the Country, achieving a net zero project with a holistic, sustainable community plan for families who reside within the community.

Second, a commercial grade solar farm currently under development by Native Hawaiians residing on the island of Kauai in

Anahola. DHHL is currently engaged in a very unique and exciting partnership being co-developed by a non-profit utility cooperative and the Homestead Community Non-Profit Development, made up of residents who reside in the community of Anahola. It represents the first time a solar farm is being pursued with Hawaiian homesteaders as a huge part of the development team. Prior to this, most of the lands are leased out and developed by third parties, whereas this project, our homesteaders are at the forefront.

Aside from the $62 million 12 megawatt solar farm being the single largest solar farm being developed in the State, the benefit to the local homestead community has been cornerstone strategy that includes cultural and environmental protection, employment and small business opportunities, energy revenue sharing for the community-based project, and of course, the mentoring of Native Hawaiians on the development team.

Beyond these projects, potential resources on Hawaiian home lands also include hydro, geothermal, wind and many others. What we know from just the initial energy-related projects pursued in the last three years is that the potential is real and achievable.

The Department of Hawaiian Home Lands makes four recommendations to increase energy development on our trust lands. First, the implementation of SUTA to access capital and tax credits. Implementation of SUTA as eligible criteria in existing and key Federal programs will have a positive impact across the Nation.

Number two, technical assistance to increase Native energy capacity and collaboration. Technical assistance and capacity building are vital tools to the development of energy resources in trust land areas.

Third, energy transmission and infrastructure capital. We recommend Federal investments in smart grid technologies dedicated to trust land areas. And fourth, a streamlined and transparent land use policy. Successful energy development requires low-cost capital, excellent partners and clear land use policies that honors the trust status and original intent of our Hawaiian Homes Commission Act.

Tribal and Hawaiian Home Lands holds some of our Nation's most precious energy resources and remain some of the most underserved areas across the Nation. With specific attention to the development of Federal energy policy dedicated to trust land areas, the potential of Native lands in playing a significant role in our Nation's energy future becomes possible.

Chairman Akaka, I thank you for the opportunity to participate this afternoon.

[The prepared statement of Ms. Kauhane follows:]

PREPARED STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Aloha Chairman Akaka, Vice-Chairman Barasso and Members of the Senate Committee on Indian Affairs.

My name is Michelle Kauhane, and I thank you for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands (DHHL). Our state agency is responsible for the administration of the federal land trust established by Congress through the Hawaiian Homes Commission Act of 1920 (HHCA), establishing trust lands for homesteading by the native Hawaiian people similar to trust lands established under the Indian Allotment Act of 1906 for residential, farming and ranching of eligible American Indians.

Hawaiian Trust Lands Under the Hawaiian Homes Commission Act

Since Hawaii's overthrow as an independent nation and the subsequent annexation to the United States, one of the most significant federal policy achievements for native Hawaiians was the enactment of the HHCA. It began as a resolution in the territorial government in Hawaii, and advocated by the territory's congressional representative, Prince Jonah Kuhio Kalanianaole. Similar to other land allotment acts of that era for Alaska Natives and American Indians, the HHCA established a land trust of approximately 200,000 acres of land located in every county in the state, to provide land for residential, agricultural and pastoral homesteading. In addition, the HHCA encourages economic development on trust lands through land licenses for commerce and public purpose development.

The Act was incorporated into Public Law 86–3, the Hawaii Statehood Act in 1959, as a condition of statehood, which required the new state government to administer the Hawaiian Home Land trust with federal oversight by the Department of Interior and Congress. DHHL and its administration of the land trust is governed by a 9-member Hawaiian Homes Commission appointed by the Governor of the state of Hawaii. Its Director, a member of the Governor's cabinet, also serves as the Chairman of the Commission. In short, DHHL is a state agency managing a federally created land trust to reconnect native Hawaiians to their ancestral lands in Hawaii.

Self-Determination of Native Hawaiians

In Hawaii, we do not refer to our Native peoples as tribal members or Indians, although it is clear that Congress intended the inclusion of Native Hawaiians in the federal policies of self-determination. The most common terminology most understood in the islands to represent native Hawaiians eligible for the HHCA land trust, are "beneficiary" or "homesteader". Moreover, the lands in the Hawaiian Home Land trust are referred to as "homesteads" rather than reservations. For the purposes of our testimony, these terms will be used to describe native Hawaiians and land areas under the HHCA, which was enacted by Congress during a policy period of the Federal Government wherein land trusts and Native allotment programs were commonly established for Native peoples in Indian Country and Alaska. The HHCA was an extension of those policies, as well as the federal policies of self-determination that have been well documents over the last century.

For the beneficiaries of the HHCA, self-determination and self-governance is expressed through the existence of beneficiary organizations governed by beneficiaries or homesteaders themselves. These organizations, called homestead associations, have existed for decades, and have representative leadership through democratically elected processes for each homestead land area on differing islands within the state. Just as tribes are powerful partners with the Federal Government, homestead associations are vital to our state's success in implementing the tenets of the HHCA as Congress intended.

Energy Development in Hawaii

Hawaii is the only state in the United States that is 90 percent dependent on imported fossil fuels for its energy.[1] Not only is the state dependent on fossil fuels for transportation, but approximately 75 percent of Hawaii's electricity is generated utilizing imported fossil fuels. The volatile price of oil, therefore, has a tremendous impact on Hawaii's economy and its rippling effect is felt by every Hawaii resident and business. Families all across the state are paying a disproportionate share of household income on utilities. Businesses are inhibited by soaring energy costs, tamping down on growth and the availability of equity capital to expand.

While it would be simplistic to view the State of Hawaii's situation as isolated, our energy dependence on fossil fuels directly impacts national security given Hawaii's strategic location in the Pacific Ocean. We serve as host to four major military installations for the United States Army, Air Force, Marines, and Navy as well as the headquarters for the United States Pacific Command (USPACOM), the combatant command focused on the Asia-Pacific region. Hawaii's energy and food security is therefore a national priority that cannot continue to be ignored.

State government, federal agencies and the energy industry are working together more than ever to bring an energy independent reality to Hawaii and its Pacific location. Hawaii has untapped indigenous, renewable resources that can be utilized, including wind, solar, geothermal, wave energy, biomass, hydroelectricity, and ocean-thermal energy conversion. In 2008, the State of Hawaii signed a Memorandum of Understanding (MOU) with the U.S. Department of Energy to address

[1] Hawaii Clean Energy Initiative Working Group Policy Recommendations for the 2010 Hawaii State Legislative Session, November 20, 2009, p. 1.

this situation, and set the goal of 40 percent generation from renewable energy sources and 30 percent increase in energy efficiency based on projected energy use levels in 2030. The Hawaii State Legislature has enacted a Renewable Portfolio Standard and an Energy Efficiency Portfolio Standard to reflect these goals, which are commonly referred to as a goal of 70 percent clean energy in 2030.

While Hawaii has robust renewable resources, the lands upon which these types of projects can be developed are limited given zoning and urbanization constraints. The lands in the Hawaiian Homes land trust host many of the robust renewable resources that can contribute to Hawaii's clean energy future with a clear opportunity to be at the forefront of energy development in the state.

As a federal land trust administered by state government, we must work with the Congress, with the Department of Energy, with the Department of Interior, to advance robust energy development to benefit the Hawaiian Home Land Trust, our state and the nation.

Examples of Energy Projects on Hawaiian Home Lands

The Hawaiian Homes Commission established an adhoc Energy Committee to bring focus to energy development and to encourage maximum participation of DHHL and homesteaders. While we have only begun to understand the opportunities, following are just a few examples of energy related projects that have been completed, underway or in preliminary evaluation:

Kaupuni Residential Subdivision. In January 2011, DHHL hit a major milestone with the award of 19 LEED-Platinum homes at the Kaupuni Village in Wai'anae, O'ahu. Kaupuni was the first LEED-Platinum single-family affordable housing subdivision in the country, achieving a net-zero project for families living in the homes constructed.

With private business constructing the project, DHHL planned the subdivision and qualified families to purchase the homes on residential land awards as defined under the HHCA. The Kaupuni project represents federal, state and local partnerships, as well as public and private industry partnerships to explore and implement a net-zero project approach. This pilot project will be a key informant to additional housing development projects across the state.

Commercial Grade Solar Farms by Energy Developers. There are at least four solar farms being developed on Hawaiian Home Lands by a variety of local and national solar developers. DHHL designates land for development, and developers capitalize the project, work with utility entities to purchase power, and construct and operate the solar farms. An important aspect of solar projects on Hawaiian trust lands, has been the implementation of beneficiary consultation and the inclusion of a benefits agreement that encompasses homestead priorities into projects on the front end.

Commercial Grade Solar Farm by Native Hawaiians. One of these projects is a one-of-akind partnership, being co-developed by a non-profit utility cooperative (the Kauai Island Utility Cooperative) and a homestead community development nonprofit representing four different Hawaiian homestead associations (Homestead Community Development Corporation). It represents the first time a solar farm is being pursued with Hawaiian homesteaders as part of the development team.

The project will produce a 12MW solar farm, the single largest in the state of Hawaii, with estimated development costs of $62 million. The project is eligible under the federal 1603 Energy Tax Credit Incentives, combined with state of Hawaii incentives, to bring a total of $24 million to the project. The USDA Rural Utility Service is a key source of debt capital, with low interest rates, which combined with the federal and state incentives make the project possible and delivers cost savings to an entire county of rate payers. In addition, the economic impact and benefit to the local homestead community has been a cornerstone strategy that includes but is not limited to cultural and environmental protections, employment and small business opportunities, energy revenue sharing for community based projects in the region and the all-important mentoring of Native Hawaiians on the KIUC development team.

Agriculture to Energy Projects. One of the exciting areas of energy development on Hawaiian Home Lands is in the cross utilization of homestead farming and ranching that connects food production to energy production. On Hawaii Island, homestead leaders are exploring the use of Hawaiian Home Lands to revitalize agriculture and ranching through the connectivity of producers to local markets, post harvest waste to energy development, and building pipelines of next generation farmers and ranchers. The project highlights include a Veteran to Farmer program to engage veterans in the agricultural industry, the development of post-harvest facilities to improve financial returns on farming, and generate

methane energy produced by an anaerobic digester that utilizes green waste, creating low cost energy. The project is in very preliminary phases, but has attracted the attention of Department of Defense officials due to its energy generation aspect, as well as food security it can provide to military installations in the Pacific.

Consumer and Business Solar Retrofits. One of the areas of energy development that DHHL has focused on with homestead communities and local Native Hawaiian community development nonprofits is the retrofit of households, public facilities and businesses located on Hawaiian Home Lands. The imperative is to retrofit existing structures to increase monthly family disposable income, create cost savings for business, and for Hawaiian Home Land areas to be at the forefront of energy transformation in our state. We believe that we must make bold moves to even the playing field with more affluent populations by creating opportunities for homestead areas to leave the electrical grid. Over a 2-year period, our partner, the Council for Native Hawaiian Advancement (CNHA), has installed 200 solar water and photo voltaic systems on households and business facilities, with additional capital leveraged through the U.S. Treasury CDFI program to deploy additional capital in our low to moderate income neighborhoods.

Beyond residential energy efficiency projects, agriculture to energy, and solar farms, potential resources on Hawaiian Home Lands also includes hydro, geothermal, wind and many others. What we know from just the initial energy related projects pursued in the last 3 years on Hawaiian trust lands, is that the potential is real, and achievable. We also know that energy development is economic development, creating real jobs inside our home land areas.

Recommendations to Increase Energy Development on Trust Lands

Hawaiian Home Lands, like Indian reservations and Alaska Native villages, are unique trust land areas that require federal land trust knowledge in any energy development partnership as well as excellent partnerships with federal agencies such as the Department of Energy, the Department of Interior and the Treasury Department at a minimum. We offer the following recommendations and input to the Committee to create a positive environment for energy development on trust lands:

1. Implement SUTA to Access Capital and Tax Credits. Congress codified the term, Substantially Underserved Trust Areas (SUTA) (9 USC 936(f)), in the 2008 Farm Bill (P.L. 110–246). SUTA lands utilize the definition of trust lands that have been used since 1992 as part of the Native American Veteran Home Loan program. SUTA lands are trust lands defined to be any lands that: (1) is held in trust by the United States for Native Americans; (2) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (3) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602 (g), (j)); or (4) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land.

The U.S. Department of Agriculture (USDA), through the Rural Utility Service (RUS) is authorized to provide grants and loans at rates as low as 2 percent to support the construction, acquisition or improvement of infrastructure on SUTA lands. This is a vitally important tool that recognizes that efforts to increase access to capital should include trust lands as a category *in addition to low-income and rural communities.*

One immediate action that can be taken which would yield significant positive impact not only on trust lands in Hawaii but throughout the nation would be to make SUTA lands automatically eligible for New Market Tax Credits (NMTC) administered by the U.S. Treasury Department. The NMTC program is one of the most successful federal programs in bringing private investment capital to underserved communities. Making SUTA lands automatically eligible for the NMTC program would have no cost to the U.S. government and would advance the incentives and awareness of economic development opportunities by capital markets.

Implementation of SUTA as eligible criteria in existing and key federal programs will have a positive impact across the nation, since 35 states in the country have Tribes and/or congressionally established trust lands.

2. Technical Assistance to Increase Native Energy Capacity & Collaboration. Technical assistance and capacity building are vital tools to the development of energy resources in trust land areas, and the economic self-determination of all Native peoples. Active participation by Homestead Associations, Indian Tribes

and Tribal Corporations leads to project development efficiencies, best practices in operations and maintenance, and economic multipliers to invest in education, healthcare, job creation, etc in trust land communities.

It is a positive cycle that serves trust land areas, surrounding communities, state economies and national priorities. We recommend strengthened and regional Technical Assistance funding awards to Tribes and Native Hawaiian Organizations to focus on energy development on trust lands in their respective states.

We further recommend the coordination of federal agencies in bringing Native Hawaiian, Alaska Native and American Indian leaders together for consultation and training sessions, which provide outstanding opportunities to be exposed to best practices in other areas of the country, and solutions developed by others to address unique trust land challenges. One of the missed opportunities that can be avoided is the power of knowledge sharing among Native leaders that is made possible through opportunities to collaborate and learn together. This is particularly true for Native Hawaiians that are often separated from their counterparts in Indian Country.

3. Energy Transmission & Infrastructure Capital. Lack of infrastructure or upgrades to aging infrastructure and energy grids to develop trust land areas continues to be a primary challenge in transforming our energy dependency from fossil fuel based to renewable and clean energy. We recommend federal investments in smart grid technologies dedicated to trust land areas, as well as targeted investments in upgrading and expanding transmission improvements, including roads.

We further recommend the coordination of federal agencies such as the Department of Interior, Energy, Transportation, HUD and USDA, to identify existing federal programs that support energy infrastructure development that are under-utilized by trust land communities. Again, the addition of the SUTA definition to the income and rural criteria used in most federal programs would ensure that trust land projects are included as priorities.

4. Streamlined and Transparent Land Use Policies. Successful energy development requires low cost capital, excellent partners and clear land use policies that honors the trust status and original intent of the HHCA. We recommend engagement by federal agencies, such as the Department of Interior, to share its best practices and pitfalls with DHHL learned over decades of Indian trust land management, including its Tribal Consultation methodologies and public comment processes through the federal register. Further, that the DoI, Office of Native Hawaiian Relations collaborate with the Bureau of Indian Affairs to publish energy project profiles of projects under development on Hawaiian home lands and Indian reservations as well as land use policies and procedures that work well, and that could be improved.

Just as we are anxious to learn from American Indian and Alaska Native projects located around the country, we welcome the opportunity to share the innovations being developed on Hawaiian Home Lands in Hawaii to advance energy independence, economic development and the generation of clean and renewable energies.

Conclusion

Chairman Akaka, Vice-Chairman Barrasso, Members of the Indian Affairs Committee, I thank you for the opportunity to participate this afternoon. The aboriginal, indigenous peoples of Hawaii are no different than those of other states in the country—adept, scientific, and practitioners of lifeways that utilize natural resources in a responsible, balanced, and common-sense manner, practices that have sustained our collective peoples for thousands of years.

Tribal and Hawaiian Home Lands hold some of our nation's most precious energy resources, and remain some of the most under-served areas. With specific attention to the development of federal energy policy dedicated to trust land areas, the potential of Native lands in playing a significant role in our nation's energy future becomes possible. Access to capital, implementation of the SUTA definition in federal program eligibility, dedicated technical assistance resources and infrastructure investments, along with streamlined land use policies are areas that this committee can champion to create a new reality in energy development.

We would welcome members of the Committee to visit our home lands along with constituents from Indian Country to engage in a dialogue of possibilities and opportunities.

Thank you for the invitation to present testimony and to share the work of Native Hawaiians in energy development on the trust lands of the HHCA.

The CHAIRMAN. Thank you very much, Ms. Kauhane.

Now I call on Vice President Rex Lee Jim for your testimony. Please proceed.

STATEMENT OF HON. REX LEE JIM, VICE PRESIDENT, NAVAJO NATION

Mr. JIM. Chairman Akaka, Ranking Member Barrasso and distinguished members of the Committee, thank you for the opportunity to testify before you today concerning energy development on Tribal lands.

Our Nation needs to foster regional economic development to see us through these tough economic times. Unfortunately, unlike most States, the Navajo Nation and indeed, many other Tribal nations, face significant regulatory burdens placed on us by the Federal Government. I will focus my testimony on the regulatory hurdles preventing us from successfully developing a sustainable economy.

Large energy projects provide the cornerstone of economic development. They infuse local economies with dollars earned from high-paying jobs and draw in businesses that serve these flourishing communities. In addition to jobs and business development, these projects provide the revenues the Navajo Nation uses to develop infrastructure and deliver social services.

It is these revenues that will allow the Navajo Nation to stand on its own. However, the same government that forced us onto reservations now punishes us further because our lands are subject to Federal regulation that suppresses Tribal energy development. Perhaps the greatest hurdle to energy development in Indian Country is the applicability of the NEPA to Tribal lands and resources. Indian Tribes do not hold legal title to Tribal trust lands, which are titled to the Federal Government.

BIA approval of Tribal leases and rights of way establishes a major Federal action triggering NEPA and the EIS/EA process. The Navajo Nation recognizes that Congress has taken action to relive the NEPA burden with Tribal energy resource agreements. However, even though the Navajo government has been developing the capacity to take advantage of the TERA, we still need assistance. We urge Congress to provide funding for Tribal capacity building.

The Navajo Nation is also seeking an avenue for Tribal energy development free of the NEPA process by amending 25 U.S.C. Section 415(e) to authorize the nation to issue mineral leases without Federal approval. It would be helpful for future NEPA exceptions for Tribes to have more express language exempting Tribal actions from NEPA compliance.

As a result of the treatment of Indian lands as Federal lands for purposes of NEPA compliance, the status of Tribal trust lands creates additional hurdles for development not present on Tribal fee lands. Tribal fee lands are still subject to State and local taxation and regulation. This circumvents Tribal jurisdiction over Tribal lands.

Congress should consider developing a new land status for Tribal trust lands that is not Federal title and would allow Tribes to develop their own land tenure systems for economic development purposes. Such a change in status should ensure that Tribal lands remain free of State taxation and regulation.

Additionally, certain parties believe that the Federal Government has the right to determine the value of Tribal lands and resources. Congress should clarify through legislation that the value of Tribal lands and resources shall be determined solely by the responsible Tribe.

Finally, the Navajo Nation urges Congress to recognize the unique situation of Indian Tribes as similar to that of developing nations in the international community and prevent Federal agencies from imposing regulatory requirements on Tribes that are more stringent than required by Federal law. For example, the Desert Rock energy project would have been the cleanest coal-fired power plant in the U.S., but it was derailed by overzealous regulation by EPA and DOI, requiring the Navajo Nation to implement unproven and prohibitively expensive technologies.

A further example of EPA's over-regulation is the recent requirement under the Regional Haze Rule and MACT for SCRs. This technology is unreasonable and unnecessary, as far cheaper existing technologies are available that satisfy EPA's objectives.

Congress should consider legislation requiring the least costly regulatory requirements on Tribes, consistent with Federal law. The unreasonable requirements of Federal agencies costs Tribes essential jobs and revenues. The way to accomplish economic self-sufficiency is to minimize Federal involvement in Tribal energy development and maximize Tribal decision-making.

Thank you.

[The prepared statement of Mr. Jim follows:]

PREPARED STATEMENT OF HON. REX LEE JIM, VICE PRESIDENT, NAVAJO NATION

Chairman Akaka, Ranking Member Barrasso, and distinguished members of the Senate Committee on Indian Affairs. Thank you for the opportunity to testify before you today concerning energy development on tribal lands. The Navajo Nation and the United States are at a crossroads: high unemployment, deteriorating or non-existent infrastructure, a lack of capital investment, and a need for low cost power have come together as the nation faces some of the worst economic conditions since the Great Depression. Our nation needs to foster regional economic development to see us through these tough economic times. Unfortunately, unlike most of the states of our great union, the Navajo Nation faces significant regulatory burdens placed on us by the Federal Government that hinder development. In terms of energy development, the most onerous of these regulations come from the Environmental Protection Agency, but we are also burdened by the regulations from many federal agencies. My testimony this morning will address the conditions we face on the Navajo Nation, our plans for future energy development, and the regulatory hurdles preventing us from successfully developing a sustainable economy.

The Navajo Nation has approximately 300,000 members, with nearly 200,000 members living on more than 27,000 square miles of Navajo land. Fifty-five percent of our people are unemployed and nearly 50 percent live below the federal poverty line. Our annual per capita income is approximately $6,800, more than 40 percent of Navajo's live without water services or electricity, and 90 percent lack natural gas. However, in the face of this poverty the Navajo Nation is rich in natural resources. We have abundant renewable energy resources such as solar and wind, substantial oil and natural gas reserves, and nearly 150 years of low cost coal.

The Navajo Nation is seeking to leverage all of our available assets to spur economic development. Economic development requires the presence of land, water, power, and human capital. The Navajo Nation is blessed with land, water, and a young and dynamic workforce. The power component of this recipe for success has two pieces, the power needed to run businesses, and the tax and royalty revenues that can be realized from power generation.

Studies have shown that a sustainable economy requires that dollars circulate a minimum of three times within a region. Currently, the majority of dollars earned by Navajos are spent in the towns and business that border the reservation because

the Navajo Nation lacks basic businesses. Large energy projects provide the cornerstone of economic development by infusing local economies with dollars earned from high paying jobs, and drawing in the subsidiary businesses that serve these flourishing communities. In addition to jobs and business development, these projects and the communities that thrive around them raise the tax base and royalties from which the Navajo Nation can draw to develop infrastructure and provide social services. It is these revenues that will allow the Navajo Nation to be independent from the Federal Government and stand on its own.

To that end, the Navajo Nation has a multi-pronged approach to develop these cornerstones of economic self-sufficiency. The Navajo Nation recently created an energy task force and has signed an MOU with the U.S. Department of Energy's Lawrence Livermore Laboratory and is developing a comprehensive energy strategy that will take into account all of the Navajo Nation's energy assets.

On the renewable energy front the Nation is developing four projects that capitalize on our abundant wind and solar resources: (1) a 500 Mega Watt (MW) wind farm on the Boquillas Ranch in Seligman, AZ; (2) a 500 MW wind farm in the Grey Mountain chapter in Cameron, AZ; (3) a 200 MW wind farm in the Black Mesa chapter in Kayenta, AZ; and (4) a large scale solar project which we are currently reviewing solar intensity data to pick the best possible site.

While we look forward to maximizing our available renewable resources, our most abundant, valuable, and stable resource is the vast coal deposits that lie within the Navajo Nation. Coal is, and for the foreseeable future will continue to be, the best source of low cost energy in the United States. We are continuing to explore alternatives to coal fired power plants such as the Desert Rock Energy Project that crumbled under the weight of EPA and DOI regulations and review. Projects such as Desert Rock would have been the cleanest pulverized coal-fired power plant in the country. This new cleaner technology would have set new standards of achievable control technologies across the spectrum, and brought in thousands of jobs and more than $1.5 billion in revenue to the Navajo Nation. With the tide clearly against pulverized coal fired power plants, we are also reviewing several coal-to-liquid plants that could convert coal to diesel or other needed industrial products. Unfortunately, the EPA's hostile view towards any further coal development makes attracting much-needed capital patterns to these projects difficult. The Navajo Nation must find solutions to utilizing its vast coal resources.

Native Nations have struggled to find avenues for economic development to provide for their people. For decades we have been trapped by government mandates to lead lives of poverty and government dependence. Now several tribes have realized that their resources can provide the avenue to economic self-sufficiency they have always longed for. However, now we find that the same government that forced us on to reservations now punishes us further by forcing stifling federal regulation because our lands, while held in trust for our benefit, are subject to federal oversight. As such, the Federal Government is the face of poverty on tribal lands, and no department is more responsible for this today than the EPA.

Perhaps the greatest hurdle to energy development in Indian Country generally is the applicability of the National Environmental Policy Act (NEPA) to the use of tribal lands and resources. Indian tribes do not hold legal title to tribal trust lands, which are titled to the Federal Government. Accordingly, the Bureau of Indian Affairs (BIA), the federal land manager for tribal trust lands, generally approves tribal leases and rights-of-ways (ROWs) for tribal energy projects. In other words, BIA approval of tribal leases and ROWs constitutes a major federal action thereby triggering NEPA, and the concomitant EIS/EA (SPELL OUT) (absent a categorical exclusion). The Navajo Nation recognizes that Congress has taken action to relieve the NEPA burden for energy development in Indian Country pursuant to the 2005 Energy Policy Act, which provides for Tribal Energy Resource Agreements (TERAs). Under a TERA, a tribe is essentially pre-authorized by the Federal Government to make its own leasing and ROW decisions for energy projects, as long as they comply with an environmental review process. Unfortunately, even for the Navajo Nation, which has a sophisticated tribal government, including a Minerals Department, Fish and Wildlife Department, Historic Preservation Department and Tribal Historic Preservation Officer, and an Environmental Protection Agency, the Navajo Nation does not yet have the capacity to undertake a TERA. Consequently, we urge Congress to provide funding for tribal capacity building so that the purposes of the 2005 Energy Policy Act in regard to tribal energy development can be realized.

The Navajo Nation is also seeking an avenue for tribal energy development free of the NEPA process by seeking amendments to 25 U.S.C. § 415(e) to authorize the Navajo Nation to issue mineral leases without federal approval. By Navajo Nation Council Resolution CAU–35–11, attached hereto as Exhibit A, the Navajo Nation approved the above proposed amendments which have been introduced in the House

of Representatives by Representative Young of Alaska in Section 11 of H.R. 3973. The Navajo Nation is simultaneously seeking approval of its General Leasing Regulations from the Secretary of the Interior pursuant to § 415(e), and would be able to immediately assume leasing authority over mineral leases if H.R. 3973 is passed by Congress. The Nation therefore asks for your support, and potentially one or more Committee members' sponsorship of equivalent Senate legislation. As a final NEPA concern, it may be helpful for future NEPA exceptions for tribes, such as those described above, to have more express language exempting such tribal actions from NEPA compliance.

As mentioned above, Indian lands are treated as federal lands for purposes of NEPA compliance. As a result of that federal ownership, the land status of tribal trust lands causes additional hurdles for economic development that are not present, for example, on tribally owned fee lands. In the case of tribally owned fee lands these are still subject to state and local taxation and regulation, which additionally circumvents what, should be inherent jurisdiction over tribal lands. In the long run, Congress should consider developing a new land status for tribal trust lands that is not federal title, and which would allow tribes to develop their own land tenure systems for economic development purposes. Any such change in land status should ensure that tribal lands remain free of state taxation and regulation.

Of additional concern certain parties believe that the Federal Government has the right to determine the value of tribal lands and resources, including for leases and ROWs. Consistent with the sovereign status of Indian tribes and the federal policy for tribal self-determination, Congress should clarify through legislation that the value of tribal lands and resources should be determined solely by the responsible tribe.

Another hurdle to energy development on the Navajo Nation is the imposition of dual taxation by states and tribes. The Navajo Nation is situated across three different states and faces the complexity of dealing with three distinct state tax regimes. In situations where state taxes are applicable on the Nation, the Navajo government is placed in a situation whereby if the tribe imposes its tax regime, it effectively discourages economic development, including energy development on the Nation, and if it does not impose taxes, it diminishes its capacity to generate needed government revenues and provide government services. Accordingly, and in recognition of the sovereignty of Indian tribes and the inherent right of tribes to tax, *see, e.g., Kerr-Mcgee v. Navajo Tribe of Indians*, 471 U.S. 195 (1985), the Nation urges the Congress to clarify the inapplicability of state tax regimes where they may adversely affect economic development on tribal lands.

Finally, the Nation urges Congress to recognize the unique situation of Indian tribes as similar to that of developing Nations in the international community, and prevent federal agencies from imposing regulatory requirements on tribes and tribal resources that are more stringent than required by federal law. For example, the Nation's Desert Rock Energy Project, which was slated to be the cleanest coal fired power plant in U.S. history, was essentially derailed by overzealous regulation by U.S. E.P.A. requiring the Navajo Nation to implement unproven and prohibitively expensive technologies. As a further example, U.S. E.P.A is requiring Selective Catalytic Reduction (SCR) technology for Best Available Retrofit Technology (BART) under the Regional Haze Rule (under the Clean Air Act) for San Juan Generating Station. U.S. E.P.A. has also proposed SCR technology in a draft rule for BART for Four Corners Power Plant, located on the Navajo Nation and utilizing Navajo coal, as well as in a Notice of Advanced Proposed Rulemaking for Navajo Generating Station, also located on the Navajo Nation and using predominately Navajo coal. U.S. E.P.A.'s requirement for SCRs is unreasonable and unnecessary to meet the requirements of the Regional Haze Rule, meant to be phased in over decades, as there is currently far cheaper existing technology which would meet the requirements of phase one of the Regional Haze Rule. Congress should consider legislation requiring U.S. E.P.A. and other federal regulatory agencies to implement the least costly regulatory requirements on tribes and tribal lands that are still consistent with federal law. The stringent requirements of federal agencies now affecting tribes costs tribes not only the ability to develop economically, but impacts existing royalties and lease rentals, and most importantly critical jobs and the government's ability to provide services.

There is only one way out of the trap of poverty and federal dependence, to allow and encourage Tribes to stand on their own and develop their own sustainable economies. In times of decreasing federal budgets this imperative is even more pronounced. The only way to accomplish this objective is to get the Federal Government out of the way and allow the Tribes to make their own decisions. The Navajo Nation is ready. Give us the opportunity.

Attachments

RESOLUTION OF THE
NAVAJO NATION COUNCIL

CAU-35-11

22ND NAVAJO NATION COUNCIL - First Year, 2011

AN ACTION

RELATING TO NABIKÍ'YÁTI'; RECOMMENDING AMENDMENTS TO 25 U.S.C. § 415(E) TO AUTHORIZE THE NAVAJO NATION TO ISSUE MINERAL LEASES WITHOUT FEDERAL APPROVAL AND TO INCREASE THE DURATION OF AUTHORIZED BUSINESS AND AGRICULTURAL LEASES

BE IT ENACTED:

1. The Navajo Nation hereby recommends amendments to 25 U.S.C. § 415(E) to authorize the Navajo Nation to issue mineral leases without federal approval and to increase the duration of authorized business and agricultural leases. Proposed amendments attached hereto as Exhibit "A."

2. The Navajo Nation Oil and Gas Company supports and recommends the same amendments proposed herein. Its resolution is attached as Exhibit "B."

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 15 in favor and 1 opposed, this 19th day of August 2011.

Johnny Naize, Speaker
Navajo Nation Council

Aug 24, 2011

Motion: Alton Joe Shepherd
Second: Charles Damon

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of AUG 24 2011 2011.

Ben Shelly, Jr., President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2011 for the reason(s) expressed in the attached letter to the Speaker.

_____
Ben Shelly, President
Navajo Nation

EXHIBIT "A"

Ch. 12 LEASE, SALE, ETC., OF LANDS 25 § 415

(e) Lease of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a), and any subsequent leases, except subsidiary leases for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations; and

(C) in the case of a lease for the exploration, development, or extraction of mineral resources, including geothermal resources, 25 years, except that any such lease may include an option to renew for one additional term not to exceed 25 years.

[Remainder of 25 U.S.C. § 415(e) is unchanged.]

EXHIBIT
"B"

RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
NAVAJO NATION OIL AND GAS COMPANY

No. 159 Respectfully Requesting the Navajo Nation Council to Recommend, and the Congress to Enact, Amendments to 25 U.S.C. § 415(e) to Permit the Navajo Nation to Issue Mineral Leases without Federal Approval and to Increase the Authorized Duration of Authorized Business and Agricultural Leases

WHEREAS:

1. The Navajo Nation Oil and Gas Company ("NNOGC") is a wholly owned corporation of the Navajo Nation organized under section 17 of the Indian Reorganization Act, as amended, and charged with developing and operating a profitable integrated oil and gas company for the benefit of the Navajo Nation; and

2. In 2000, the Navajo Nation sought and obtained amendments to 25 U.S.C. § 415 to permit the Navajo Nation to issue business site and other leases of Navajo Nation land held in trust by the United States without federal approval under Navajo Nation regulations approved by the Secretary of the Interior, but such amendments did not include the authority for the Nation to issue mineral leases under that leasing structure; and

3. The Navajo Nation Council enacted and the Secretary approved regulations under the amended 25 U.S.C. § 415(e), and the Navajo Nation has been evaluating, administering, and approving leases thereunder for over five (5) years; and

4. The Navajo Nation's history of leasing and lease administration under its own regulations has been positive and virtually without controversy, and the streamlined leasing structure has eliminated or greatly reduced delays inherent in the federal approval process; and

5. The Navajo Nation has a well established Division of Natural Resources, Minerals Department, Environmental Protection Agency, Historic Preservation Department, judiciary, and other administrative offices with demonstrated expertise in mineral leasing and lease administration, environmental protection, historic and cultural preservation, surface mining, oil and gas well inspections and APD issuances, and fair and thorough dispute resolution, all of which agencies handle federal responsibilities under delegations of authority, treatment as a state provisions, or P.L. 93-638 contracts with federal agencies; and

6. The Navajo Nation has demonstrated the capability to evaluate, administer, and approve mineral leases in the same capable manner as it performs such functions with respect to other leases of Navajo Nation trust land; and

7. Permitting the Navajo Nation to undertake such functions for mineral leasing would be consistent with the modern Congressional policy of enhancing tribal self-determination and self-sufficiency, and would have the added benefits of reducing the extraordinary delays and costs associated with federal approval of such leases and of facilitating responsible mineral

production for the benefit of the United States generally; and

8. NNOGC's management and legal counsel recommend that this Board recommend to the Navajo Nation Council that it seek amendments to 25 U.S.C. § 415(e), as set forth on the attached Exhibit "A," to permit the Navajo Nation to approve and administer mineral leases of Navajo Nation trust land under the same leasing structure as is now permitted for all other such leases, and to urge Congress to adopt such amendments; and

9. This Board has heard the report and recommendation of management and has determined that it should recommend that the Navajo Nation Council by formal enactment seek amendments to 25 U.S.C. § 415(e), as set forth on the attached Exhibit "A," and urge Congress to adopt such amendments.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Oil and Gas Company Board of Directors hereby respectfully recommends to the Navajo Nation Council that it request by formal enactment the Congress of the United States to amend 25 U.S.C. § 415(e) as set forth on the attached Exhibit "A" and that the Navajo Nation Council, the Office of the President and Vice President, and other appropriate officials of the Navajo Nation government (including without limitation the Navajo Nation Washington Office and the Executive Director of the Division of Natural Resources, as may be authorized by the President) urge Congress to adopt such amendments.

2. Management is hereby authorized and directed to cooperate fully with appropriate officials and employees of the Navajo Nation to process this recommendation within the Navajo Nation government, to testify and engage in lobbying efforts that may be requested or authorized by appropriate officials or committees of the Navajo Nation, and to take any and all other reasonable and proper steps to effect the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered at a duly called meeting of the Board of Directors of the Navajo Nation Oil and Gas Company at which a quorum was present at Albuquerque, New Mexico, and that the same was passed by vote of 8 in favor, 0 opposed, and 0 abstained, this 10th day of June, 2011.

Nelson Toledo, Chairman
Board of Directors

Attest:
Secretary

The CHAIRMAN. Thank you very much, Vice Chairman Jim.

I am going to hold my questions for now and defer to Senator Tester for him to ask his questions.

Senator TESTER. Thank you, Mr. Chairman. I certainly appreciate that. That helps me out a bunch.

I will start with the Montanan in the crowd. Stoney, I appreciate your testimony and I also appreciate your level of expertise you bring to the panel. I didn't know that you worked in the private sector, BIA and now a councilman. That is good.

You said some things during your testimony that I would like to flesh out a little bit. Long delays in processing mineral leases, months, years. I did talk about TERA, I think Mr. Jim talked about TERA a little bit, too. Can you give me some ways we can

help streamline the processing of mineral leases? It shouldn't take months and years. If it takes longer than it does on off-reservation land, that is certainly where the development is going to flow.

I don't even know how long it takes off reservation lands at this point in time. Could you give me some sort of idea what we could do and maybe what the differences are right now, if you can tell me that, how long it takes? And by the way, are those oil rigs you have on your tie?

Mr. ANKETELL. Yes.

Senator TESTER. Okay, I just wanted to point that out for the crowd.

[Laughter.]

Senator TESTER. Give me an idea of the difference between off-Reservation development and on-reservation development and maybe some things we could do.

Mr. ANKETELL. Yes, Senator. The problem with the Bureau of Indian Affairs and the long time frames that it takes to get leases approved and other documents is that they are understaffed. The agencies are underfunded. And I just hate to be blunt here but, under-qualified people are put in very important positions. If an oil company was to embark on oil and gas development, they certainly wouldn't put a farmer in charge of their oil and gas leasing department.

Senator TESTER. Come on, really?

[Laughter.]

Senator TESTER. No, go ahead, you are right. You are absolutely correct.

Mr. ANKETELL. We need technical experts in key positions. And the problem is that we may have an IHS employee transfer to the realty department. Then our CS person is now sitting as a superintendent. I believe that you should work your way up through realty, which is the branch of the Bureau of Indian Affairs that is in charge of oil and gas leasing. There should be years of experience behind people in key positions in oil and gas, and they are out there.

On the fee land, you knock on the door of a farmer's house and you can lease up to 5,000 acres in one day. With Tribal and allotted leases, Tribal can go pretty fast, as there is only one owner. But the allotted leases, you may have to hunt down literally hundreds of people, and small, minute percentages, and you have to get over 50 percent to be able to get the lease approved and then be able to drill.

So what happens when the BIA is inundated with leases and you don't have the proper staff or the proper expertise in that office, what happens is that you may have somebody that signed an approved consent form, that person may pass away and it gets to be a probate. So the superintendent can still sign for a probate. But once the probate closes, now you have a whole bunch of new heirs that you have to go find.

So if it takes a year or more, there may be two or three instances where a probate closes and a whole new set of heirs are now required to sign, so that the superintendent can approve those leases.

So time is of the essence. I also want to stress that if my land, and I have signed a consent form, and it is submitted to the BIA

for approval and they don't get to it for a year or two or even three, which is the case at Fort Peck, that ties up my land for eight years, not five. The standard lease for a BIA lease is five years. But if it is sitting in the BIA waiting to be approved and it is down on the bottom of a pile of leases, then essentially the Federal Government is tying up my land for eight years, not five. That is grossly unfair, in my opinion.

Senator TESTER. I appreciate the comments. Just to let you know, I am sure the BIA is watching this, so they probably agree with part of what you are saying. The fact is, I think your perspective on understaffed, underfunded, and potentially even underqualified are strong points.

I want to talk about TERA a little bit, because Jodi Gillette said it would be a good idea, and I agree with her. This isn't directed at anybody specifically, although Rex Lee Jim talked a little bit about TERA in his remarks.

If you want to talk about it, you can; if none of you feel comfortable talking about it, that is fine, too. Can you tell me why it is not being used at this point in time? And it is not directed at anybody specifically, anybody who wants to talk to it can. With no Tribes in this Country utilizing TERA, there must be a reason for that. Go ahead, Rex Lee Jim.

Mr. JIM. Thank you, Senator Tester. The Navajo Nation is very interested in pursuing a TERA as a way of removing the Federal Government from our development of Tribal energy resources. However, the TERA process requires the existence of significant capacity in terms of both institutional capacity and staffing. Even though the Navajo Nation has a sophisticated regulatory structure with institutions and tough environmental laws, we still need help in fully developing our capacity.

So we urge Congress to provide grants to help in those areas.

Senator TESTER. That would be good. We do need to have some collaboration to figure out how we can make it work. Because it was set up back in 2005, I believe is when it was done, and it is still non-functional. We need to work together to figure that out. I would be interested in doing that in a big, big way.

I have a lot of other questions that may take up—one more. Levi, you talked about disclosure of the fracking fluid. I know, and I have heard both sides of this equation, I have heard that there are no contaminants in it, nothing to worry about and then I have heard folks say there are big things to worry about.

I guess the question I have for you, if you made a request to the companies for disclosure and have they turned you down?

Mr. PESATA. On the fracking issue, on Jicarilla, what our concern is basically is the chemical content that is used for fracking. We are concerned about water contamination. And like you say, there are two sides to the story. I think it is kind of a sensitive issue, because even the State of New Mexico, my home State, does not have a position on fracking. Although it is coming to the forefront more and more, I understand the BLM draft regulations that are coming out is asking for something like prior approval before using a fracking mechanism on any well, and also kind of a follow-up.

I believe that it is still an issue, because whatever chemicals they are using are not disclosed. Regardless of which way this issue

goes, I think it is important, because there are health issues on the reservation, for rural residents, they come down with cancers and different kinds of medical problems, which really does not correlate with the general environment and some of the health issues that are inherent in that environment.

So it is an issue, I believe, that needs some disclosure.

Senator TESTER. I would agree with that. I think that one of the things that bothers me about this, and make no mistake about it, and Stoney, you talked about it, I think without the fracking process we wouldn't be able to access the Bakken. So it is important that we keep those options open. On the other side of the coin, if there is nothing in it that we need to be worried about, why hasn't it been disclosed? That really is part of the equation.

I know there are trade secrets involved and all that, but I have told folks in the industry that, quite honestly, the fracking process, there is information on both sides of the fracking fluid, there is information on both sides, and they need to get some good research out there so we can make good decisions.

Thank you all for your testimony, I very much appreciate it.

The CHAIRMAN. Thank you. Thank you very much, Senator Tester.

I have a question for each of you. I want to deal with particular parts of energy.

President Bordeaux, your Tribe is a producer of wind energy. What advice could you offer other Tribes hoping to develop their wind energy?

Mr. BORDEAUX. Mainly getting an investor, getting a good company that you can trust, do a lot of due diligence on them. One of the major problems we have is the power purchase agreement and finding that investor and attracting the business.

Another major factor that we are having is, as Mr. Jim mentioned too, is the State taxation of trust lands. That is a huge problem. We think it is illegal, they impose what they call a nameplate tax on our trust lands. And it is completely illegal, and it has happened on Navajo, it is going to happen everywhere. It is going to be an issue you have to face.

But the problem that really started that was basically coming across Indian Country, because there is a lot of development of wind energy in South Dakota, the taxes are driving wind energy Development away in South Dakota. They are all over in Minnesota. So that is a major problem. So you are going to have to watch out for the State.

And the Federal Government needs to assist us in that effort, and getting the resources. It is good that the DOE is helping out, the BIA is helping out. But the imposition of illegal taxes by the State, that is a major problem. And doing the studies, adequate studies that make sure that you have that, and the environmental.

Even with the Bureau, they are talking about their leasing regulations and stuff, and I would like to agree with my colleague from Fort Peck, you get adequate personnel, trained personnel, knowledgeable personnel in the BIA leasing offices, they are not adequately funded. We need to fund the local BIA offices to a capacity where they can make these decisions and get qualified people in there.

Most of the money that is taken away from the agency level either ends up in the area offices or here in Washington. And it needs to be down at the local level where all the action is, at the reservation level.

The CHAIRMAN. Thank you for sharing.

President Pesata, your Tribe is a leader in oil and gas production. What advice could you offer the Tribes who may wish to develop their resources?

Mr. PESATA. Mr. Chairman, I think a lot of the recommendations that were given by the presenters here are very important. I think that consent must be very important. I think the cooperation of the agencies that I have mentioned, BIA, BLM, ONRR and so forth, must all work together to provide adequate information before any lease is signed.

As we proceed through oil and gas development I believe that it has been mentioned here that some of the forms and documents used for oil and gas leasing are so outdated that they need to be revised. I think they need to mention some of the things that I have mentioned, like the bankruptcy issues on how to deal with that as you proceed through this. I think a lot of the oil and gas companies are using bankruptcy right now to circumvent some of the Federal laws that are available to protect Indian oil and gas and other energy leasing on our reservations.

So what is said here I think is very pertinent to the hearing today, Mr. Chairman.

The CHAIRMAN. Thank you.

Councilman Anketell, what would being better enabled to develop wind energy mean to your people? You have mentioned to us many of the problems, the delays of leases and so forth, that you are experiencing at the present time. I thought I would ask you about something that enabled you to develop wind energy and what it means to your people.

Mr. ANKETELL. Thank you for the opportunity, Mr. Chairman.

On the Fort Peck Reservation, we developed a feasibility study in 1997 to determine the feasibility of wind energy on the Fort Peck Reservation. We got a quarter of a million dollar grant from the Department of Energy, hired Bechtel to do a total feasibility study on this.

We do have Class 6 winds. What would the benefit be to us is, I have always envisioned, if we have enough transmission capacity to get it off the reservation, then we could sell the power to a utility and still have enough left over to provide free electricity to our Tribal membership. That still is a goal of mine. We need the transmission capacity to be upgraded along the high line.

If we do, it would provide a tremendous benefit to our people, because of the extreme weather that we suffer. Our winters may get as low as 40 below zero Fahrenheit. It gets as high as 110 degrees in the summer. So we have huge swings in temperature. So we have a large need for the energy, either to heat our homes or to cool them in the summer. What an ideal thing we would have if we had a wind farm that would allow that as a benefit to our people.

So I hope that answers your question.

The CHAIRMAN. Yes. We want to share what you have learned that may help other Tribes, as they seek to use this type of energy. So thank you very much for that.

Mr. ANKETELL. Thank you, sir.

The CHAIRMAN. Ms. Kauhane, why is the substantially underserved trust area definition, better known as SUTA, maybe you could explain that also, why is that important to the development of energy in Hawaii?

Ms. KAUHANE. Thank you, Senator. For Hawaii, the first community that comes to mind and why SUTA is important, Substantially Underserved Trust Areas, as defined in the Farm Bill of 2008, if some of our trust lands, if we implement the SUTA definition to automatically include any of the trust lands with that definition, it would bring in Federal programs, resources, attract new capital and credits to our trust lands.

One example in particular, new market tax credits. In Kona, we have 10,000 acres that are prime for solar renewable energy PV farms. But because it is so close to the tourist destination, it doesn't fit within the census track. Therefore, we can't attract private capital through new market tax credits.

But if we implemented the SUTA definition, all of our trust lands, whether they are close to the destination for the traveler or not, it would allow us to attract capital and tax credits, private capital in the form of tax credits on our trust properties.

The CHAIRMAN. Thank you. Other Tribes can benefit by it, and the idea is to look for available money that can help you develop these energy systems.

Ms. KAUHANE. Yes.

The CHAIRMAN. So thank you very much for sharing that.

Vice President Jim, your Tribal lands are geographically positioned to become a great producer of solar energy. Can you tell me what obstacles stand in your way in developing solar energy?

Mr. JIM. Well, Chairman Akaka, it really comes down to land issues. We have huge land, but we have land regulations in place where one individual who has a permit to graze land can say no and stop the whole development. So we need to revisit those BIA regulations of how we deal with land and if we change that and allow for a different process, then we will be able to develop more. And as indicated, if somebody passes on, the next generation might say no to it. So we need to change those laws.

And the other is capital capacity. Any time you need to start something, you do need money. So we do want to do business with private firms. We call that strategic partnering. When we want to do that, the whole idea of double taxation, it all comes into place. So businesses shy away from that.

And not only that, but when businesses come in, and we spoke to this earlier as well, that is the land status, they know that it is not owned by the Navajo Nation. And if they invest so much into it, and for some reason, either the Tribe or someone defaults on it, on the loans or whatever is in place, they are not able to get to the land. So they shy away from that as well. And if they built something and they might end up losing it.

So these are some of the critical issues that we need to address.

The CHAIRMAN. Well, you can certainly help other Tribes think about the possible obstacles that you have experienced in trying to build solar energy.

I have a question for all of you on the panel. Many of you alluded to the high unemployment rate in your communities. My question to you is, do you have any estimates as to how many jobs could be created, could be created with energy development? President Bordeaux?

Mr. BORDEAUX. Mr. Chairman, just for our 30 megawatt wind farm, we probably had 100 jobs for construction initially for about six months, four to five permanent for the O&M. For the larger 190 megawatt, we are talking about 200 jobs for 9 to 12 months, construction, and then 15 to 20 permanent jobs. Value-added jobs, hopefully the construction business startup. The Tribe does not have a concrete or construction company. That would need to be developed. We are in the infancy stages on that.

What we are also looking at is to, with the revenue from the wind farm, is to develop more small businesses on the reservation and try to attract our dollars, and encouraging our people. Because 80 cents out of the dollar leaves the reservation to surrounding communities. If we have more businesses on the reservation, we can spend that dollar locally and create more jobs.

So primarily small business development and Tribal contracting business also. Thank you.

The CHAIRMAN. Thank you.

Mr. Pesata?

Mr. PESATA. Mr. Chairman, we are primarily involved in oil and gas, that is probably about 90 percent of our revenue to operate our government. We have approximately 15,000 employees that are non-Tribal on the reservation from the oil and gas industry. And a very small percentage of that goes to Tribal member.

The reason for that is it is very hard to get into the oil and gas industry, even though we have attempted to get programs, even from the high school level where we can have some training for young people on the reservation. It seems like we are not making a whole lot of headway.

So right now, with our new agreements that we have with the oil and gas activity coming into the reservation, we are trying to make that a part of the agreement, so that we can put more jobs onto the reservation. I think that if we can get that, as we move along eventually, we can pick up, I think, maybe close to 1,000 jobs that we can add to our employment force. I think that is very important, we are trying to focus on that.

Some of the other local activities, we have some small businesses and enterprises, like gaming operations on the Reservation. But that doesn't employ a whole lot of people. So we still have a problem, we are still struggling to get more people to work. Thank you.

The CHAIRMAN. Thank you very much, President Pesata.

Councilman Anketell?

Mr. ANKETELL. Mr. Chairman, I think that if we were to get our energy house in order, which my Tribe is making every effort to do so, we could eliminate the unemployment rate, the high, unusually high unemployment rate of our reservation. First of all, we, through strategic partnerships, have drilled the first two Bakken

wells on our reservation. In fact, they are being fracked, one of them is being fracked as we are speaking today. It started Monday. It takes about a week to frack it. Then they are going to move to the second well and frack that.

And this is all Tribal. This was a Tribal initiative, we went out and got the leases. We formed the partnerships and are a very active participant in developing our own oil and gas resources. It is called Fort Peck Energy Company.

So I am really proud of that, that we took the initiative to drill two wells that were many millions of dollars each.

I want to just briefly touch on a problem that exists in my area, my part of the world. And that is that there is so much new production coming online through the Bakken that oil pipelines are at full capacity. They are having to transfer the oil out of the region by rail cars or by any which way they can. They are paying huge fees to get it into pipeline; instead of being offered a premium they are paying a premium to get it to the nearest refinery.

So with that extreme need, we are developing a refinery on Tribal land within our reservation, on an old refinery site, so we can clean it up. It is a brownfield by the EPA standard, it is a brownfield. And the only way really to economically clean it up is to refine the products that are floating on top of our groundwater. We will pump it out of the ground, refine it, sell it and use the revenues to further clean up this 110-acre piece of land that the old Kemco refinery sat on.

So I think it is the first of its kind, where we are not taking new land, pristine land and turning it into a refinery. We are talking about brownfield land we are turning into a refinery. With that comes jobs, jobs and more jobs. Because oil exploration is not labor-intensive, but the refining process is. And many, many jobs go along with it, like mechanics, truck drivers, et cetera.

So I would ask for strong Federal support in our efforts to, when we endeavor to move forward on this refinery project, it is in the infancy stage. But the land has been purchased, we are moving forward. So that will take our 65 percent unemployment rate and take it down to practically nothing.

I would urge this Committee to help us in our endeavor to get a refinery online. The first one in the United States since 1976, there has not been a new refinery built. Thank you, sir.

The CHAIRMAN. Thank you for that report.

Ms. KAUHANE.

Ms. KAUHANE. Thank you, Chairman.

I can speak to the project that we are currently partnering with the homesteaders and the community utility co-op in Anahola. And that particular, it is a 12 megawatt farm. Total cost of that project is at $62 million, $24 million of that coming from 1603 credits through the DOE program under ARRA. It will create about 125 jobs while the farm is being developed and put into operation.

But I think more importantly for Anahola and that community, because the community is at the forefront of that project, not only will they have the short-term jobs through the process of development, but we have community benefit agreements in place, where the community then gets to do the maintenance of the grounds and

have other longer-term jobs for the area after the project is done in the construction phase.

I would also like to say for the record that what is very, very exciting in listening to all of the panelists and how powerfully important clean energy is to Tribal lands across our Nation is that it is really the true essence as Native people to be self-sufficient, that we have opportunities because of our land base and our land asset to take charge of our destiny and create jobs, both on and off homesteads. I think it is powerfully important, we thank you for this hearing as we take a look at all the needs around energy. Mahalo.

The CHAIRMAN. Thank you, Michelle Kauhane.

Vice President Jim?

Mr. JIM. Thank you, Chairman Akaka. The Navajo Nation has more than 300,000 members, nearly 200,000 of them live on Navajo. And we have a 55 percent unemployment rate, with nearly 50 percent living below the Federal poverty line.

We also have about $2.5 billion coming through Navajo and 85 percent of that goes off Navajo to border towns. Only 15 percent remains. We are working to reverse that, so that 85 percent remains and the 15 percent is going off to border towns.

One way of doing that is to develop our own energy, because when we do that, we are also creating jobs on Navajo, so more and more people will stay on Navajo and spend more money there. We do not have an estimate, but we estimate that the Desert Rock project alone would have been over 1,000 permanent jobs, at the plant and in the mine, and 2,000 construction jobs. That was just one project.

We also estimate that for every energy job created, three subsidiary jobs are created to support the energy jobs. So that is just one project that we have on Navajo. So if we had several projects similar to this going on, we would be creating quite a bit of jobs. Thank you.

The CHAIRMAN. Thank you very much.

It is good to hear of these possibilities. I want to wish all of you well in your pursuits and your endeavors in energy across the United States.

I want to thank our witnesses for participating in today's hearing. Enabling Native communities to develop their energy resources helps them develop their economies and provide for their people, as has been mentioned. It also creates jobs in rural communities throughout the United States for both Natives and non-Natives alike, while reducing dependency on foreign energy sources.

I look forward to continuing to work together with my colleagues on these issues, so that we may implement policies that improve Native energy development. You have given us possible areas to work in here in the Congress. Because we want to continue to hear from you, please remember, the hearing record is open for written testimony for the next two weeks. You may send in your testimonies to us.

This has been an interesting hearing, and it is good to hear of what you are doing out there. I hope that what we have heard in here will be the basis of developing greater programs throughout the Nation and energy for the indigenous people of our Country in Indian Country, Alaska and Hawaii.

So mahalo nui loa, thank you very, very much. This hearing is adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE CROW TRIBE OF MONTANA

I. Introduction

The Crow Nation welcomes this opportunity to share our views and concerns about energy development in Indian Country. 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 Tribal energy development can be facilitated so as to fully contribute to national energy security. 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 and 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 percent 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 percent 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 percent Crow allotments; 20 percent Crow Nation trust land; and 35 percent non-Indian fee land. In sum, the pattern of surface ownership generally is "checkerboard" with interspersed Crow Nation trust and fee lands, Crow allotments (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 more than 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 by 2015, 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. Our current unemployment rate is 47 percent according to BIA statistics. 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 38-year relationship with Westmoreland Resources, Inc. Over that period, the Absaloka mine has produced about 150 million tons of coal and is the largest private employer within the Crow Reservation.

The Crow Nation has very substantial undeveloped mineral resources. Our coal resources exceed 9 billion 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 royalties and taxes amounted to 25 percent of the gross revenue of 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 nearly *two-thirds* of the Nation's non-federal funds 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 percent. More than 70 percent 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 ICPTC 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. The recent unplanned outage of the Sherburne County # 3 unit, which burns almost exclusively Crow coal, will put further pressure on the viability of the Absaloka Mine (and the Tribe's finances), by cutting production in half for many months. In addition, 35 percent of the Mine's workforce have been furloughed until the unit is repaired and brought back into service. Continuance of the ICPTC is critical to the future of the Absaloka Mine and the stability of revenue and jobs for 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 opportunity for the Crow Nation to monetize our currently stranded, 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, greenhouse gases, 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 Tribe is currently seeking a new industry partner for the Many Stars project, and remains committed to developing an advanced coal conversion project for the long-term utilization of our coal with full carbon dioxide capture and sequestration.

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.

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, and to provide for the long-term monetization of our vast coal resources. The first phase of the integrated surface mine and CTL plant could create up to 2,000 jobs during an initial three year construction period with the expectation that a sig-

nificant 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 $6,500 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.

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 conducting a preliminary 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) consistently creates 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 with a truck-mounted drilling rig 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 this year, 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 devastating impact on the Nation given that this mine provides a major portion of the Nation's government's operating budget. The tax credit has worked to keep the mine competitive and open. While the threat to the viability of Crow coal sales from emission allowance pricing has passed for the time being, other threats to coal sales continue. The loss of sales to the Sherburne County # 3 power plant, a major customer, presents a serious challenge in the short term. The ICPTC allows Crow coal to compete better in the regional market. Making this tax credit permanent provides the Nation with a basic level of security in the volatile energy markets, in addition to creating future opportunities for expanded sales and revenue back to the Nation.

Now, in 2012, this tax credit remains critically important to the current operation of the existing Absaloka Mine and provides sufficient incentive to help us attract additional investment for future energy projects to diversify the Tribe's income sources. 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, the placed-in-service date should be extended for at least 10 years, and the requirement that the coal be sold to an unre-

lated 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.

3. Indian Employment Wage Credit

The 1993 Act also included an "Indian employment wage credit" with a cap not to exceed 20 percent (20 percent) 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 $35,000.

As written, the wage tax credit is completely ineffective for high-paying energy industry jobs, 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 these 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 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 percent) investment tax credit for each CTL plant placed in service before the same future date, and/or allow 100 percent (100 percent) 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. We have been told repeatedly that policy uncertainty with respect to clean coal support equates to paralysis in trying to move the Many Stars CTL Project forward with new 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 begin realizing its true potential as a domestic energy producer. However, our vision can only become a reality with your assistance. We strongly feel that events in the Congress during 2012 will have a decisive impact on realizing our vision.

PREPARED STATEMENT OF HON. IRENE C. CUCH, CHAIRWOMAN, UTE TRIBAL BUSINESS COMMITTEE, UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs, my name is Irene Cuch. I am the Chairwoman of the Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. Our Reservation is located in northeastern Utah. Thank you for the opportunity to provide testimony on energy development in Indian Country. My testimony will focus on the barriers the Tribe faces in developing its energy resources and legislative solutions to those barriers.

I. Energy Development of the Ute Indian Tribe

Energy development has long been an important part of the Tribe's Reservation economy. Production of oil and gas began on the Reservation in the 1940s. Over the past 70 years, production has been ongoing and went through a few periods of expansion. Today, the Tribe is a major oil and gas producer. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per day. And, we have plans for expansion. The Tribe is currently in process of opening up an additional 150,000 acres to mineral leases on the Reservation with an $80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our tribal government and the services we provide. We use these revenues to govern and provide services on one of the largest reservations in the United States. Our Reservation covers more than 4.5 million acres and we have 3,175 members living on the Reservation.

Our tribal government provides services to our members and manages the Reservation through 60 tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine for economic growth in northeastern Utah. Tribal businesses include a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water Services LLC, and Ute Energy LLC. Our governmental programs and tribal enterprises employ 450 people, 75 percent of whom are tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources as a majority owner of Ute Energy which has an annual capital budget of $216 million. In addition to numerous oil and gas wells, Ute Energy teamed with the Anadarko Petroleum Corporation to establish and jointly own the Chipeta gas processing and delivery plant in the Uintah Basin. The Tribe recently approved plans for Ute Energy to become a publically traded company. This investment will allow us to expand our energy development and increase revenues.

Despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. This process is primarily managed by the Department of the Interior (DOI).

II. Administrative Efforts to Promote Indian Energy Development

The Tribe is working directly with the Administration to improve oil and gas permitting on the Reservation and has also provided Congress with legislative solutions to the barriers we face. The Tribe takes this issue very seriously because the number of permits that the Federal Government is able to process and approve is directly related to the revenues the Tribe has available to serve its members.

The Tribe is working with the Administration on its own and as a part of the Coalition of Large Tribes (COLT) to improve the oil and gas permitting process. Last November the Tribe hosted a tour of its oil and gas development on the Reservation

for Del Laverdure the Principal Deputy Assistant Secretary for Indian Affairs, Juan Palma the State Director of the Bureau of Land Management (BLM), staff of the Utah Congressional Delegation, and other advisors and staff.

The purpose of the tour was to provide the agency officials with a perspective on the scope of the Tribe's energy development so that they could better understand the Tribe's needs for an efficient oil and gas permitting process. We provided information about the permitting processes to the agency officials and we are working with them to streamline the process and improve their permitting capacity.

As former Senator Dorgan highlighted, the Bureau of Indian Affairs (BIA) uses a 49 step process to approve a single oil and gas lease. Overall that process includes the following general steps:

- 5 Day Posting of Proposal;
- Obtain Permission to Survey;
- Field Staking;
- Onsite Inspection;
- Develop Site Specific Environmental Assessment (EA);
- Application for Permit to Drill (APD) and Application for Right-of-Way (ROW);
- Review and approve ROW and APD; and,
- Construct ROW and Commence Drilling Operations.

In addition, the processing of an oil and gas permit must comply with a number of federal laws and regulations, including:

- Indian Leasing Laws and Regulations;
- Indian Rights-of-Way Laws and Regulations;
- the National Environmental Policy Act (NEPA);
- the National Historic Preservation Act or Section 106 Process;
- the Endangered Species Act; and,
- potentially, the Clean Air Act.

The Tribe estimates that an oil and gas permit could be processed through these steps in about 90 days. Indeed, on the Fort Berthold Reservation in North Dakota where DOI utilizes a "virtual one-stop shop" to oversee and streamline permitting, we understand that oil and gas permits are processed in about 60 days. On our Reservation the actual time it takes a typical permit to process is about 480 days—more than one year.

The Tribe is working with the Administration to find the resources, staff, and expertise needed to efficiently oversee oil and gas development on the Reservation. The first step is to get good information on the status of the permits. Unfortunately, the approval process is so complicated this information is difficult to obtain.

In June 2011, DOI's Office of Indian Energy and Economic Development found that there were 1200 backlogged permits. In January 2012, the BLM Field Office in Vernal, Utah reported that it had 245 permits pending in its system. Also in January, the Tribe's Energy and Minerals Department reported that it had 10 permits pending. Specific information is needed for the permits pending with the BIA. The processing of permits needs better tracking. The number of permits pending in the system on any given day should not be greater than the number of permit applications submitted over a two month period, and no matter what the number is, permits should not be in the system for longer than 60 to 90 days.

The second step is to find the staff and expertise for the BIA and BLM to efficiently process permits. As discussed in more detail below, the Tribe supports the "one-stop shop" concept and believes that permitting on the Reservation would benefit from a "one-stop shop." The Administration has suggested other options such as detailing employees to areas with high permitting needs or using permitting teams that would rotate among the local agencies to clear back logs.

The Tribe's ability to expand its oil and gas development is dependent upon a solution to the current permitting delays. For example, the Tribe understands that oil and gas companies operating on the Reservation are currently limiting operations based on the number of permits the agencies are able to process. In particular, companies are limiting the number of drilling rigs they are willing to operate on the Reservation.

Drilling rigs are expensive operations that move from site to site to drill new wells. Oil and gas companies often contract for the use of drilling rigs. Any time a drilling rig is not actively drilling a new well it amounts to an unwanted expense. Consequently, oil and gas companies will only employ as many drilling rigs as permit processing will support. On our Reservation, the Tribe understands that some oil and gas companies who are currently using one drilling rig would increase their operations to three drilling rigs if permit processing could support this increase.

One example of this is the Anadarko Petroleum Corporation's operations on the Reservation. Anadarko reported that it needed 23 well locations approved per month in 2011 and beyond, but in 2010, their permits were approved at a rate of 1.7 per month. Anadarko informed the Tribe that unpredictable approvals of permits forces the company to alter its operational plans at the last minute and often results in the company temporarily moving its operations off the Reservation to State and private lands. With consistent and reliable permit approvals, the Tribe is hopeful additional drilling rigs will move on to tribal lands and increase the revenues available for the tribal government, members, and investments.

III. Legislative Efforts to Promote Indian Energy

The Tribe is also working with Congress to improve the oil and gas permitting process. First and foremost, Congress needs to provide the BIA with sufficient budgets to support Indian energy development. The BIA needs to hire additional staff to process environmental reviews and needs to hire staff with energy expertise. In addition, Congress needs to pass laws that improve the permitting process and ensure that tribes have the authorities necessary to support Indian energy development.

The Tribe has participated in the development of Indian energy legislation in the 111th Congress and the current Congress. Last May, the Committee held a listening session on Senator Barrasso's draft Indian energy bill. At that listening session and in response to the draft bill, the Committee asked tribes to submit legislative ideas that would facilitate Indian energy development. In response to your request, the Ute Tribe developed 32 legislative solutions to overcome barriers and improve the management of Indian energy resources. We submitted these proposals to you and your staff last July. Then, last October, Senator Barrasso introduced S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, with Senators Akaka, McCain, and Hoeven as cosponsors.

The Tribe supports S. 1684 and believes that it is a good start. We ask that you review the Tribe's solutions and expand the bill to address more of the barriers that we face in managing our energy resources. I have attached the Tribe's 32 legislative solutions to this testimony so that they will be part of the hearing record.

In particular, the Tribe asks that the Committee support the creation of Indian Energy Development Offices to improve both traditional and renewable energy permitting. As former Senator Dorgan and many in Congress have noted, the oil and gas permitting process is a bureaucratic maze of federal agencies. Indian Energy Development Offices would bring all of the agencies into the same room and would streamline permit processing. These agencies could then work collaboratively to eliminate backlogs and delays in approving leases, rights-of-way, and applications for permits to drill.

Former Senator Dorgan referred to these offices as one-stop shops. There are 3 one-stop shops already in Indian Country. There is one at Navajo, in Oklahoma, and a virtual one-stop shop on the Fort Berthold Reservation in North Dakota. Former Senator Dorgan reported that the one-stop shop at Fort Berthold helped to increase oil and gas permit approvals by 4 times.

On our Reservation, the Ute Indian Tribe needs 10 times as many oil and gas permits to be approved. Currently, about 48 Applications for Permits to Drill (APD) permits are approved each year on the Reservation. The Tribe and its business partners estimate that about 450 APDs will be needed each year as the Tribe expands its operations. The Tribe believes that a one-stop shop is the best way to get the BIA, the BLM, and other federal agencies working efficiently with the Tribe to manage the high level of permitting needed on the Reservation.

Just as important, the BIA, BLM and other federal agencies that oversee the permitting process do so without the staffing and expertise needed to fully support Indian energy development. A one-stop shop would encourage the Department of the Interior to hire staff with Indian energy expertise. The BIA may be the most important federal agency responsible for supporting Indian energy development, yet there are only a handful of BIA employees with energy expertise. Congress needs to provide the authority and budgets so that the BIA can hire energy experts.

The Tribe also believes that we need to remove as many disincentives to energy development on Indian reservations as we can. For example, the fees that the BLM charges for oil and gas activities on Indian lands are a disincentive to Indian energy development and encourage developers to move just over the Reservation boundary to private lands where there are no BLM fees. In the case of shallow wells, these fees may make development completely uneconomical. In addition, when the Tribe is developing its own resources, it is outrageous that the Tribe's federal trustee would charge us for performing its trust responsibility. The BLM should be prohibited from charging fees for oil and gas activities on Indian lands.

We also need clarifications in the law to encourage energy development and other economic activities. Legislation should clarify that Indian tribes retain their inherent sovereign authority and jurisdiction over any rights-of-way they have granted. Over the last 30 years, jurisdiction over rights-of-way has been treated differently by various federal courts. Each time an issue arises, another federal court undertakes a new examination. This leads to uncertainty in the law and a lack of dependability about the rules that apply on a right-of-way. This hinders our ability to develop energy resources because all parties need certainty in the law.

The law should also be clarified to ensure that tribes can raise needed tax revenues to support and oversee energy development. Currently, federal courts allow other governments to tax energy development on Indian lands. This limits and even prevents tribes from earning tax revenues from development on our lands. Without tax revenues, tribal infrastructure, law enforcement, and other services cannot keep up with the burdens imposed by energy development, and we remain dependent upon funding from the Federal Government.

The Tribe is encouraged that amendments to the Tribal Energy Resources Agreement (TERA) program are being discussed by the Committee. The Tribe supports many of the changes to the TERA program that Senator Barrasso included in his Indian energy bill, S. 1684. These changes are intended to improve the TERA application process and make TERA's more useful to tribes. In addition, the Tribe asks that changes include a limitation on the number of times DOI can force a tribe to revise a TERA application. DOI should be limited to requesting one-revision of a TERA application and if DOI requires any additional changes they should have to provide a reason why the change was not requested the first time.

Finally, the Committee should not overlook the important role of the Department of Energy (DOE) could be playing in the management of Indian energy resources. In general, DOE ignores Indian tribes in its programs and in setting national energy policies. The relatively new Office of Indian Energy Policies and Programs is making progress, but tribes are left out of the vast majority of DOE programs. The Committee could hold an entire oversight hearing on the lost opportunities. Tribes need full access to existing DOE programs for energy loan guarantees, energy efficiency, weatherization assistance, and renewable energy research and development.

At a minimum, DOE should be including tribes in federal energy efficiency and weatherization programs. The Federal Government provides about $100 million every year to fund these programs at the state level. This funding should go to those who need it most, but for decades these programs have ignored the needs of tribes. The Tribe asks that these programs be expanded to include set-asides for tribal governments. These programs would help tribes reduce energy costs and manage energy use in government buildings and reservation homes.

IV. Fracing Rule

The Tribe would also like the Committee to monitor BLM's decision to develop regulations for hydraulic fracturing (fracing) activities on public lands. We are concerned with the process by which BLM is developing its regulations as well as the impact it will have on the oil and gas industry on the Reservation.

First, BLM apparently considers Indian lands to be "public lands" and plans to apply its fracing regulations to Indian lands. Indian lands are not public lands. Indian lands are for the exclusive use and benefit on Indian tribes. The BLM's oversight of activities on our lands is in fulfillment of the BLM's trust responsibility to the Tribe. The BLM should not apply its public interest standards to our lands. The Tribe requests that the Committee and Congress pass legislation that would prevent Indian lands from being swept into laws and policies for public lands.

Second, BLM is not fulfilling its obligation to consult with Tribes on its draft regulations. To date, BLM has hosted a handful of informational meetings throughout the West. The BLM has been describing these meetings as tribal consultation. An informational meeting describing to tribes what BLM plans to do is not tribal consultation.

Effective tribal consultation is sitting down at the table with tribes to discuss the proposed regulations and its effects on tribes. This has not happened even though consultation is necessary for the BLM to understand how its proposed regulations may affect tribes differently than others. The Tribe requests that the Committee inquire with BLM regarding its plan for ensuring that tribal concerns are considered in the development of any regulations.

For example, because of the Tribe's reliance on oil and gas revenues to fund government activities, provide services to members, and invest in local businesses, any change in oil and gas regulations is of great significance to the tribal government and economy. If the BLM's new fracing regulations create a disincentive for companies to develop energy on the Reservation, the Tribe would suffer a disproportion-

ately greater impact than others. At a minimum, BLM should explain how it is going to mitigate for this disproportionate impact.

Third, according to the draft regulations the BLM provided at a meeting in Salt Lake City, Utah, the BLM plans to look at three key issues pertaining to the fracing process: wellbore integrity, disclosure, and flowback water. We know of no incidents on tribal lands that would precipitate federal regulation of these issues.

Fourth, the proposed rule would require prior approval from the BLM for all well stimulation activities. This additional time required for BLM staff to review a proposed fracing job only adds to delays oil and gas companies on the Reservation face—delays that have economic consequences. Requiring BLM approval for fracing jobs adds to the burden of an already short-staffed BLM Field Office. As stated above, there is currently a backlog of APDs and adding an additional burden on BLM staff will only worsen the problem.

Oil and gas operators seeking permits to drill on Indian and public lands already undergo an extensive environmental review process before they can begin drilling activities. This process has become lengthy, time consuming and costly, so much so that there is a backlog of hundreds of permits to drill applications not having been acted upon by our local BLM Field Office.

In addition, the Environmental Protection Agency (EPA) and other federal agencies are currently conducting scientific studies on fracing. BLM regulation is premature in advance of the EPA study, and BLM has offered no justification for proceeding with this new regulation without the benefit of these studies. Without clear demonstration of a problem with the fracing process, we feel the BLM regulation is putting the horse before the cart.

V. Minor Source Rule

While EPA's Minor Source Rule, to date, has not had a significant impact on the oil and gas industry on our Reservation, we understand that it has impacted some of our sister tribes. We feel it is unfair that the EPA decided to move forward with the implementation of this rule. As a starting point, EPA did not engage in meaningful tribal consultation prior to finalizing the rule and subsequent publication in the Federal Register. Any agency action without meaningful consultation impacts us greatly.

EPA issued its final rule for "Review of New Sources and Modifications in Indian County" in July 2010. To ensure that economic development was not adversely affected, EPA delayed implementation of much of the rule for three years while it hires the necessary staff and develops its permitting process. However, one part of the rule took effect almost immediately, the Synthetic Minor Source Rule (SMSR).

Despite Congressional and tribal pleas to EPA to halt the implementation of the SMSR part of the rule, the EPA decided that it could not wait and implemented it. EPA implemented the rule despite not knowing what the SMSR permit should look like or exactly what it should contain. To date, EPA has yet to share with industry what a SMSR permit should look like and what is should contain.

We ask that this Committee and Congress inquire with EPA as to why it decided to implement a rule it does not have the resources to implement. In addition, we ask this Committee and Congress to pass legislation that would make the SMSR part of the rule not operable until September 2013 in order for the EPA to develop its permitting process fully.

VI. Conclusion

I would like to thank Chairman Akaka, Vice Chairman Barrasso and members of the Committee for the opportunity to present this testimony on behalf of the Tribe. The Tribe stands ready to work with the Committee to find ways to eliminate barriers to Indian energy development. The current barriers have a direct effect on the Tribe's revenues, our ability to invest in the future, and the services we are able to provide our members, our children and grandchildren.

Towaok (Thank You)

PREPARED STATEMENT OF HON. RANDY KING, CHAIRMAN, SHINNECOCK INDIAN NATION

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs. My name is Randy King. I am the Chairman of the Shinnecock Nation Board of Trustees. Thank you for the opportunity to provide this testimony for the Committee's Oversight Hearing on Energy Development in Indian Country.

The Shinnecock Nation's Reservation is located within the geographic boundaries of Suffolk County, New York—on Long Island. The Nation has maintained its exist-

ence on Long Island as a self-governing nation with a land base that it has exercised jurisdiction over since time immemorial. Despite this long history, the Nation was only recently acknowledged by the Federal Government. This circumstance has resulted in a situation where the Nation bore all the burdens and responsibilities of governing its land base without the support of federal resources that other tribes utilize.

Federal acknowledgement opens up new opportunities for the Nation to provide for the critical needs of its communities, including implementation of energy development and efficiency measures. The Nation is facing impacts from climate change, growing energy costs, and the need to provide jobs for its members. In order to provide long-term economic opportunities for our members, protect our Reservation homelands, and address the imminent challenges of climate change, the Nation must plan for its energy future. We have already begun by working to partner with local organizations, including a potential project with Stony Brook University, to develop and implement renewable energy projects that will benefit both the Nation and the surrounding communities.

Since the Nation gained federal recognition status, it has worked to build its sovereign capacity and self-governing infrastructure to better serve its tribal members. The Nation now has the ability to apply for federal grants to support and expand land use planning, environmental protection, health and safety, energy sovereignty, and economic self-sufficiency. Prior to now, the Nation has never been able to take advantage of federal assistance programs that many tribes utilize. The Nation plans to use this new opportunity to meet the needs of its members in the area of energy development by examining options for energy self-sufficiency, and economic development, including training and jobs for tribal members, as well as energy efficiency programs.

According to the economic characteristics data set from 2005–2009, the U.S. Census Bureau reports that a significant portion of the tribal membership is unemployed, underemployed, or in need of employment. This percentage does not include tribal members who are living off the Reservation, and want to come home to raise their families within their traditional community. In 2003, more than 70 percent of Shinnecock citizens lived in Suffolk or Nassau County on Long Island or in one of the boroughs of New York City, all approximately within a two-hour drive of the Reservation. The Nation is faced with the challenge of developing and promoting energy projects that will provide benefits to all its members both on the Reservation and off. In order to meet this challenge the Nation must be able to create and implement sustainable energy projects that benefit the Reservation and surrounding area.

Because the Nation's Reservation is geographically limited and surrounded on three sides by water, we have an acute sense of the growing threat of climate change and the need to plan for our energy future. The Nation's energy planning includes developing sustainable energy projects that will serve the immediate needs of the Nation, and longer term adaptive measures that will be needed in the face of climate change impacts over time. Energy independence will play a critical role in meeting these challenges. In order to be self-sufficient and sustainable as a Nation, the Shinnecock people will need to have sound reliable sources of energy. This includes not just generation resources, but also energy efficiency and weatherization measures that will help the Nation control energy costs for itself and its members.

Environmentally sound energy development and the promotion of tribal energy sustainability would dramatically and positively impact the Shinnecock tribal economy by creating revenue through the sales of clean energy and, potentially, carbon credits, into the regional economy. Our effort to gain energy independence would promote the long-term security of our communities, provide a major regional economic boost, and provide a test-case in clean energy development that can assist the Department of the Interior (DOI), the Department of Energy (DOE), and other tribal communities seeking examples of successful tribal energy management and renewable energy development.

The Nation intends to implement its energy planning through a potential partnership with Stony Brook University's Southampton Campus to develop a hydrokinetic project. This project would allow a research facility to be put in place off the coast of the Nation's Reservation. Tribal members and the University will be able to gain practical engineering experience and electric market experience in the development of the project. Hydrokinetic power offers a clean reliable domestic source of energy that could have far reaching benefits not only for Shinnecock, but for all coastal communities.

The Nation supports the Committee's interest in promoting Indian energy development, and generally support's Senator Barrasso's Indian energy bill, S. 1684. Promoting Indian energy and tribal management of energy resources is consistent with the Nation's energy planning and goals described above. S. 1684 makes a handful

of important changes, but much more is needed. In addition to what is already in S. 1684, the Nation requests that the Committee include additional changes needed to overcome barriers to Indian energy development.

As a newly acknowledged tribe, the Shinnecock Nation needs support for land into trust, tribal permitting processes, and restructuring of renewable tax credits. We ask the Committee to consider including provisions for incentives for development of offshore technologies, and an expedited fee to trust process for lands where energy projects are intended to be developed.

The need for energy security and a sound domestic energy supply justifies an expedited fee to trust process for tribal energy projects. This does not negate or resolve the current issues many tribal nations face in the wake of the Carcieri decision. We believe resolving the Carcieri problem through adoption of a *Carcieri* fix will significantly assist tribal nations in moving forward with social welfare and economic development projects such as new more efficient housing, and renewable energy projects.

Below, we provide some specific examples of how changes in law and additional tools for tribal governments would help us manage our energy resources and provide long-term economic resources for our communities. We ask that the Committee consider taking action on these ideas and include them in S. 1684 or any other Indian energy legislation being developed by the Committee.

First, the Nation appreciates the work of Committee member Senator Murkowski to support hydrokinetic projects by sponsoring a bill, S. 630, which will improve marine and hydrokinetic renewable energy research and development. However, the bill should include Indian tribes and Alaska Natives as eligible entities for grant funds to implement hydrokinetic test facilities. Currently, the bill does not.

The Nation requests that the Committee include the provisions of S. 630, and include tribes in those provisions, in any Indian energy legislation moving through the Committee. In the alternative, if the Senate plans to move S. 630 on its own or part of a larger national energy bill, the Nation asks that the Committee and Senator Murkowski ensure that Indian tribes and Alaska Natives are included in the list of eligible entities. The Nation is seeking an equal opportunity to apply for such funding and participate with other entities on Long Island as an equal partner for implementation of a hydrokinetic project.

Second, the Nation also has an opportunity to purchase a number of tracts of land on eastern Long Island that could be utilized for the development of a solar power facility that would bring clean and reliable energy to Long Island. Currently, there are transmission constraints on Long Island that have impacted the ability for the eastern end of the Island to have reliable power. The Nation's plan to acquire the lands and develop a solar facility on eastern Long Island would help meet New York State's renewable portfolio standard and also provide local power without the constraints of wheeling power from other areas which would promote the reliability of electricity for the Nation and Long Island.

In addition, this potential project is consistent with Governor Cuomo's Energy Highway concept as it creates new clean sources of power to meet the needs of Downstate New York, while providing skilled jobs for tribal members and revenue for the Nation. This provides a win-win for both the Nation and the State of New York, allowing for a beneficial partnership that can be built on for future tribal energy projects in New York. However, in order to move forward with the proposed solar project, the Nation will need to acquire the land and have it placed into trust. The Nation recommends that the Committee develop legislation that would require DOI to expedite fee to trust applications for tribal energy projects.

Third, the Committee should consider exempting energy projects in Indian country from some DOI approvals, or allowing tribes to take over certain approval processes. While the Tribal Energy Resource Agreement (TERA) program from the 2005 Energy Policy Act already allows tribes to do much of this, the TERA program requires tribes to take over most or all of the permitting. Very few tribes have the resources to completely take over energy permitting.

Instead, the Nation asks that the Committee recognize that every tribe is at a different place in its capacity to oversee energy projects and alternatives should be available for tribes to take over some DOI approvals, but not necessarily the entire energy permitting process. The Committee should consider exempting or allowing tribes to take over approval processes for appraisals, leases, rights-of-way, environmental reviews, and any other discrete parts of the energy development process. Having these options available will allow tribes to develop energy expertise and permitting capacity in manageable steps.

Fourth, the Nation aspires to make President Barack Obama's Executive Order on "Stewardship of the Ocean, Our Coasts and the Great Lakes" a reality and plans to examine its opportunities for development of ocean energy technology, which will

be a monumental step towards energy security and conservation for the entire Northeast Region. In order to be successful in this pursuit, the Nation will need to have the ability to permit such facilities, and have access to federal programs and funds that promote the development of offshore energy projects.

On July 19, 2010, President Obama signed the Executive Order and established a National Ocean Policy to ensure the United States' coasts, oceans and lakes are "healthy and resilient, safe and productive . . . so as to promote the well-being, prosperity, and security of present and future generations." Exec. Order No. 13547, § 2. The Executive Order contemplates direct participation by tribal officials in the promotion of this policy, as well as tribal collaboration with state and Federal officials, with the goal of developing and implementing regional coastal and marine spatial planning that includes assessment and consideration of offshore renewable energy technologies.

The Nation intends to participate in the process and pursue the potential for clean renewable ocean energy development; including both the aforementioned hydrokinetic project, as well as examining the potential for offshore wind projects. The Nation asks that the Committee help to make sure that tribes are included in programs and legislation supporting offshore energy projects.

Fifth, the Nation looks to the Committee and Congress for support in the development and implementation of sound energy policies that will be able to promote environmentally friendly energy resources, and economic opportunities. An environmentally sound and predictable order for development on the reservation would allow the Nation to move forward with implementation of much needed energy projects, and, in turn, provides certainty for those considering investing in the Nation from an economic stand point, as well as for government agencies considering awards to the Nation for energy programs.

The Nation has struggled for more than three decades for its rightful place as a federally recognized Indian tribe, and it now needs to focus on the long-term sustainable development of tribal resources. It is critical that Congress adopt policies that will allow for Indian tribes to meet our long-term goals by ensuring that federal programs designed to promote development of renewable power projects include Indian tribes as beneficiaries, and that policies supporting tribal permitting of such projects on tribal land be in place.

The Nation is confident that tribal members and the surrounding communities will mutually benefit from environmental conservation, economic self-sufficiency and job creation that would come from a more streamlined tribal permitting process, expedited fee to trust applications for energy projects, and full access to grants, loan guarantees and tax credits used to advance energy technology and promote energy development. The Nation believes that the renewable energy mandatory purchase requirements of state and federal agencies are only going to increase. The Nation hopes to be a part of this growing market while at the same time promoting environmentally positive energy resources, as well as providing resources to assist coastal communities in climate change adaption measures.

Sixth, as the Nation increases its energy activities, our tribal government will need to use the same tax revenues as other governments use to staff our energy programs, finance energy projects, and oversee tribal infrastructure. We need Congress to ensure that tribes can raise needed tax revenues. Without tax revenues we will not be able to develop the infrastructure necessary to manage and oversee our energy resources.

Seventh, tribes also need to be able to take advantage of renewable energy tax credits. These tax credits have become essential to financing renewable energy projects and lowering the cost of the energy produced. Tribes need to be able to monetize these tax credits or share them with a private energy partner. Without the ability to utilize renewable energy tax credits tribes will be priced out of the market.

Eighth, Congress should open up federal energy efficiency and weatherization programs to tribal participation. For decades the Federal Government has helped state governments manage their energy costs by providing around $50 million a year in energy efficiency funding. Tribal governments need the same support.

Congress should also require DOE to send weatherization funding directly to tribal governments. Currently, DOE sends the money to state non-profits and tribes barely see a dime. Despite its trust responsibility, DOE does not even know how much funding tribes receive. This funding should go to those who need it most, but for decades DOE has ignored the needs of reservation homes.

Finally, we support many of the other comments and suggestions made by tribes at this hearing. Like many tribes, the Nation is interested in exercising self-determination over its energy resources. To do this, we need Congress to reform laws that stand in our way, include tribes in all federal energy programs, and ensure

that tribes can exercise the full range of governmental authorities needed to develop the physical and legal infrastructure to support energy development.

I would like to thank Chairman Akaka, Vice Chairman Barrasso and Members of the Committee on Indian Affairs for the opportunity to present this testimony on behalf of the Nation.

PREPARED STATEMENT OF HON. TEX G. HALL, CHAIRMAN, MANDAN, HIDATSA AND ARIKARA NATION OF THE FORT BERTHOLD RESERVATION

Good afternoon Chairman Akaka, Vice Chairman Barrasso and Members of the Committee. My name is Chairman Hall. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation). I am honored to present this testimony.

The MHA Nation has long been working with both the Senate Committee on Indian Affairs and the House Subcommittee on Indian and Alaska Native Affairs to advance Indian energy legislation. In the 110th and 111th Congresses, the MHA Nation was fortunate to participate and present testimony at two Indian energy hearings held by former Senator Dorgan. In the current 112th Congress, the MHA Nation is again an active participant.

In May of 2011, the Committee held a listening session on Senator Barrasso's draft bill the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011." At that listening session the Committee requested that tribes submit proposals to overcome barriers to Indian energy development. On July 18, 2011, the MHA Nation submitted 31 proposals. I have attached those proposals to my written testimony for inclusion in the official hearing record.

In addition, I testified in April of 2011 as a part of an Indian Energy Oversight Hearing before the House Committee on Natural Resources' Subcommittee on Indian and Alaska Native Affairs. MHA Nation also testified before the Subcommittee on February 15, 2012, on Congressman Don Young's "Native American Energy Act," H.R. 3973.

In my prior testimony before the Senate and the House, I have described how the Fort Berthold Reservation is located in the heart of the Bakken Formation which is the largest continuous oil accumulation in the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of oil. Today, the Bakken Formation is the most active oil and gas play in the United States.

MHA Nation is actively promoting the development of our energy resources. Our resources provide us with a substantial opportunity to ensure that our members have good jobs, can heat their homes and provide for their families. We are interested in developing our resources in a responsible manner that will maintain our homelands and provide long-term economic security for our Reservation communities.

However, almost one year later, the MHA Nation continues to work on many of the same issues raised in our prior testimony, including: streamlining the oil and gas permitting process, insufficient federal staffing, and the Environmental Protection Agency's recent decision to require air permits for oil and gas wells on our Reservation. We are beginning to wonder whether our testimony is doing any good. While there have been some improvements, each day brings a new challenge and the level of federal support is often in question.

Of all of the challenges, the biggest issue we face is the inequitable division of tax revenues with the State of North Dakota. Under current law, states can tax energy companies on Reservation lands. Because of these state taxes, we cannot raise enough of our own tax revenue to provide the infrastructure needed to support and regulate the growing energy industry. We need Congress to affirm the exclusive authority of tribes raise tax revenues on the Reservation so that we can rely on the same revenues that state governments use to maintain infrastructure and support economic activity.

Without the ability to raise sufficient tax revenues, the increasing oil and gas activity is taking a tremendous toll on the Reservation. For example, we need to maintain roads so that heavy equipment can reach drilling locations, but also so that our tribal members can safely get to school or work. I have attached to my testimony two pictures that show how the industry has devastated our roads.

We also need to provide increased law enforcement to protect tribal members and the growing population of oil workers. And, we need to develop tribal codes and employ tribal staff to regulate activities on the Reservation. For example, we developed a code to prevent dumping of hazardous waste, but we also need to hire staff to enforce the code.

Our tribal government works every day to provide the stable foundation needed to promote energy development on our Reservation. But, the laws and policies of the United States force us to do this with one hand tied behind our back. It is not a fair fight and our Reservation homelands are suffering the consequences.

To avoid double state and tribal taxation on energy development that would have driven energy companies off the Reservation, we were forced into a lopsided tax agreement with the State. Three years later, the State is sitting on surpluses while we struggle to make ends meet.

I am not talking about small state surpluses. Recent reports show that in the current fiscal year the State will have a $1 billion budget surplus and created a $1.2 billon impact trust fund to put money into an investment account for infrastructure needs. The MHA Nation has current needs and our tax revenues should not be going into a North Dakota investment account.

We actually agree with what Governor Dalrymple said earlier this year, "The number one priority is to keep up with infrastructure. growth cannot continue if we do not keep up with all of the impact that happens on communities out there."

Apparently, the Governor was not talking about tribal communities. In 2011, the State of North Dakota collected in excess of $60 million in tax revenue from oil and gas development on my Reservation, but State reports document that it expended less than $2 million toward the maintenance of on-Reservation roads and infrastructure and all of that was on the state and county roads. In 2012, projections are that the State will make nearly $100 million in tax revenues from oil and gas development on the Reservation.

The need to raise tax revenues is directly related to MHA Nation's ability to exercise self-determination in the development of our energy resources. We agree with self-determination policies and the need to eliminate bureaucracy, but, without the taxes revenues that other governments rely on, tribal governments will never have the staff and resources to effectively run permit programs. This is especially true in the complicated field of energy development.

Without laws that support tribal taxing authority, MHA Nation will always be subject to bureaucratic delays by the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM). MHA Nation will also be dependent on federal budgets for Indian roads and law enforcement. To put an end to this problem, Congress should clearly affirm the exclusive authority of tribal governments to tax activities on Indian lands. Where the State provides services on the Reservation, the State can be fairly reimbursed out of tribal tax revenues.

In addition to this important taxation issue, the MHA Nation needs many other changes to the law to support energy development on the Fort Berthold Reservation. Senator Barrasso has introduced a bill, S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, that addresses a few issues, but much more is needed. The MHA Nation asks that the Committee look to the past few years of Indian energy hearings, roundtables, and legislation for legislative text and ideas that tribes have long supported.

Ideas that should be included in Indian energy legislation are:

- We need changes to the Department of the Interior appraisal process, including a deadline for making a decision on an appraisal, so that energy projects do not get held up by bureaucratic decisionmaking.
- Legislation should require the BIA and BLM to standardize lease numbers to improve permitting.
- Participants in the environmental review process for an energy project on Indian lands should be limited to the affected area.
- Legislation should eliminate fees that the BLM charges for the oversight and management of Indian trust oil and gas resources.
- Formal authority should be provided for Indian Energy Development Offices, or "One-Stop Shops," to co-locate all the federal agencies involved in permitting energy projects on Indian land which would streamline permitting, and force the BIA to hire staff with energy expertise.
- Legislation should clarify tribal jurisdiction over Reservation activities and any rights-of-way granted by an Indian tribe to eliminate uncertainty created by the Courts and encourage business development.
- We need changes in law that will allow Indian tribes to become full participants in the renewable energy industry by providing tribes will the ability to monetize tax credits, or the ability to share those tax credits with a private investor.
- Congress should also provide the Western Area Power Authority (WAPA) with the ability to treat tribal power as federal power so that tribal energy projects

can utilize the existing WAPA transmission grid to get our energy to the cities that need it.

- Legislation should open up the approximately $50 million in federal energy efficiency programs to tribal participation so that tribes can get the same support that state governments get to manage their energy costs through energy efficiency measures.
- Legislation should also require the Department of Energy (DOE) to send weatherization funding directly to tribal governments and provide opportunities for weatherization training to increase the number of energy auditors in Indian country.

I want to thank Chairman Akaka, Vice Chairman Barrasso and the members of the Committee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources. We ask that you consider legislation to address many of the issues we have described.

Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads

Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads

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

Introduction

The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments. Since 1944, tribal governments have gathered as a representative congress through NCAI to deliberate issues of critical importance to tribal governments. NCAI is pleased to submit testimony for the Senate Committee on Indian Affairs to supplement the oversight hearing on "Energy Development in Indian Country."

NCAI thanks the Senate Committee on Indian Affairs (Senate Committee) for their sustained attention to the matter of tribal energy and their dedication to finding legislative solutions to make this important sector of tribal economies viable. NCAI also appreciates the long-standing commitment of the Senate Committee in working, in a bipartisan fashion, to address key challenges in Indian Country.

An NCAI resolution regarding energy development is attached. PDX–11–072, describes the tribal energy issues most important to tribes and supports the *Indian Tribal Energy Development and Self-Determination Act Amendments* (S. 1684). In this testimony, NCAI would like to outline support for and views on S. 1684 as well as key provisions that NCAI would like to see added.

1. Analysis of Current Law and Regulations

The barriers to tribal energy development have been discussed at length during round tables and hearings conducted by the Department of Energy (DOE) and the Senate Committee on Indian Affairs. Examples of barriers include cumbersome bureaucratic processes, such as the requirement that tribes and tribal businesses obtain the approval of the Secretary of the Department of the Interior (DOI) for almost every step of energy development on tribal lands, including the approval of business agreements, leases, rights of way and appraisals. Other major barriers include tribes' and tribal businesses' lack of access to financing and transmission, and unfair treatment regarding Application for Permit to Drill (APD) fees as applied on tribal lands.

2. Enacting S. 1684 Would Reduce or Eliminate a Variety of Barriers to Tribal Energy Development

Title V of the Energy Policy Act of 2005, the "Indian Tribal Energy Development and Self-Determination Act of 2005," (the "Energy Policy Act of 2005") provides for

tribal energy self determination through the creation of tribal energy resource agreements (TERAs). Tribes have not found TERAs in their current form to provide a suitable means of achieving energy self determination. Both the Senate Committee on Indian Affairs and the House Subcommittee on Indian and Alaska Native Affairs are currently considering legislation that NCAI believes would remedy the barriers to tribal energy development in the Act.

A. Tribal Energy Resource Agreements (TERAs)

Senate bill S. 1684, *the Indian Tribal Energy Development and Self-Determination Act Amendments*, seeks to amend the existing TERA process established by the Energy Policy Act of 2005. The fact that, to date, no Indian tribe has successfully navigated the burdensome TERA process, attests to its need for procedural revisions. S. 1684 streamlines the criteria for approval by setting time limits for the approval process, as well as shifting the burden from the tribe to the federal agency to disapprove an application for a TERA, of course necessitating that the tribe meet several core criteria. After demonstrating sufficient capabilities, tribes would be able to proceed without the DOI Secretary's review for leases, business agreements and rights of way. NCAI believes the amendments provided in S. 1684 would streamline the TERA process significantly and allow tribes to better use of legislation which Congress intended they make use of but which, to date, has not helped tribes develop critical energy resources.

B. Tribal Energy Development Organizations (TEDOs)

S. 1684 also provides for a new approach to tribal energy development with the introduction of Tribal Energy Development Organizations (TEDOS). Rather than form a TERA with Interior, a tribe will be able to form a Tribal Energy Development Organization that may include partnerships with other entities. TEDOs, wholly owned by the tribe, will be able to develop tribal energy resources with reduced DOI oversight. NCAI supports this provision as an option for tribes desiring to exercise their self-determination over energy development.

C. Agency Collaboration (DOE and DOI)

NCAI also supports the S. 1684 mandate for collaboration between the DOI Office of Indian Energy and Economic Development (OIEED) and the DOE Office of Indian Energy Policy and Programs (OIEPP) on matters involving tribal energy development. Tribes would greatly benefit from the combined process expertise of OIEED and the technical expertise of OIEPP. Recognizing the value of the technical expertise that DOE, through OIEPP, has to offer, NCAI strongly recommends mandating that DOE make its expertise available to tribes in the same manner S. 1684 mandates DOI provide technical assistance. OIEPP is making critical strides to leverage the immense expertise of DOE to address the challenges facing tribal energy development and NCAI believes it is imperative that this work continue regardless of any potential change in administration.

NCAI also supports the provision of S. 1684 that expands the DOE loan guarantee program to include the Tribal Energy Development Organizations (TEDOs). This is an essential part of financing that needs to be available to tribal energy development entities.

With enactment of S. 1684, tribes will be poised to move into the energy sector with greater sophistication and self-determination. This legislative action is crucial to increasing tribal ownership and control over their own natural resources, and helping ensure those resources help provide for the future of Indian Country.

As mentioned earlier, the members of NCAI have passed a resolution to express support of S. 1684 (attached). This resolution also expresses the need for transmission access, the elimination of APD fees and the importance of making tax and finance options accessible to tribes.

3. Additional Key Barriers to Energy Development Identified in the NCAI Resolution

The NCAI resolution states opposition to any Application for Permit to Drill (APD) fees levied by the DOI Bureau of Land Management on tribal land because the APD fees create a significant disadvantage by burdening costs of exploration on tribal lands relative to the costs for exploration on neighboring lands. The NCAI resolution also recognizes the benefit of making tax incentives for renewable energy projects that are tradable and assignable for use by tribes and improving transmission access.

Tribes are commonly interested in developing their renewable energy resources for the benefits of air and water quality. However, due to their tax-exempt status as sovereigns, use of federal tax incentives for renewable energy projects is becomes a complicated issue. NCAI would like to see the renewable energy tax credits made

assignable and tradable to help tribal renewable energy projects gain traction with real world investment and finance entities. Similarly, NCAI would like to see Section 17 Corporations, which are federally-chartered corporations formed under Section 17 of the Indian Reorganization Act (IRA), become statutorily eligible for the 1603 Treasury grants for renewable energy, regardless of appropriations levels for that program.

Finally, for tribes to fully realize the scope and benefits of energy development on tribal lands, tribes need access to electric transmission. NCAI recommends an amendment to make the Energy Policy Act of 2005 binding so that power marketing administrators offer technical assistance to tribes seeking to use high voltage transmission lines. NCAI would also like to see federal power procurement leveraged for the benefit of tribal power producers.

4. Indian Coal Production Tax Credit

The Indian Coal Production Tax Credit (ICPTC) has helped tribal coal development remain competitive to ensure that much-needed revenue remains in place for tribal governments. Specifically, the Crow Nation relies on the ICPTC to stay in business due to the price differential imposed on coal with higher sulfur (SO_2) emissions. This price differential was created by Title IV of the Clean Air Act and neutralized by the Indian Coal Production Tax Credit established in the 2005 Energy Policy Act.

The 2005 Energy Policy Act included the Indian Coal Production Tax Credit, which began in tax year 2006 but unfortunately sunsets December 31, 2012. "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 a factor. The Energy Policy Act 2005 provides a factor of $1.50 per ton between 2006 and 2010 and $2.00 between 2010 and December 31, 2012.

NCAI believes that the Indian Coal Production Tax Credit should be made permanent and allowed for use against the alternative minimum tax. Additionally, the requirement that the coal be sold to an unrelated person should be amended to allow and encourage facilities owned, in whole or in part, by Indian nations to participate and benefit from the credit.

5. Carcieri Fix

NCAI supports a legislative fix to the Supreme Court's 2009 decision in *Carcieri v. Salazar*. The *Carcieri* decision erodes the trust responsibility of the Federal Government and harms future tribal energy development by creating uncertainty for investors and challenging the authority of the Department of the Interior to take land into trust for tribes. Tribal governments require trust land on which to develop their resources including energy. NCAI supports a legislative fix to the Carcieri decision that does not exclude Alaska Native tribes.

6. Statutory Assertion of Tribal Taxation Authority

Energy development provides critical revenue needed by tribes to provide governmental services to tribal members. Legislative action, affirming Indian tribes' inherent taxing authority over tribal lands would enable revenue from energy development to be fully invested in quality-of-life improvements for tribal members rather than being diminished by state taxation.

7. Small Scale Energy Implementation

NCAI recommends the creation of legislation to support implementation of small scale renewable energy. This would be particularly helpful for Alaska Native villages that pay extremely high prices for heat and power. Small scale renewable energy can reduce and stabilize energy bills by using wind and solar resources. The DOE Tribal Energy Program has facilitated the planning and initial implementation of small projects all over Alaska and the United States and these projects help greatly with high utility costs, often in very innovative ways.

Conclusion

NCAI appreciates the Committee's attention to S. 1684 and urges timely action so that a long awaited tribal energy bill can be passed during this session. NCAI supports S. 1684 but would also like to see the provisions described in this testimony included to make the next tribal energy legislation a comprehensive solution to the challenges facing tribal energy development.

Attachment

The National Congress of American Indians
Resolution #PDX-11-072

TITLE: Supporting S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, American Indian and Alaska Native tribes have significant renewable energy resource capacity in the form of wind, solar, geothermal, and biomass, as well as significant tradition energy resources, and seek to establish sustainable economic development for tribal communities; and

WHEREAS, the primary obstacle to both renewable and traditional energy resource development on tribal lands has been delays and bureaucracy at the Department of Interior, particularly in its inability to conduct appraisals and approve leases in a timely manner; and

WHEREAS, NCAI recognizes that energy efficiency is a core component of a sustainable energy program that can reduce both the amount and costs of energy consumption and raise the quality of life in Indian communities, and the NCAI strongly supports direct federal funding for increased funding for tribal energy efficiency programs; and

WHEREAS, after consultation with Indian tribes, Senator John Barrasso of Wyoming introduced S. 1684, titled above, which has been co-sponsored by Senators Akaka, McCain, Thune and Hoeven, and which would provide Indian tribes with the opportunity to remove some of the bureaucratic obstacles to energy leasing; and

WHEREAS, S. 1684 also provides a formula for direct federal funding of tribal weatherization programs, establishes a tribal priority for hydropower leasing, and includes Indian tribes in the Department of Interior's efforts on biomass; and

WHEREAS, the NCAI recognizes that the integration of the abundant tribal renewable resources into the national energy economy requires access and interconnection into the local distribution and regional transmission grids, particularly those that are owned and operated by the federal hydropower marketing administrations; and

WHEREAS, the NCAI supports the renewable energy tax incentive program and urges Congress to make these tax incentive tradable and assignable; and

WHEREAS, the NCAI strongly opposes the Department of Interior's unfair federal drilling permit fees (APD fees) as applied to tribal lands, which violate the federal trust responsibility and severely disadvantage tribal lands against competition from nearby state lands where the drilling fees are much lower.

NOW THEREFORE BE IT RESOLVED, that the NCAI supports the Indian Tribal Energy Development and Self-Determination Act Amendments (S. 1684) and urges Congress to pass the legislation after hearings and dialogue with tribal leaders; and

BE IT FURTHER RESOLVED, that in any future legislation that addresses electricity transmission access, the NCAI urges Congress to include preferential tribal access and interconnection to the distribution and transmission system; and

BE IT FURTHER RESOLVED, that the NCAI urges the passage of separate legislative provisions that would enable American Indian tribes to trade or assign tax credits from the production of renewable energy; and

BE IT FURTHER RESOLVED, that the NCAI urges Congress, the Department of Interior, and the Appropriations Committees to remove or modify the unfair drilling permit fees (APD fees) that disadvantage energy development on tribal lands; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.

President

ATTEST:

Recording Secretary

PREPARED STATEMENT OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

Tri-State Generation and Transmission Association respectfully submits the following testimony with supporting documents for inclusion in the record.

The town of Dulce, New Mexico, located on the Jicarilla Apache Nation Reservation, is served by a 24.9 kV electric distribution line. As early as 2004, management from Northern Rio Arriba Electric Cooperative, Inc. (Nora) identified the need to increase capacity of the electric service to Dulce and worked with the Jicarilla Nation (Jicarilla) to secure the right-of-way to build a 115 kV transmission line from Chama, New Mexico to Dulce. Nora requested permission to build a 115 kV transmission line and planned to operate it at 69kV initially. In April 2008, The Jicarilla contacted Nora management to inform them that the Tribal Council had approved a resolution to allow construction of a 69 kV transmission line and substation. Nora management responded that the 69kV approval needed to be changed to 115 kV as

previously discussed to correspond with all planning and engineering work done. The Jicarilla representative went back to the Tribal Council several times to request the change.

Finally, on November 7, 2009, Nora received a letter (Attachment 1) from the Jicarilla dated October 19, 2009 stating that The Jicarilla Legislative Council enacted resolution 2009–R- 359–06 on September 28, 2009 thereby confirming that the Nation had elected to construct the portion of the 115 kV transmission line on the Jicarilla Apache Nation Reservation from Dulce to the Reservation boundary in lieu of granting Nora an easement for Nora's construction of a 115 kV line. The letter indicated that the Jicarilla would own those facilities constructed on their land and interconnect those facilities to the Nora system south of Chama. A copy of resolution 2009–R–525–09 is included as Attachment 2. The letter referenced the wrong resolution. The resolution and letter indicated the nation was preparing a draft contract to provide for a long term lease of the constructed facilities to Nora and Tri-State for the purpose of delivering energy to the cooperative members on the reservation. Nora management agreed with the proposal and expected construction by the Jicarilla to begin immediately.

By 2009, the existing distribution circuit had reached its capacity during peak loads so Nora, the Jicarilla, and Nora's power supplier, Tri-State Generation and Transmission Association, Inc. (Tri-State) reached an agreement to install a temporary 2 MW generator for 24 months at a site selected by the Jicarilla in Dulce to serve the increasing load. That generator was energized for commercial service on February 3, 2010 and remains there today. The 24-month term was agreed to under a revocable permit from the Department of the Interior, Bureau of Indian Affairs as a stopgap measure while final negotiations were completed on the right-of-way for the 115 kV transmission line from Chama to Dulce.

To date, the Jicarilla have not constructed the transmission line and have indicated verbally and through their attorney that they now intend to secure transmission service from Public Service Company of New Mexico with a new line from the south and to begin negotiation with Nora to discuss acquisition of existing electric distribution facilities. The Jicarilla's attorney produced an unsigned tribal resolution at a meeting on September 9, 2011 stating so. With that discussion, Nora requested formal notice of the Jicarilla's position and plans regarding the transmission line and Nora's facilities located on the Reservation. To date, no formal notice has been provided. The twenty-four (24) month generator agreement expired and was extended even though its original purpose was frustrated (temporary service while the 115 kV Chama-Dulce line is constructed). Tri-State and Nora continue to serve the cooperative members in the area through the existing circuit and with the temporary generator. However the nature of that generator is temporary and it is imperative that the Jicarilla formally notify Nora of their intentions. Nora and Tri-State have stood ready to serve the needs of its cooperative members in the Dulce area but all efforts have been frustrated.

Attachments

THE JICARILLA APACHE NATION
P.O. BOX 507 • DULCE, NEW MEXICO • 87528-0507

Resolution of the Legislative Council

GOVERNMENT
Re: **Establishing Certain Actions That Are To Be Taken Regarding Development of a Temporary Generator Project and Phase 1 Transmission Line, Substation and Facilities**

Resolution No. 2009-B-525-09

WHEREAS, the Northern Rio Arriba Electric Cooperative, Inc. ("NORA") is an electric cooperative that distributes electric power to portions of the Jicarilla Apache Reservation (the "Reservation") and NORA's primary wholesale power supplier is Tri-State Generation and Transmission Association, Inc., ("Tri-State"); And

WHEREAS, at a meeting on June 8th and 9th, 2009 between the Legislative Council, NORA's board, and Tri-State's senior management ("Chama Meeting") the participants agreed as follows:

- That a portable "peaker" generator should be installed and interconnected to address the immediate load and reliability needs of the Chama-Dulce Circuit; and

- That in order to address these same load and reliability concerns on a long-term basis it is necessary to construct a 115kV transmission line, substation and related facilities, which can be construed either by NORA ("Approach A") or by the Nation ("Approach B"), and because both Approach A and B can only be accomplished with the Nation's consent and approval, the Nation will select from these two approaches and thereafter enter into the necessary agreements NORA and/or Tri-State to implement the selection of Approach A (which requires a right of way agreement) or B (which requires a lease of the Nation -- constructed transmission line); and

- That NORA must address issues concerning adequacy and the service connections concerning on Reservation NORA members; and

- That at an appropriate time the Nation will consider a Phase 2 (115kV) line from Navajo Dam to Dulce if it is proposed by Tri-State; and

WHEREAS, Tri-State has also undertaken steps in order to install and interconnect a temporary generator within the time frames discussed at the Chama Meeting, and Tri-State and NORA have agreed to execute the attached Revocable Permit for the installation of a temporary generator and NORA recognizes that the moratorium on new service hook-ups must be lifted; And

WHEREAS, Tri-State and NORA agree that a Memorandum of Agreement memorializing the key terms of the Chama Meeting is not necessary for the generator project to proceed once the Legislative Council selects either Approach A or Approach B; And

WHEREAS, Sturgeon Electric Company ("Sturgeon") has submitted a proposal to construct the Phase 1 115kV transmission line, substation, and connecting distribution to Dulce for the Nation for a cost of $8.85 million.

NOW, THEREFORE, BE IT RESOLVED, that the President of the Nation is authorized to:

1. Provide Tri-State and NORA with written notice that the Nation has: (i) opted for the "self-build" alternative for the Phase 1 transmission line, substation and distribution line, and is ready to enter an agreement with NORA for the development of that facility and lease it to NORA to enable NORA to deliver electricity to the Reservation and (ii) is willing to grant a short-term extension of the NORA Franchise Agreement to facilitate the development of the Phase 1 transmission line, subject to Tri-State and NORA continuing to proceed with the generator project on this basis; and

2. Execute the attached Revocable Permit for the temporary generator; and

3. In coordination with the Nation's legal counsel, Holland & Knight LLP, negotiate the terms and conditions of a construction contract for Phase 1 facilities subject to the identification of funding sources and other details to be decided by the Legislative Council's review and approval; and

4. In coordination with the Nation's legal counsel, Holland & Knight, LLP, negotiate the terms and conditions of a lease agreement for the Phase 1 facilities with NORA and Tri-State, and a suitable short-term extension of the NORA Franchise Agreement, both agreements subject to Legislative Council approval.

BE IT FINALLY RESOLVED, that the President is authorized to execute any documents necessary to carry out the directives of this Resolution.

President

Certification

The foregoing Resolution was enacted upon by the Legislative Council of the Jicarilla Apache Nation on the 28th day of September, 2009, by a vote of 6 for, 0 against, 0 abstaining, at a duly called meeting at which a quorum of the Legislative Council Members were present.

Attest:

Secretary

THE JICARILLA APACHE NATION

EXECUTIVE OFFICES

P.O. Box 507 • Dulce, New Mexico • 87528-0507 • (505) 759-3242

Jicarilla Apache Reservation
February 11, 1887-1987

October 19, 2009

Mr. Ben R. Leyba
General Manager
Northern Rio Arriba Electric Cooperative, Inc.
P.O. Box 217
Chama, New Mexico 87520

Mr. Kenneth Anderson
Executive Vice President and General Manager
Tri-State Generation & Transmission Cooperative, Inc.
1100 116th Street
Westminster, Colorado 80234

Re: 115 kV "Phase I" Transmission Line

Dear Mr. Leyba and Mr. Anderson:

Pursuant to the discussions among the Jicarilla Apache Nation ("Nation"), Tri-State Generation & Transmission Cooperative ("Tri-State") and Northern Rio Arriba Electric Cooperative ("NORA") (collectively the "Cooperatives") at Chama on June 8, 2009, the Nation's Legislative Council enacted Resolution 2009-R-359-06 on September 28, 2009, thereby confirming that the Nation's has elected to construct the portion of the proposed Phase I transmission line on the Jicarilla Apache Nation Reservation ("Reservation") from Dulce to the Reservation boundary. A copy of this Resolution is enclosed for your records.

This Phase I line will be a 115 kV line sited on the right-of-way previously identified and approved for a 69 KV line in March 2008, to connect the existing NORA transmission system south of Chama with a new substation on the Reservation at a site south of Dulce, with suitable distribution connections from this substation to Dulce. The Nation's portion of the project will include the transmission line on the Reservation, the substation, and distribution lines to Dulce. NORA and Tri-State will be responsible for the off-Reservation portion of the project as well as interconnecting these new transmission facilities with the NORA system.

The Nation is preparing a draft contract to provide for long-term lease of the on-Reservation Phase I facilities to the Cooperatives for the purpose of delivering energy to on-Reservation members on mutually-agreed terms and conditions, and to provide for agreed technical specifications, timing, siting and other necessary arrangements for these facilities. We look forward to bringing this contract to mutually-satisfactory conclusion quickly and proceeding with the project.

In the interests of expediting the installation and interconnection of the portable generator project, the Jicarilla Agency Office of the Bureau of Indian Affairs ("BIA") has evaluated and has indicated that approved the Revocable Permit are forthcoming. A fully executed and BIA-approved original counterpart of the Revocable Permit will be forwarded under separate cover to the respective legal counsel for Tri-State and NORA within the next few days. Please keep Shenan Atcitty, Stephen McHugh, and Michael Cavanaugh advised about the schedule for completing the survey of the generator site that is called for by the Revocable Permit. They will assist you in coordinating with the BIA and in obtaining any permits necessary for performing survey work on the generator site within the Reservation.

In closing, on behalf of the Legislative Council and the Nation's citizens that rely on NORA for electrical service, this is an opportunity to emphasize the critical importance of having the generator installed an interconnect at the earliest possible opportunity, and certainly by or before December 1, 2009. The Nation stands ready to assist NORA and Tri-State in achieving this vital objective.

Sincerely yours,

Levi Pesata
President