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H.R. 3973, TO FACILITATE THE DEVELOPMENT OF ENERGY ON INDIAN LANDS BY REDUCING FEDERAL REGULATIONS THAT IMPEDE TRIBAL DEVELOPMENT OF INDIAN LANDS

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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CONTENTS

	Page
Hearing held on Wednesday, February 15, 2012	1
Statement of Members:	
Boren, Hon. Dan, a Representative in Congress from the State of Oklahoma	4
Prepared statement of	5
Gosar, Hon. Paul A., a Representative in Congress from the State of Arizona	1
Prepared statement of	3
Statement of Witnesses:	
Cuch, Hon. Irene C., Chairwoman, Ute Tribal Business Council, Ute Indian Tribe of the Uintah and Ouray Reservation, Fort Duchesne, Utah	11
Prepared statement of	13
Fox, Frederick, Administrator, Tribal Energy Department, MHA Nation, New Town, North Dakota, on behalf of The Honorable Tex G. Hall, Chairman, Mandan, Hidatsa, and Arikara Nation of the Fort Berthold Reservation, Oral statement of	31
Hall, Hon. Tex G., Chairman, Mandan, Hidatsa, and Arikara Nation of the Fort Berthold Reservation, Prepared statement of	33
Groen, Wilson, President & Chief Executive Officer, Navajo Nation Oil and Gas Exploration and Production, (Arizona/New Mexico/Utah), Window Rock, Arizona	63
Prepared statement of	64
King, Hon. Randy, Chairman, Shinnecock Nation Board of Trustees, Southampton, New York	56
Prepared statement of	58
Letter of clarification submitted for the record	62
Olguin, Hon. James M. "Mike," Vice Chairman, Southern Ute Indian Tribal Council, Southern Ute Indian Tribe, Ignacio, Colorado	5
Prepared statement of	7
Sweeney, Tara M., Senior Vice President, External Affairs, Arctic Slope Regional Corporation, Anchorage, Alaska	53
Prepared statement of	54
Additional materials supplied:	
Crow Nation, Statement submitted for the record on H.R. 3973	82
Gemmill, Faith, Executive Director, Resisting Environmental Destruction on Indigenous Lands (REDOIL), Letter submitted for the record	86
National Congress of American Indians, Statement submitted for the record	89
National Congress of American Indians, Resolution #PDX-11-072	92

LEGISLATIVE HEARING ON H.R. 3973, TO FACILITATE THE DEVELOPMENT OF ENERGY ON INDIAN LANDS BY REDUCING FEDERAL REGULATIONS THAT IMPEDE TRIBAL DEVELOPMENT OF INDIAN LANDS, AND FOR OTHER PURPOSES.

Wednesday, February 15, 2012
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to notice, at 11:02 a.m., in Room 1324, Longworth House Office Building, Hon. Paul Gosar presiding.

Present: Representatives Young, Gosar, Boren, Faleomavaega, and Luján.

Mr. GOSAR. The Subcommittee will come to order. The Chairman notes that we have a quorum, which under Committee Rule 3(e) is two Members.

The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on H.R. 3973, the Native American Energy Act. Under Committee Rule 4(f), opening statements are limited to the Chairman and the Ranking Member of the Subcommittee, so that we can hear from our witnesses more quickly. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the Clerk by the close of business today.

[No response.]

Mr. GOSAR. Hearing no objection, so ordered.

STATEMENT OF THE HON. PAUL GOSAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GOSAR. I want to welcome today's witnesses, all of whom are tribes that are actively engaged in the exploration, development, and production of both conventional and emerging energy technology and resources. The Native American Energy Act contains common-sense measures to streamline and promote Native American energy and other natural resource development. It continues our efforts in this Congress to reduce the role of the Federal Government in Indian life, strengthen tribes and businesses, and encourages Indian peoples to make their own decisions and be governed by them.

Specifically, the bill reduces bureaucratic burdens, reduces frivolous lawsuits that delay or prohibit critical economic development projects, lowers the cost on tribes to permit on their trust lands, and increases tribal sovereignty by providing additional

opportunities for tribes to control their own destiny when it comes to energy development on their lands.

This bill is a result of intensive consultation with tribes across the country that are involved in energy exploration, development, and production. It contains measures that tribes requested of the Committee rooted in the principle of increasing Native Americans' control over their lands' resources. These tribes know best, because they must live with the status quo that is stifling their economic prosperity.

And I am particularly proud of the provision that will allow the Navajo Nation to assume responsibility for its subsurface leasing program. Given the vast supply of coal, oil, and natural gas on the Navajo Reservation, there is enormous opportunity for the Nation to create jobs and provide revenues for the Navajo and surrounding communities.

Given the staggering rate of poverty and unemployment on the Reservation today, the question about this initiative should be not why, but instead: How quickly can we set this in motion? Facilitating this new responsibility for the Nation will contribute to the principles of self-determination that many on this Committee have worked diligently to advocate and advance, as well as further the economic security that our nation so desperately needs.

Before I recognize the Ranking Member for any opening statements he may have, I would like to thank my friend, Wilson Groen of the Navajo Nation Oil and Gas Company. As a Member of Congress that represents the majority of the Navajo Nation, I have met with him in the past to discuss barriers to energy development on Native American lands. I am pleased to have him here testifying in support of this bill.

Second, I want to note for the record that the Subcommittee invited the Secretary of the Interior, or his designee, to testify. The Department declined, even though the Department agreed to testify tomorrow in the Senate in an oversight hearing on Indian energy.

This is the second time in this Congress that the Department has refused to testify in this committee on a bill for Native Americans. The first was a Subcommittee hearing on H.R. 887, another bill I have cosponsored with the Chairman to reduce the outrageous $99 million the Department agreed to take from the pockets of individual Indians to pay the lawyers in the *Cobell v. Salazar* settlement agreement. I am disappointed in the Department's disregard not only for the members of the Subcommittee, but for our witnesses. Many of them flew long distances from their homes and families to testify today.

But I am not discouraged. Whether the Department realizes it or not, its failure to appear today underscores the problems that tribes live with every day. The Administration's failure to show up today will not hold up progress on this bill. Chairman Young and I are committed to moving this proposal forward quickly so Congress can provide our Native American and Alaska Native constituents relief from the Federal barriers that prohibit energy development on their land.

If the Administration is serious about its commitment to encouraging economic development in Indian Country and honoring trust

responsibilities, as the Interior Secretary Salazar testified today in the Full Committee's oversight hearing on the Fiscal Year 2013 budget, they will work with Chairman Young and I to ensure our bill becomes law.

[The prepared statement of Mr. Gosar follows:]

Statement of The Honorable Paul Gosar, a Representative in Congress from the State of Arizona

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The Native American Energy Act contains common-sense measures to streamline and promote Native American energy and other natural resources development.

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The Administration's failure to show up today will not hold up progress on this bill. Chairman Young and I are committed to moving this proposal forward quickly so Congress can provide our Native American and Alaskan Native constituents relief from federal barriers that prohibit energy development on THEIR land. If the Administration is serious about its commitment to "encouraging economic development in Indian Country and honoring trust responsibilities," as Interior Secretary Salazar testified today in the full committee's oversight hearing on the FY2013 budget, they will work with Chairman Young and I to ensure our bill becomes law.

Mr. GOSAR. I look forward to hearing from our witnesses, but now would like to recognize the Ranking Member for five minutes.

STATEMENT OF THE HON. DAN BOREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. BOREN. Thank you, Mr. Chairman. I apologize for being just a little bit late. Other than slow elevators, I was speaking with Congressman Bishop who was bragging on Chairman King for quite a while. So anyway, he was saying what a great job you are doing, and everything else, so I said, "Oh, I have to get to that hearing." So he said to take good care of you.

Anyway, I do want to thank you, Mr. Chairman. I wanted to commend Chairman Young, who I guess will be with us shortly, but—for keeping his promise that he made Indian Country last year, and that was to draft and introduce legislation that allows tribes to pursue energy self-determination.

The legislation we are considering today, H.R. 3973, is a product of direct consultation with tribes across the country. It takes a number of recommendations that tribes submitted and seeks to address the many obstacles they face when developing jobs and energy resources in Indian Country.

As reported by NCAI in their Fiscal Year 2013 Indian Country Budget Request—and I quote—"Even though tribes boast nearly a quarter of American onshore oil and gas reserves, and one-third of the West low-sulfur coal, existing tribal energy production represents less than five percent of current national production, due to bureaucratic and financial barriers."

With tribes willing and able to invest in the energy industries, these numbers are unacceptable. Tribes in Oklahoma have already begun exploring hydroelectric natural gas and biomass as a means to keep emissions down, costs low, and energy local. Others are looking to develop partnerships between state and local governments. These are the first steps. But we must do more to help their efforts. The President, Members of Congress, and the American people all recognize the importance of domestic energy production. Yet our tribes cannot get past the government red tape to push forward with this development.

H.R. 3973 attempts to break through these bureaucratic barriers with a series of proposals to reduce the time for approving appraisals, requires standardization—which I think we are going to hear about in testimony—of DOI reference numbers, limit public participation in NEPA, in the NEPA review process, which—we all know about NEPA—and eliminate the collection of BLM fees on Indian lands.

While we all celebrated the passage of the Indian Tribal Energy Development and Self-Determination Act in 2005, which authorized a variety of Federal, technical, and financial assistance, participating tribes, many impediments still remain. I want to applaud, again, our Chairman for his efforts to work with our tribal neighbors to remove those impediments with the introduction of H.R. 3973.

Again, thank you, Mr. Chairman, and I look forward to the testimony.

[The prepared statement of Mr. Boren follows:]

Statement of The Honorable Dan Boren, Ranking Member, Subcommittee on Indian and Alaska Native Affairs

Thank you Mr. Chairman. First, I want to commend you Chairman Young for keeping the promise you made to Indian Country last year, to draft and introduce legislation that allows tribes to pursue energy self-determination.

The legislation we are considering today, H.R. 3973, is a product of direct consultation with tribes across the country. It takes a number of recommendations that tribes submitted and seeks to address the many obstacles they face when developing jobs and energy resources in Indian Country.

As reported by the National Congress of American Indian in their Fiscal Year 2013 Indian Country budget request, "even though Tribes boast nearly a quarter of American on-shore oil and gas reserves and one-third of the West's low-sulfur coal, existing tribal energy production represents less than 5 percent of current national production due to bureaucratic and financial barriers." With tribes willing and able to invest in the energy industries, these numbers are unacceptable. Tribes in Oklahoma have already begun exploring hydroelectric, natural gas and biomass as a means to keep emissions down, costs low, and energy local. Others are looking to develop partnerships state and local governments. These are the first steps, but we must do more to help their efforts. The President, Members of Congress, and the American people all recognize the importance of domestic energy production. Yet our tribes cannot get past the government red tape to push forward with development.

H.R. 3973 attempts to break through these bureaucratic barriers with a series of proposals to reduce the time for approving appraisals; require standardization of DOI reference numbers; limit public participation in NEPA review process and eliminate the collection of BLM fees on Indian lands.

While we all celebrated the passage of the Indian Tribal Energy Development and Self Determination Act in 2005, which authorized a variety of Federal technical and financial assistance of participating Tribes, many impediments still remain. I want to applaud you Mr. Chairman for efforts to work with our tribal neighbors to remove those impediments with the introduction of H.R. 3973.

Thank you again for recognizing me Mr. Chairman. I want to welcome our Tribal leaders to today's hearing and look forward to receiving their testimony.

Mr. GOSAR. Thank you. Our witnesses today, going from left to right, Mr. James Olguin, Vice Chairman of the Southern Ute Tribal Council; Ms. Irene Cuch, Chairman of the Ute Indian Tribe Business Council; Frederick Fox, Administrator of the Tribal Energy Department, MHA Nation; Tara Sweeney, Senior Vice President, Arctic Slope Regional Corporation; Randall King, Chairman, Shinnecock Nation Board of Trustees; and finally, Mr. Wilson Groen, President and CEO of the Navajo Nation Oil and Gas Company.

Like all our witnesses, your written testimony will appear in full in the hearing record. So I ask you to keep your oral statements to five minutes, as outlined in your invitation to you, and under Committee Rule 4(a).

Our microphones are not automatic. So please press a button when you're ready to begin. Just to give you a little bit of information on our timing, once you start and you will see the green light, that will change to yellow at four minutes, and then turns to red at five. At the yellow light, start to summarize and culminate your remarks.

And we will start right away with Mr. Olguin. Thank you.

STATEMENT OF JAMES M. "MIKE" OLGUIN, VICE CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL, IGNACIO, COLORADO

Mr. OLGUIN. Good afternoon, Chairman Gosar, Ranking Member Boren, and members of the Subcommittee. I am Michael Olguin, the Vice Chairman of the Southern Ute Indian Tribe. I am honored

to appear before you on behalf of my tribe and Tribal Council to provide testimony regarding H.R. 3973. I have submitted written testimony that covers all our comments regarding the legislation. But I will focus my comments today to the areas of the bill that are most important in our view.

First, I commend you, Chairman Gosar, for introducing the—or, excuse me, Chairman Young, for introducing the Native American Energy Act, because the bill is a positive step forward for Indian energy development. At Southern Ute, we have a proven track record of successful and responsible energy development. Yet we still must rely on Federal officials to tell us how to lease our own lands and minerals. Our primary comments on the bill relate to its provisions regarding appraisals and environmental reviews.

Additionally, we would like to suggest a new issue be included in the legislation: appraisals. We strongly support Section 3 of H.R. 3973, which would provide greater flexibility in securing required appraisals for development of tribal trust lands. We often run into significant delays when trying to complete appraisals for various transactions.

For example, our tribe's consent was requested to grant a right-of-way for a fiber optic cable. In exchange for the right-of-way the tribe asked for capacity in the cable for data transmission. Traditional appraisals could not effectively measure the value of that capacity. But our leaders knew that being connected would serve our government and businesses immensely. After long and costly delays, we secured a waiver of the appraisal process for that transaction. Since then, we have demanded similar waivers for tribal trust land transactions. Based on our experience and frustration, we strongly support the optional alternative approach to appraisals suggested in Section 3.

NEPA reform. Section 5 of the proposed legislation would limit the categories of people who can comment through the NEPA process on projects proposed on tribal trust lands. Because many transactions taking place on these lands require Federal approval, NEPA's requirements must be followed, meaning the transactions are often delayed. As tribal leaders, we fully understand the environmental consequences of our actions. But it is unacceptable that, except for the Federal Government, we are the only land owners in the United States who are subject to NEPA with respect to our land use decisions.

In fact, we—with regard to energy development, NEPA often means that other developers drain our resources from neighboring private land not subject to NEPA's requirements. Therefore, we support the changes to NEPA process proposed by Section 5. But we also hope that someday tribal trust lands are removed from the NEPA process all together.

Proposed amendment regarding the sharing of civil penalties. Last, we have recently learned of an issue that we believe would fit nicely into H.R. 3973. Under existing Federal law, tribes can enter cooperative agreements with the Office of Natural Resources Revenue, or ONRR, to assist with the audit of energy leases and royalty payments. ONRR can assess civil penalties against those who fail to make proper payments or file accurate reports under applicable leases and regulations.

If the assessment of such civil penalties is the product of work performed by a tribal audit team, ONRR must share such civil penalty proceeds on a 50/50 basis with the tribe. However, any civil penalty amounts shared by ONRR are then deducted from the amounts to be paid to the tribe under its cooperative agreement. This offset requirement unfairly punishes those tribes who have worked with the Federal Government to ensure responsibilities—is responsibly reporting.

Therefore, we suggest amending existing Federal law so that the civil penalties recovered through the tribe's efforts are shared without deduction from the tribe's contract funding. The language we propose is reflected in our written comments, and I urge you to carefully review and consider our proposed addition to H.R. 3973 on this issue.

In conclusion, thank you again for this opportunity to appear before you today on behalf of the Southern Ute Indian Tribe, and it is an honor and privilege. And we look forward to continuing our work with you on this important matter.

At this point I would be happy to take any questions. Thank you.

[The prepared statement of Mr. Olguin follows:]

Statement of The Honorable James M. "Mike" Olguin, Vice Chairman, Southern Ute Indian Tribal Council, Southern Ute Indian Tribe

I. Introduction

Chairman Young, Ranking Member Boren and members of the subcommittee, I am Mike Olguin, the Vice Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today to provide testimony regarding H.R. 3973. Although this proposed legislation was only recently introduced, it addresses a number of issues involving Indian energy resource development that have been under discussion for many months.

The proposed Native American Energy Act is a positive step forward in our longstanding effort to level the playing field when it comes to Indian energy development. For decades our tribal leaders have appeared before House and Senate Committees and urged you to change existing laws so that tribes would have the legal power to use their lands as they see fit, free from the bureaucratic delays and interference inherent in a system that relies on federal review and approval. We are very grateful for your attention and efforts toward that end. This statement presents specific comments regarding a number of the legislative provisions.

II. Background

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado in the Four Corners Region of the United States. The land ownership pattern within our Reservation is complex and includes tribal trust lands, allotted lands, non-Indian patented lands, federal lands, and state lands. Based in part upon the timing of issuance of homestead patents, sizeable portions of the Reservation lands involve split estates in which non-Indians own the surface but the tribe is beneficial owner of oil and gas or coal estates. In other situations, non-Indian mineral estates are adjacent to tribal mineral estates. When considering energy resource development, these land ownership patterns have significant implications that range from the potential for drainage to questions of jurisdiction. Historically, we have established solid working relationships with the State of Colorado and local governmental entities, which have minimized conflict and emphasized cooperation.

III. The Southern Ute Indian Tribe Has Assumed Significant Responsibility Over Energy Development

Our Reservation is a part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940's. Commencing in 1949, our tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged any active, comprehensive resource management planning. That changed in the 1970's as we and other energy resource tribes in the West recognized the po-

tential importance of monitoring oil and gas companies for lease compliance and maintaining a watchful eye on the federal agencies charged with managing our resources.

A series of events in the 1980's laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in Merrion v. Jicarilla Apache Tribe, the Tribal Council enacted a severance tax, which has produced more than $500 million in revenue over the last three decades. After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands and insisted upon flexible provisions that vested our tribe with business options and greater involvement in resource development.

In 1992, we started our own gas operating company, Red Willow Production Company, which was initially capitalized through a secretarially-approved plan for use of $8 million of tribal trust funds received by our tribe in settlement of reserved water right claims. Through conservative acquisition of on-Reservation leasehold interests, we began operating our own wells and received working interest income as well as royalty and severance tax revenue. In 1994, we participated with a partner to purchase one of the main pipeline gathering companies on the Reservation. Today, our tribe is the majority owner of Red Cedar Gathering Company, which provides gathering and treating services throughout the Reservation. Ownership of Red Cedar Gathering Company allowed us to put the infrastructure in place to develop and market coalbed methane gas from Reservation lands and gave us an additional source of revenue. Our tribal leaders recognized that the peak level of on-Reservation gas development would be reached in approximately 2005, and, in order to continue our economic growth, we expanded operations off the Reservation.

As a result of these decisions and developments, today, the Southern Ute Indian Tribe, through its subsidiary energy companies, conducts sizeable oil and gas activities in approximately 10 states and in the Gulf of Mexico. We are the largest employer in the Four Corners Region, and there is no question that energy resource development has put the tribe, our members, and the surrounding community on stable economic footing. These energy-related economic successes have resulted in a higher standard of living for our tribal members. Our members have jobs. Our educational programs provide meaningful opportunities at all levels. Our elders have stable retirement benefits. We have exceeded many of our financial goals, and we are well on the way to providing our children and their children the potential to maintain our tribe and its lands in perpetuity.

Along the way, we have encountered and overcome numerous obstacles, some of which are institutional in nature. We have also collaborated with Congress over the decades in an effort to make the path easier for other tribes to take full advantage of the economic promise afforded by tribal energy resources. As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours." The Native American Energy Act will help implement our longstanding goal of self determination, and we thank you for introducing it.

IV. Specific Comments

A. Appraisals. Section 3 of the proposed legislation would provide tribes with meaningful options and reforms to the current appraisal process. As you know, existing regulations require the Secretary of the Interior to conduct appraisals in the course of reviewing proposed transactions affecting Indian trust lands or trust assets. While this practice reflects an ostensible effort to carry out the Secretary's trust responsibility and to ensure that Indians are not short-changed in land-related transactions, it has become a major bottleneck to Indian commerce.

The current appraisal process imposes inordinate delays. In addition to near impossible staffing challenges, the appraisal methodologies employed in determining "fair market value" do not take into account the flexibility and creative deal-making often necessary to attract economic development to Indian Country. An example we often refer to involved our tribe's consent to granting a right-of-way for a fiber optic cable. As compensation for the right-of-way, we requested capacity in the cable for data transmission. Traditional appraisal methods could not effectively measure the value for compensation purposes of capacity in an unconstructed fiber optic cable, yet our leaders knew that the connectivity to our government and businesses far exceeded tradition dollar-per-rod compensation practices.

Ultimately, and after considerable and costly delay, our leaders prevailed in obtaining a waiver of the appraisal process for that transaction. We have since insisted upon a general waiver of Interior appraisals for tribal trust land transactions

on our Reservation. In lieu of those appraisals, we have a schedule of permission and surface damage compensation fees, tied to land classification categories, that guides us in most situations. We strongly support the optional, alternative approach to Interior appraisals suggested in Section 3.

B. Standardization. Section 4 of the proposed legislation directs the Secretary of the Interior to implement a uniform system of reference numbers and tracking systems for oil and gas wells. We do not know the specific facts that led to this proposal. Our tribe's energy department has worked closely with the Bureau of Land Management and the Colorado Oil and Gas Conservation Commission in many aspects of natural gas development. Through those cooperative efforts, specific API numbers and well names are assigned to each permitted well, and that indentifying information is used by operators, governmental officials, and others to reference such wells. Although there may be exceptions to the experience we have enjoyed, we would caution against adopting statutory language in this section that is so broad that it modifies existing, standard practices that are working. Instead, more specific language that remedies the particular problems would appear preferable.

C. Environmental Reviews of Major Federal Actions on Indian Lands. Section 5 of the proposed legislation would significantly reduce the categories of persons who would be entitled to review or comment upon environmental impact statements associated with major federal actions involving Indian lands. Because energy transactional documents involving Indian land generally require the approval of the Interior Secretary, and because such approval constitutes federal action, this approval process triggers compliance with the National Environmental Policy Act ("NEPA").

NEPA is a procedural statute designed to ensure that federal agencies evaluate alternatives to a proposed federal action, taking into consideration the potential environmental and social impacts of the alternatives and the views of the public. Except for the federal government, no owner of land in the United States—other than an Indian tribe or an Indian allottee—is subject to NEPA with respect to its land use transactions.

Unlike Indian trust lands, which are owned beneficially by Indian tribes or Indian individuals, other federal and public lands are generally owned for the benefit of the public at large. Like many tribal representatives, our leaders have witnessed the very real economic harm done when NEPA blankets tribal land use decisions and unfairly encroaches on tribal sovereignty. To be sure, Indian tribes are bound to substantive environmental protection laws of general application when Congress has indicated its intent to bind tribes. So long as proposed transactions are to be performed in compliance with those substantive laws, however, the evaluation of multiple alternatives to a tribal land use decision and inclusion of the public in second-guessing a tribe's decision are objectionable.

Further, in the context of energy development, the NEPA process severely penalizes tribes. Energy development on private lands adjoining tribal land does not require NEPA compliance. Thus, while federal officials undertake detailed evaluation of alternatives to a tribal energy lease, for example, oil and gas resources of tribes are often being drained by their neighbors. Particularly for tribes, like the Southern Ute Indian Tribe, with sophisticated energy and environmental staffs and decades of proven success, the NEPA review process remains frustrating and damaging.

We are supportive of major NEPA reform involving the use of tribal trust lands. We were active supporters of Section 2604 of the Energy Policy Act of 2005 and the legislative authorization for use of "Tribal Energy Resource Agreements" ("TERA"). In place of NEPA, Congress now permits a tribe with an approved TERA to establish a tribal environmental review process that allows for limited public participation. A TERA would also authorize a fribe to assume federal administrative functions related to review and operation of energy development on tribal lands. Just as our tribal leaders supported the TERA concept, we are also supportive of the public participation limitations proposed under Section 5 of the Native American Energy Act.

D. Indian Energy Development Offices. Section 6 of the legislation directs the Interior Secretary to establish at least five multi-agency Indian Energy Development Offices. The Indian Energy Development Offices would be set up in regions of significant Indian energy resource activity or potential, and, through centralized staffing, the Indian Energy Development Offices would presumably be better able to handle Indian energy development than current administrative structures. Although the establishment of Indian Energy Development Offices has been advocated by others in the Indian community, we seriously question the need for or the long-term viability of these multi-agency offices. All of the administrative agencies at the Department of the Interior share the federal trust responsibility. With the exception of the Bureau of Indian Affairs, all of those offices also have responsibilities for activities on a variety of federal lands.

Our experience indicates that when dealing with officials from non-BIA agencies, such as the BLM or the Office of Natural Resources Revenue, much can be accomplished through officials held in high regard and occupying positions of broad authority within their agencies, who have an awareness and sensitivity to Indian matters. We fear that, because of their value to their agencies for dealing with multiple issues, such officials would not be the ones selected to fill positions in Indian Energy Development Offices. With guidance from the Secretary of the Interior, we believe that prioritization of Indian trust matters and inter-agency cooperation can be effectively addressed without the creation of Indian Energy Development Offices. In sum, we do not oppose this proposal, but we seriously question whether it would be an improvement over existing practice.

E. BLM Oil and Gas Fees. Section 7 of the proposed legislation would prevent the BLM from imposing fees for (i) applications for permits to drill on Indian lands, (ii) oil and gas inspections on Indian lands, and (iii) nonproducing acreage on Indian lands. We support this legislative proposal. Energy development on Indian lands is already subject to a number of competitive disadvantages and disproportionate costs, and the imposition of the referenced fees is a further disincentive to energy development in Indian Country.

F. Bonding Requirements and Nonpayment of Attorneys' Fees To Promote Indian Energy Projects. Section 8 of the legislation imposes significant hurdles and disincentives for litigants desiring to block Indian energy projects in court or through administrative processes. Although there are aspects of this proposal that we favor, we also have some concerns. Clearly, the object of this section is to eliminate frivolous challenges to proposed activities, which challenges are designed principally as delay tactics. Our hesitancy to support this measure fully, however, derives from the knowledge that, in some cases, challenges to energy development may not be frivolous. In that regard, our tribe was the plaintiff in hard-fought litigation that ended only after the Supreme Court ruled that we did not own the coalbed methane gas trapped in our coal deposits. Legitimate disputes, such as good faith disputes regarding ownership, should not necessarily be swallowed by the reforms contemplated in this section. We are continuing our study of this section and look forward to reviewing the thoughts of other witnesses and commentators.

G. Tribal Biomass Demonstration Project; Tribal Resource Management Plans; and Leases of Restricted Lands For the Navajo Nation. Sections 9, 10, and 11 of the proposed legislation contain provisions that we support. The tribal biomass demonstration project would encourage use of valuable timber resources obtainable from federal lands for energy purposes. Section 10 recognizes resource development activity undertaken under an approved tribal resource management plan as a federally-acknowledged sustainable management practice. Finally, section 11 would expand the authorization currently extended to the Navajo Nation to enter into leasing activities with minimal federal oversight. We believe that the processes in place and being proposed for the Navajo Nation should be considered as an option available to all tribes.

V. Cooperative Agreements and Civil Penalty Cost Sharing

This portion of our testimony discusses a new issue that we hope will be addressed by the Subcommittee as the Native American Energy Act evolves: clarification regarding the sharing of civil penalties under the Federal Oil and Gas Royalty Management Act ("FOGRMA"). Under the FOGRMA, Indian tribes may enter into contracts with the Office of Natural Resources Revenue ("ONRR") to conduct audit work related to the payment and reporting of oil and gas royalties due under federally approved oil and gas leases involving tribal lands. 30 U.S.C. §§ 1732.

The Southern Ute Indian Tribe and ONNR are currently parties to such a cooperative audit agreement, which is similar to previous cooperative agreements that have been in place since the late 1980s. One provision of FOGRMA authorizes ONRR to assess civil penalties against oil and gas companies who fail to make proper payments or file accurate reports under the applicable leases and regulations. 30 U.S.C. § 1719. If the assessment of such civil penalties is the product of work performed by a tribal audit team, FOGRMA also authorizes ONRR to share such civil penalty proceeds on 50/50 basis with the applicable tribe. 30 U.S.C. 1736. The civil penalty sharing provision also states, however, that the portion received by a tribe "shall be deducted from any compensation due such. . .Indian tribe under" the applicable cooperative agreement.

Historically, the ONRR and its predecessor agencies have not collected significant civil penalties from misreporting oil and gas companies, and, accordingly, the effect of sharing such civil penalties on contract funding has not been an issue. However, the issue has recently come to the forefront. See Decision re: Office of Natural Resources Revenue—Cooperative Agreements, No. B–32197 (Comptroller General of

the United States, August 2, 2011). There appears to be a common recognition among participating tribes and ONRR that clarification is needed with respect to 30 U.S.C. § 1736. In order to provide statutory clarity and preserve the full incentive associated with the sharing of civil penalties, we suggest the following statutory language, or materially similar language:

SEC. ___. SHARED CIVIL PENALTIES.

Section 206 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1736) is amended by striking the second sentence and replacing it as follows: "Within 180 days from the date of enactment of this section, the Secretary shall also pay to applicable tribes an amount equal to 50 per centum of any civil penalty collected by the federal government under this Act resulting from activities conducted by an Indian tribe pursuant to a cooperative agreement under section 202, not previously paid under this section by the Secretary to such tribe, without deduction from any compensation due such tribe under a previous or currently existing cooperative agreement under section 202.

We hope that the Subcommittee will consider the proposed language favorably, and we look forward to working with you in discussing this matter further.

Conclusion

In conclusion, I am honored to appear before you today on behalf of the Southern Ute Indian Tribe. We believe that our experiences have given us a unique perspective on matters related to energy development in Indian Country. We look forward to continuing our work with the Subcommittee on this important matter.

At this point, I would be happy to answer any questions you may have.

Mr. GOSAR. Thank you very, very much. We are running ahead of time.

Ms. Cuch, your turn.

STATEMENT OF IRENE CUCH, CHAIRWOMAN, UTE INDIAN TRIBAL BUSINESS COUNCIL, FORT DUCHESNE, UTAH

Ms. CUCH. Good afternoon, Mr. Gosar, Ranking Member Boren, and members of the Subcommittee. My name is Irene Cuch. I am the Chairwoman of the Ute Business Committee for the Ute Indian Tribe. Thank you for the opportunity to testify today on H.R. 3973. I ask that my written testimony and additional materials, including the tribe's legislative proposals, be made a part of the hearing record.

As you know, when I testified last April during the Subcommittee's oversight hearing on Indian energy, I described the importance of oil and gas development to the tribe, and the barriers we face in fully developing these resources. Today I will spend most of my time discussing H.R. 3973. For further details about the tribe's oil and gas development, I ask that you refer to my testimony from April.

As I described in April, our Reservation is located in the State of Utah, and is one of the largest in the United States. Oil and gas has been developed on the Reservation since the 1940s. Today the tribe leases nearly 400,000 acres for oil and gas development, with some 7,000 wells producing 45,000 barrels a day, and about 900 million cubic feet of gas per day.

The tribe's oil and gas development is a primary source of revenue to fund the Tribal Government and the services we provide to our members through 60 tribal departments and agencies. The tribe also invests in tribal businesses and is a major employer in energy for economic growth in Northeastern Utah.

One of the tribe's businesses is Ute Energy, LLC, an oil and gas development company. We recently approved plans for Ute Energy,

LLC to raise significant new sources of financial capital by becoming a public traded company. With this additional investment, improvements to the oil and gas permitting process are vital to the tribe's long-term economic success.

The best example of the needed improvements come from the private sector oil and gas companies that operate on the tribe's Reservation. They routinely tell us that the Department of the Interior permitting process is the single biggest risk factor in their operations. We take this issue very seriously, because the number of permits that Interior is able to process is directly related to the revenues the tribe has available to serve its members.

At the April 2011 hearing, Chairman Young asked witnesses to submit proposals to overcome barriers to Indian energy resource development. We developed 32 legislative proposals that were submitted in July of 2011, and are pleased that some of these are included in the bill. The tribe supports H.R. 3973, and we believe the bill is a good start and can be expanded to provide more support for tribal energy development. The tribe supports the bill's reform to the appraisal process, the environmental review process, standardizing government tracking systems, and the elimination of BLM oil and gas fees.

We strongly support the bill's proposal to create Indian energy development offices. As many in Congress have noted, the oil and gas permitting process is a bureaucratic maze of Federal agencies that it takes 49 steps to obtain 1 permit. Indian energy development offices would bring all of the agencies into the same room and would streamline processes.

Former Senator Dorgan referred to these as one-stop shops. There are three one-stop shops already in Indian Country. There is one at Navajo, one in Oklahoma, and a virtual one-stop shop on a Forth Berthold Reservation in North Dakota. Senator Dorgan reported that the one-stop shop at Fort Berthold increases permit approvals by four times.

The fact is we need 10 times as many permits to be approved, and would benefit from one-stop shop. Currently, about 48 applications for permit to drill are approved each year for oil and gas operations on the Reservation. We estimate that 458 PDs will be needed each year as we expand operations. A one-stop shop would encourage the Bureau of Indian Affairs to hire staff with energy expertise. The BIA may be the most important Federal agency charged with supporting Indian energy, yet there are only a handful of BIA employees with energy expertise.

In addition, we ask that you expand the bill to include more of the solutions the tribes propose. I will highlight a few of the most important ones.

The bill could clarify that tribes retain jurisdiction over any right-of-ways they are granted. Over the last 30 years Federal courts have treated this issue differently. The uncertainty in the law hinders our energy business.

The bill must also ensure that tribes can raise tax revenues so that we can manage energy development. Currently, Federal courts allow other governments to tax energy development on Indian lands. This limits the tax revenues tribes can earn.

As Congress looks for ways to diminish——

Mr. GOSAR. Are you just about ready to wrap that up?

Ms. CUCH. Yes, almost. Just got—diminish the role of the Federal Government on Indian lands, Congress must also ensure that tribes can raise tax revenues.

[The prepared statement of Ms. Cuch follows:]

Statement of The Honorable Irene C. Cuch, Chairwoman, Ute Tribal Business Committee, Ute Indian Tribe of the Uintah and Ouray Reservation

Good afternoon Chairman Young, Ranking Member Boren, and Members of the Subcommittee. My name is Irene Cuch. I am the Chairwoman of the Ute Tribal Business Committee for the Ute Indian Tribe ("Tribe"). Thank you for the opportunity to testify today on H.R. 3973. I ask that my written testimony and additional materials including the Tribe's legislative proposals be made a part of the hearing record.

As you know, when I testified last April during the Subcommittee's Oversight Hearing on Indian Energy, I described the importance of oil and gas development to the Tribe and the barriers we face in fully developing those resources. Today I will spend most of my time discussing H.R. 3973. For further details about the Tribe's oil and gas development, I ask that you refer to my testimony from April.

As I described in April, our reservation is located in the State of Utah and is one of the largest in the United States. Oil and gas has been developed on the Reservation since the 1940's. Today, the Tribe leases nearly 400,000 acres for oil and gas development, with some 7,000 wells producing 45,000 barrels of oil a day and about 900 million cubic feet of gas per day. The Tribe's oil and gas development is the primary source of revenue to fund our tribal government and the services we provide to our members through 60 tribal departments and agencies. The Tribe also invests in tribal businesses and is a major employer and engine for economic growth in northeastern Utah.

One of the Tribe's businesses is Ute Energy, LLC—an oil and gas development company. We recently approved plans for Ute Energy, LLC to raise significant and new sources of financial capital by becoming a publically-traded company. With this additional investment, improvements to the oil and gas permitting process are vital to the Tribe's long-term economic success.

The best example of the need for improvements comes from the private sector oil and gas companies that operate on the Tribe's reservation. They routinely tell us that the Department of the Interior's permitting process is the single biggest risk factor in their operations. We take this issue very seriously because the number of permits that Interior is able to process is directly related to the revenues the Tribe has available to serve its members.

At the April 2011 hearing, Chairman Young asked witnesses to submit proposals to overcome barriers to Indian energy resource development. We developed 32 legislative proposals that were submitted in July 2011, and are pleased that some of these are included in the bill. The Tribe supports H.R. 3973, and we believe the bill is a good start and can be expanded to provide more support for tribal energy development.

The Tribe supports the bill's reforms to the appraisal process, the environmental review process, standardizing government tracking systems, and the elimination of BLM oil and gas fees.

We strongly support the bill's proposal to create Indian Energy Development Offices. As many in Congress have noted, the oil and gas permitting process is a bureaucratic maze of federal agencies, and that it takes 49 steps to obtain one permit. Indian Energy Development Offices would bring all of the agencies into the same room and would streamline processing.

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

The fact is that we need 10 times as many permits to be approved and would benefit from a one-stop shop. Currently, about 48 Applications for Permits to Drill (APD) are approved each year for oil and gas operations on the Reservation. We estimate that 450 APDs will be needed each year as we expand operations.

A one-stop shop would also encourage the Bureau of Indian Affairs (BIA) to hire staff with energy expertise. The BIA may be the most important federal agency

charged with supporting Indian energy, yet there are only a handful of BIA employees with energy expertise.

In addition, we ask that you expand the bill to include more of the solutions the Tribe proposed. I will highlight a few of the most important ones. The bill should clarify that tribes retain jurisdiction over any rights-of-way they have granted. Over the last 30 years, federal courts have treated this issue differently. The uncertainty in the law hinders our energy business.

The bill must also ensure that tribes can raise tax revenues so that we can manage energy development. Currently, federal courts allow other governments to tax energy development on Indian lands. This limits the tax revenues tribes can earn. As Congress looks for ways to diminish the role of the federal government on Indian lands, Congress must also ensure that tribes can raise tax revenues.

The Tribe also recommends amendments to the Tribal Energy Resource Agreement (TERA) program that was enacted in 2005. The Tribe supports many of the changes to the TERA program Senator Barrasso included in his Indian energy bill. In addition, changes should include a limitation on the number of times Interior can force a tribe to revise a TERA application.

Finally, the bill should include set-asides for tribes in 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 tribes.

In closing, I would like to thank Chairman Young, Ranking Member Boren and members of the Subcommittee for the opportunity to present this testimony on behalf of the Tribe. We stand ready to work with the Subcommittee 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)

Legislative Hearing on H.R. 3973
Additional Materials for the Record:

Ute Indian Tribe's Energy Legislation Proposals, July 11, 2011

On July 11, 2011, the Tribe submitted to Chairman Young and Subcommittee staff 32 legislative proposals in response to the Chairman's request at an April 1, 2011, Indian Energy Oversight Hearing, that tribes identify barriers to Indian energy development and propose solutions. The Tribe provides these additional materials at this time so that they will part of the hearing record for H.R. 3973. The Tribe has removed from these additional materials tax measures that may not be germane to this legislative hearing and other provisions that are already included in House and Senate Indian energy bills.

1) Delayed Royalties Due to Communitization Agreements

Problem: Current law requires that oil and gas companies pay royalties on producing wells within 30 days of the first month of production. However, when the well is subject to a Communitization Agreement (CA), without any statutory or regulatory authority, the Bureau of Land Management (BLM) allows oil and gas companies a 90 day grace period before royalties are due. During this period no interest is due. Moreover, the 90 day grace period has been known to extend for a year or more.

Proposed Solution: Where feasible, BLM should require CAs to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account. Once the CA is approved the royalties, plus interest can be paid to the mineral owners.

2) Standardization of Procedures for Well Completion Reports and Enforcement of Late Payments.

Problem: Current regulations only require oil and gas companies to send well completion reports to the BLM. However, at least two other agencies should be aware of this information as soon as possible, the Bureau of Indian Affairs (BIA) and the Office of Natural Resources Revenue (ONRR) within the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). In addition, upon receipt of this information ONRR should inform oil and gas companies of the penalties if royalties are not received in the required time periods, and ONRR needs to be reminded of its enforcement obligations.

Proposed Solution: Require DOI to develop a regulation that requires oil and gas lessees to send oil and gas well completion reports to BLM, BIA and ONRR at the same time. Also require ONRR to inform oil and gas companies of penalties for late payment, and clarify that ONRR is required to collect penalties if payments are late.

3) Inclusion of Tribes in Well Spacing Decisions

Problem: In most states, the BLM defers to state practices and forums when determining oil and gas well spacing on federal lands. The BLM follows this same procedure for determining spacing on Indian lands. Although the BLM ultimately exercises its federal authority and approves the oil and gas well spacing that was originally proposed in state forums, the BLM should more directly consult with and include Indian tribes in spacing determinations on their reservations.

Proposed Solution: Where the BLM is involved in determining spacing units on a tribe's reservation, the BLM should be directed to enter into oil and gas spacing agreements with Indian tribes. These agreements should provide a tribe every opportunity to participate in and ultimately determine spacing units on its reservation.

4) Environmental Review of Energy Projects on Indian Lands

Problem: Environmental review of energy projects on Indian land is often more extensive than on comparable private lands. This extensive review acts as a disincentive to development on Indian lands. In addition, federal agencies typically lack the staff and resources to expeditiously review a project.

Proposed Solution: Similar to the Clean Water Act, Clean Air Act and others, amend the National Environmental Policy Act (NEPA) to include treatment as a sovereign (TAS) provisions. The new provision would allow a tribe to submit an application to the Council on Environmental Quality and once approved, federal authority for performing environmental reviews would be delegated to tribal governments.

5) Minor Source Regulation in Indian Country

Problem: The Environmental Protection Agency (EPA) recently completed new regulations for issuing minor source air permits in Indian Country. EPA's new regulations were completed without meaningful consultation with tribal governments, and EPA does not have the necessary staff throughout Indian Country to implement the new regulations.

Proposed Solution: Require EPA to delay implementation of any new minor source rule until after it consults with tribes on its implementation plan and considers the impacts. In addition, require EPA to ensure appropriate staffing is in place to administer any new permitting requirements.

6) Distributed Generation and Community Transmission

Problem: Areas of Indian Country lack access to electric transmission. 1990 Census data found that 14.2 percent of Indian households lacked access to electric service compared to 1.4 percent of all U.S. households—a tenfold difference.[1] In some areas it is not economically feasible to develop large transmission projects. Current Department of Energy (DOE) tribal energy programs are focused on developing the most energy for the most people. There is no program that emphasizes efficient distributed generation and community transmission.

Proposed Solution: Direct DOE to conduct no fewer than 10 distributed energy demonstration projects to increase the energy resources available to Indian and Alaska Native homes, communities, and government buildings. Priority should be given to projects that utilize local resources, and reduce or stabilize energy costs.

Proposed Legislative Text:

(a) Definition of Indian Area.—In this section, the term "Indian area" has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

(b) Energy Demonstration Projects.—The Secretary of Energy shall conduct not less than 10 distributed energy demonstration projects to increase the energy resources available to Indian tribes for use in homes and community or government buildings.

(c) Priority.—In carrying out this section, the Secretary of Energy shall give priority to projects in Indian areas that—

[1] U.S. Dep't of Energy, Energy Info. Admin., Energy Consumption and Renewable Energy Development Potential on Indian Lands ix (April 2000) *(available at http://www.eia.doe.gov/cneaf/solar.renewables/ilands/ilands.pdf (using information from the 1990 Decennial Census).*

(1) reduce or stabilize energy costs;
(2) benefit populations living in poverty;
(3) provide a new generation facility or distribution or replacement system;
(4) have populations whose energy needs could be completely or substantially served by projects under this section; or
(5) transmit electricity or heat to homes and buildings that previously were not served or were underserved.

(d) Eligible Projects.—A project under this section may include a project for—
(1) distributed generation, local or community distribution, or both;
(2) biomass combined heat and power systems;
(3) municipal solid waste generation;
(4) instream hydrokinetic energy;
(5) micro-hydroelectric projects;
(6) wind-diesel hybrid high-penetration systems;
(7) energy storage and smart grid technology improvements;
(8) underground coal gasification systems;
(9) solar thermal, distributed solar, geothermal, or wind generation; or
(10) any other project that meets the goals of this section.

(e) Incorporation Into Existing Infrastructure.—As necessary, the Director shall encourage local utilities and local governments to incorporate demonstration projects into existing transmission and distribution infrastructure.

(f) Exemptions.—
(1) IN GENERAL.—A project carried out under this section shall be exempt from all cost-sharing requirements of section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).
(2) APPLICATIONS.—An application submitted to carry out a project under this section shall not be subject—
(A) to any maximum generation requirements; or
(B) to any requirements for maximizing benefits in relation to the population served.

(g) Reports.—Not later than 2 years after the date on which funds are made available for a project under this section, and annually thereafter, the Secretary shall submit to Congress a report describing—
(1) the activities carried out under the project, including an evaluation of the activity; and
(2) the number of applications received and funded under this section.

7) Surface Leasing Authority

Problem: In general, surface leases on Indian lands are limited to 25 years with one 25 year automatic approval allowed, however, the life of a typical energy project is 50 years.

Proposed Solutions: General surface lease terms should be lengthened to reflect the life of energy projects. These proposals are limited to 50 year lease terms to avoid a lease resulting in de facto ownership of tribal lands by non-Indians, and because other federal laws governing tribal jurisdiction over tribal lands can change over shorter time periods and affect the authority of tribes over lessors. In addition, all tribes should be given the opportunity to assume BIA leasing responsibilities for certain kinds of surface leasing.

a) Amend 25 U.S.C. 415(a), known as the "Indian Long Term Leasing Act," to authorize Indian tribes to lease restricted Indian land for not more than 50 years.
b) Amend 25 U.S.C. 415(e) to allow all tribes to develop leasing regulations, and once approved by the Secretary, the tribes may lease their lands for housing and community purposes for not more than 25 years without having to obtain the approval of the Secretary for each individual leases. This proposal is the similar to the HEARTH Act introduced in the 112th Congress as S. 703 and H.R. 205.
c) Amend the Indian Reorganization Act (25 U.S.C. 477) to authorize Section 17 Corporations to lease Indian land for not more than 50 years.

Proposed Legislative Text:

(a) Long-Term Leasing Act.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) (commonly known as the "Long-Term Leasing Act"), is amended—
(1) by striking the subsection designation and all that follows through "Any restricted" and inserting the following:

"(a) Authorized Purposes; Term; Approval by Secretary.—
"(1) AUTHORIZED PURPOSES.—Any restricted";

(2) in the second sentence, by striking "All leases so granted" through "twenty five years, except" and inserting the following:

"(2) TERM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term of a lease granted under paragraph (1) shall be—

"(i) for a lease of tribally owned restricted Indian land, not more than 50 years; and

"(ii) for a lease of individually owned restricted Indian land, not more than 25 years.

"(B) EXCEPTION.—Except";

(3) in the third sentence, by striking "Leases for public" and all that follows through "twenty-five years, and all" and inserting the following:

"(3) APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—All"; and

(4) in the fourth sentence, by striking "Prior to approval of" and inserting the following:

"(B) REQUIREMENTS FOR APPROVAL.—Before approving".

(b) Approval of, and Regulations Related to, Tribal Leases.—The first section of the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415) is amended as follows:

(1) In subsection (d)—

(A) in paragraph (4), by striking "the Navajo Nation" and inserting "an applicable Indian tribe";

(B) in paragraph (6), by striking "the Navajo Nation" and inserting "an Indian tribe";

(C) in paragraph (7), by striking "and" after the semicolon at the end;

(D) in paragraph (8)—

(i) by striking "the Navajo Nation";

(ii) by striking "with Navajo Nation law" and inserting "with applicable tribal law"; and

(iii) by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

"(9) the term 'Indian tribe' has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a); and

"(10) the term 'individually owned allotted land' means a parcel of land that—

"(A)(i) is located within the jurisdiction of an Indian tribe; or

"(ii) is held in trust or restricted status by the United States for the benefit of an Indian tribe or a member of an Indian tribe; and

"(B) is allotted to a member of an Indian tribe.".

(2) By adding at the end the following:

"(h) Tribal Approval of Leases.—

"(1) IN GENERAL.—At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease 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 2 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 regulations issued by the Indian tribe.

"(2) ALLOTTED LAND.—Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

"(3) AUTHORITY OF SECRETARY OVER TRIBAL REGULATIONS.—

"(A) IN GENERAL.—The Secretary shall have the authority to approve or disapprove any tribal regulations issued in accordance with paragraph (1).

"(B) CONSIDERATIONS FOR APPROVAL.—The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations—

"(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

"(ii) provide for an environmental review process that includes—

"(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

"(II) a process for ensuring that—

"(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

"(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

"(4) REVIEW PROCESS.—

"(A) IN GENERAL.—Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

"(B) WRITTEN DOCUMENTATION.—If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

"(C) EXTENSION.—The deadline described in subparagraph (A) may be extended by the Secretary, after consultation with the Indian tribe.

"(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

"(6) DOCUMENTATION.—If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

"(A) a copy of the lease, including any amendments or renewals to the lease; and

"(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

"(7) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

"(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

"(8) COMPLIANCE.—

"(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

"(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.

"(C) DOCUMENTATION.—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

"(i) make a written determination with respect to the regulations that have been violated;

"(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

"(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with—

"(I) a hearing that is on the record; and

"(II) a reasonable opportunity to cure the alleged violation.

"(9) SAVINGS CLAUSE.—Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.".

(c) Indian Reorganization Act.—Section 17 of the Act of June 18, 1934 (25 U.S.C. 477) (commonly known as the "Indian Reorganization Act") is amended in the second sentence by striking "twenty-five" and inserting "50"

8) Partnership with Federal Power Marketing Agencies

Problem: Despite the enormous potential for generating traditional and renewable energy on Indian lands, in many cases, the nation is unable to utilize these resources because they are in remote locations far from population centers where additional energy is needed.

Proposed Solution: Require Federal Power Marketing Agencies, including the Western Area Power Administration and the Bonneville Power Administration, to treat energy generated on Indian lands as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy. This solution would promote the development of traditional and renewable energy projects on tribal lands, and allow the nation to benefit from additional domestic energy supplies. In addition, this solution would provide some compensation through the promotion of tribal energy projects to Indian tribes whose lands were flooded or taken for the generation of federal energy.

Proposed Legislative Text:

Title XXVI of the Energy Policy Act of 1992 (2512 U.S.C. 3501) is amended, by adding at the end a new section:

Section XXXX. Classification of Indian Energy.

(a) IN GENERAL.—The Western Area Power Administration, the Bonneville Power Administration, and all other Federal Power Marketing agencies and related agencies shall consider energy generated on Indian lands the same as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy.

9) Duplicative Review of Tribal Energy Resource Agreements

Problem: The Energy Policy Act of 2005 provided clear standards for the Secretary to assess in approving an application for a tribal energy resource agreement. These standards do not include or require review under NEPA. However, the Department of Interior's regulations require that a TERA application be reviewed under NEPA.

Proposed Solution: Clarify that Secretarial approval of a TERA includes only the standards expressed in the Energy Policy Act of 2005 and does not include review under NEPA.

Proposed Legislative Text:

Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504) is amended by adding at the end the following—

"SECRETARIAL REVIEW.—In determining whether to approve a tribal energy resource agreement submitted in accordance with this section, the Secretary shall only rely on the standards set forth in Title V of the Energy Policy Act of 2005. The Secretary's review shall not include compliance with the National Environmental Policy Act.

10) Tribal Jurisdiction Over Rights-of-Way

Problem: Tribal jurisdiction over some rights-of-way has been limited by federal case law. Without clear jurisdictional authority over rights-of-way tribal governments are unable to provide for the health, safety, and welfare of reservation lands, and state and county governments do not have the resources to provide these services. Legislation is needed to clarify that Indian tribes retain their inherent sovereign authority and jurisdiction for any rights-of-way across Indian lands.

Proposed Solution: Clarify the law to state that Indian tribes retain their inherent jurisdiction over any rights-of-way across Indian lands.

Proposed Legislative Text:

Notwithstanding any other provision of law, Indian tribes retain inherent sovereignty and jurisdiction over Indian and non-Indian activities on any rights-of-way across Indian land granted for any purpose.

11) Need for Tax Revenues

Problem: In addition to taxes levied by Indian tribes, a variety of other governments attempt to tax energy activities on Indian lands. In some cases, the other governments levying the taxes earn more from the project than the tribal government. Dual and triple taxation is a disincentive to energy development on Indian

lands and results in decreased revenues for tribal governments. Just to encourage development, many tribes are unable to impose their own taxes or can only impose partial taxes. When tribes are not able to collect taxes on energy development, tribal governments lack the revenues to fund staff and tribal agencies to effectively oversee energy activities and tribes will remain dependent on federal funding and programs.

Proposed Solution: Limit other governments from taxing energy projects on tribal lands. If limited taxation is allowed by other governments, they should only be able to tax a project to the extent needed to cover any impacts from the project on that government's infrastructure.

Proposed Legislative Text:

(a) IN GENERAL.—Indian tribes have exclusive authority to levy or require all assessments, taxes, fees, or levies for energy activities on Indian lands.

(b) REIMBURSEMENT FOR SERVICES.—State and other local governments may enter into agreements with Indian tribes for reimbursement of services provided by the state or local government that are a directly related to the energy activities on Indian lands. Indian tribes, state and local governments are directed to negotiate in good faith in developing such agreements. Any agreement under this section may be reviewed for accuracy by the Secretary of the Interior.

(c) DEFINITIONS.—For the purposes of this section, the terms "Indian tribe" and "Indian land" have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

12) Indian Tribal Energy Loan Guarantee Program.

Problem: Despite the success of federal loan guarantee programs, DOE has not implemented the Indian Energy Loan Guarantee Program from the Energy Policy Act of 2005. This significant loan guarantee program is needed to help tribes finance energy projects.

Proposed Solution: Require DOE to implement the program in the same way that the Energy Policy Act required a national non-Indian loan guarantee program (the Title XVII program) to be implemented. The Title XVII program required DOE to develop regulations establishing the program and providing for its implementation. Once the program was established, then appropriations were provided by Congress to fund the program.

Proposed Legislative Text:

Section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) is amended—

(1) in paragraph (1)—

(A) by striking the paragraph designation and all that follows through "may provide" and inserting the following:

"(1) REQUIREMENT.—Subject to paragraph (4), not later than 1 year after the date of enactment of the Indian Energy Parity Act of 2010, the Secretary of Energy shall provide"; and

(B) by striking "any loan made to an Indian tribe for energy development" and inserting "such loans made to Indian tribes or tribal energy development organizations for energy development, energy transmission projects, or the integration of energy resources as the Secretary determines to be appropriate";

(2) in paragraph (3), by striking the paragraph designation and all that follows through "made by—" and inserting the following:

"(3) ELIGIBLE PROVIDERS OF LOANS.—A loan for which a loan guarantee is provided under this subsection shall be made by—";

(3) in paragraph (4)—

(A) by striking "(4) The aggregate" and inserting the following:

"(4) LIMITATIONS.—

"(A) AGGREGATE OUTSTANDING AMOUNT.—The aggregate"; and

(B) by adding at the end the following:

"(B) SPECIFIC APPROPRIATION OR CONTRIBUTION.—No loan guarantee may be provided under this subsection unless—

"(i) an appropriation for the cost of the guarantee has been made; or

"(ii) the Secretary of Energy has—

"(I) received from the borrower a payment in full for the cost of the obligation; and

"(II) deposited the payment into the Treasury.";

(4) in paragraph (5), by striking the paragraph designation and all that follows through "may issue" and inserting the following:

"(5) REGULATIONS.—The Secretary of Energy shall promulgate"; and

(5) in paragraph (7), by striking "1 year after the date of enactment of this section" and inserting "2 years after the date of enactment of the Indian Energy Parity Act of 2010".

13) Coordination of Agency Funding and Programs

Problem: Funding for Indian energy activities is spread across many agencies. Individual funding sources are typically too small to meet the financial needs of developing energy projects. Tribal administration costs are increased because each agency requires different application and reporting requirements.

Proposed Solution: Allow tribes to integrate and coordinate energy funding from the departments of Agriculture, Commerce, Energy, EPA, Housing and Urban Development (HUD), Interior, Labor and Transportation to ensure efficient use of existing federal funding. The proposal is modeled after the successful Pub.L.102–477 employment training integration program. The proposal would allow individual agencies to retain discretion over approval of individual projects.

Proposed Legislative Text:

(a) Definitions.—In this section:

(1) AGENCY.—The term "agency" has the meaning given the term in section 551 of title 5, United States Code.

(2) AGENCY LEADER.—The term "Agency leader" means 1 or more of the following:

(A) The Secretary of Agriculture.
(B) The Secretary of Commerce.
(C) The Secretary of Energy.
(D) The Secretary of Housing and Urban Development.
(E) The Administrator of the Environmental Protection Agency.
(F) The Secretary of the Interior.
(G) The Secretary of Labor.
(H) The Secretary of Transportation.

(3) TRIBAL ENERGY DEVELOPMENT ORGANIZATION.—The term "tribal energy development organization" has the meaning given the term in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

(b) Single Integrated Program.—

(1) IN GENERAL.—An Indian tribe or tribal energy development organization may submit to the Secretary, and to applicable Agency leaders, a plan to fully integrate into a single, coordinated, comprehensive program federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

(2) NO ADDITIONAL REQUIREMENTS.—The Agency leaders shall not impose any additional requirement or condition, additional budget, report, audit, or supplemental audit, or require additional documentation from, an Indian tribe or tribal energy development organization that has satisfied the plan criteria described in subsection (c).

(3) PROCEDURE.—

(A) IN GENERAL.—On receipt of a plan of an Indian tribe or a tribal energy development organization described in paragraph (1) that is in a form that the Secretary determines to be acceptable, the Secretary shall consult with the applicable Agency leaders to determine whether the proposed use of programs and services is in accordance with the eligibility rules and guidelines on the use of agency funds.

(B) INTEGRATION.—If the Secretary and the applicable Agency leaders make a favorable determination pursuant to subparagraph (A), the Secretary shall authorize the Indian tribe or tribal energy development organization—

(i) to integrate and coordinate the programs and services described in paragraph (4) into a single, coordinated, and comprehensive program; and

(ii) to reduce administrative costs by consolidating administrative functions.

(4) DESCRIPTION OF ACTIVITIES.—The activities referred to in paragraph (1) are federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment), including—

(A) any program under which an Indian tribe or tribal energy development organization is eligible to receive funds under a statutory or administrative formula;

(B) activities carried out using any funds an Indian tribe or members of the Indian tribe are entitled to under Federal law; and

(C) activities carried out using any funds an Indian tribe or a tribal energy development organization may secure as a result of a competitive process for the purpose of planning, designing, constructing, operating, or managing a renewable or nonrenewable energy project on Indian land.

(5) INVENTORY OF AFFECTED PROGRAMS.—

(A) REPORTS.—Not later than 90 days after the date of enactment of this Act, the Agency leaders shall—

(i) conduct a survey of the programs and services of the agency that are or may be included in the plan of an Indian tribe or tribal energy development organization under this subsection;

(ii) provide a description of the eligibility rules and guidelines on the manner in which the funds under the jurisdiction of the agency may be used; and

(iii) submit to the Secretary a report identifying those programs, services, rules, and guidelines.

(B) PUBLICATION.—Not later than 60 days after the date of receipt of each report under subparagraph (A), the Secretary shall publish in the Federal Register a comprehensive list of the programs and services identified in the reports.

(c) Plan Requirements.—A plan submitted by an Indian tribe or tribal energy development organization under subsection (b) shall—

(1) identify the activities to be integrated;

(2) be consistent with the purposes of this section regarding the integration of the activities in a demonstration project;

(3) describe—

(A) the manner in which services are to be integrated and delivered; and

(B) the expected results of the plan;

(4) identify the projected expenditures under the plan in a single budget;

(5) identify each agency of the Indian tribe to be involved in the administration of activities or delivery of the services integrated under the plan;

(6) address any applicable requirements of the Agency leaders for receiving funding from the federally funded energy-related activities and programs under the jurisdiction of the Agency leaders, respectively;

(7) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe recommends to be waived to implement the plan, including any of the requirements described in paragraph (6); and

(8) be approved by the governing body of the affected Indian tribe.

(d) Approval Process.—

(1) IN GENERAL.—Not later than 90 days after the receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary and applicable Agency leaders shall coordinate a single response to inform the Indian tribe or tribal energy development organization in writing of the determination to approve or disapprove the plan, including any request for a waiver that is made as part of the plan.

(2) PLAN DISAPPROVAL.—Any issue preventing approval of a plan under paragraph (1) shall be resolved in accordance with subsection (e)(3).

(e) Plan Review; Waiver Authority; Dispute Resolution.—

(1) IN GENERAL.—On receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary shall consult regarding the plan with—

(A) the applicable Agency leaders; and

(B) the governing body of the applicable Indian tribe.

(2) IDENTIFICATION OF WAIVERS.—

(A) IN GENERAL.—In carrying out the consultation described in paragraph (1), the Secretary, the applicable Agency leaders, and the governing body of the applicable Indian tribe shall identify the statutory, regulatory, and administrative requirements, policies, and procedures that must be waived to enable the Indian tribe or tribal energy development organization to implement the plan.

(B) WAIVER AUTHORITY.—Notwithstanding any other provision of law, the applicable Agency leaders may waive any applicable regulation, administrative requirement, policy, or procedure identified under subparagraph (A) in accordance with the purposes of this section.

(C) TRIBAL REQUEST TO WAIVE.—In consultation with the Secretary and the applicable Agency leaders, an Indian tribe may request the applicable Agency leaders to waive a regulation, administrative requirement, policy, or procedure identified under subparagraph (A).

(D) DECLINATION OF WAIVER REQUEST.—If the applicable Agency leaders decline to grant a waiver requested under subparagraph (C), the applicable Agency leaders shall provide to the requesting Indian tribe and the Secretary written notice of the declination, including a description of the reasons for the declination.

(3) DISPUTE RESOLUTION.—

(A) IN GENERAL.—The Secretary, in consultation with the Agency leaders, shall develop dispute resolution procedures to carry out this section.

(B) PROCEDURES.—If the Secretary determines that a declination is inconsistent with the purposes of this section, or prevents the Department from fulfilling the obligations under subsection (f), the Secretary shall establish interagency dispute resolution procedures involving—

(i) the participating Indian tribe or tribal energy development organization; and

(ii) the applicable Agency leaders.

(4) FINAL DECISION.—In the event of a failure of the dispute resolution procedures under paragraph (3), the Secretary shall inform the applicable Indian tribe or tribal energy development organization of the final determination not later than 180 days after the date of receipt of the plan.

(f) Responsibilities of Department.—

(1) MEMORANDUM OF AGREEMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Agency leaders shall enter into an interdepartmental memorandum of agreement that shall require and include—

(A) an annual meeting of participating Indian tribes, tribal energy development organizations, and Agency leaders, to be co-chaired by a representative of the President and a representative of the participating Indian tribes and tribal energy development organizations;

(B) an annual review of the achievements made under this section and statutory, regulatory, administrative, and policy obstacles that prevent participating Indian tribes and tribal energy development organizations from fully carrying out the purposes of this section;

(C) a forum comprised of participating Indian tribes, tribal energy development organizations, and agencies to identify and resolve interagency or Federal-tribal conflicts that occur in carrying out this section; and

(D) the dispute resolution procedures required by subsection (e)(3).

(2) DEPARTMENT RESPONSIBILITIES.—The responsibilities of the Department include—

(A) in accordance with paragraph (3), developing a model single report for each approved plan of an Indian tribe or tribal energy development organization regarding the activities carried out and expenditures made under the plan;

(B) providing, subject to the consent of an Indian tribe or tribal energy development organization with an approved plan under this section, technical assistance either directly or pursuant to a contract;

(C) developing a single monitoring and oversight system for the plans approved under this section;

(D) receiving and distributing all funds covered by a plan approved under this section; and

(E) conducting any required investigation relating to a waiver or an interagency dispute resolution under this section.

(3) MODEL SINGLE REPORT.—The model single report described in paragraph (2)(A) shall—

(A) be developed by the Secretary, in accordance with the requirements of this section; and

(B) together with records maintained at the Indian tribal level regarding the plan of the Indian tribe or tribal resource development organization, contain such information as would allow a determination that the Indian tribe or tribal energy development organization—

(i) has complied with the requirements incorporated in the applicable plan; and

(ii) will provide assurances to each applicable agency that the Indian tribe or tribal energy development organization has complied with all directly applicable statutory and regulatory requirements.

(g) No Reduction, Denial, or Withholding of Funds.—No Federal funds may be reduced, denied, or withheld as a result of participation by an Indian tribe or tribal energy development organization in the program under this section.

(h) Interagency Fund Transfers.—

(1) IN GENERAL.—If a plan submitted by an Indian tribe or tribal energy development organization under this section is approved, the Secretary and the applicable Agency leaders shall take all necessary steps to effectuate interagency transfers of funds to the Department for distribution to the Indian tribe or tribal energy development organization.

(2) COORDINATED AGENCY ACTION.—As part of an interagency transfer under paragraph (1), the applicable Agency leader shall provide the Department a 1-time transfer of all required funds by not later than October 1 of each applicable fiscal year.

(3) AGENCIES NOT AUTHORIZED TO WITHHOLD FUNDS.—If a plan is approved under this section, none of the applicable Agency leaders may withhold funds for the plan.

(i) Administration; Recordkeeping; Overage.—

(1) ADMINISTRATION OF FUNDS.—

(A) IN GENERAL.—The funds for a plan under this section shall be administered in a manner that allows for a determination that funds from a specific program (or an amount equal to the amount attracted from each program) shall be used for activities described in the plan.

(B) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section requires an Indian tribe or tribal energy development organization—

(i) to maintain separate records relating to any service or activity conducted under the applicable plan for the program under which the funds were authorized; or

(ii) to allocate expenditures among those programs.

(2) ADMINISTRATIVE EXPENSES.—

(A) COMMINGLING.—Administrative funds for activities under a plan under this section may be commingled.

(B) ENTITLEMENT.—An Indian tribe or tribal energy development organization shall be entitled to the full amount of administrative costs for the activities of a plan under this section, in accordance with applicable regulations.

(C) OVERAGES.—No overage of administrative costs for the activities of a plan under this section shall be counted for Federal audit purposes, if the overage is used for the purposes described in this section.

(j) Single Audit Act.—Nothing in this section interferes with the ability of the Secretary to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act").

(k) Training and Technical Assistance.—

(1) IN GENERAL.—The Department, with the participation and assistance of the Agency leaders, shall conduct activities for technical assistance and training relating to plans under this section, including—

(A) orientation sessions for Indian tribal leaders;

(B) workshops on planning, operations, and procedures for employees of Indian tribes;

(C) training relating to case management, client assessment, education and training options, employer involvement, and related topics; and

(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.

(2) ADMINISTRATION.—To effectively administer the training and technical assistance activities under this subsection, the Department shall collaborate with an Indian tribe that has experience with federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

14) Tribal Economic Development Bonds

Problem: Section 1402 of the American Recovery and Reinvestment Act of 2009, P.L. 115–5, 123 Stat. 115 (2009) authorized tribal governments to issue, on a temporary basis, tribal economic development bonds (TED Bonds) without satisfying the essential government function test. The bond limitation was set at $2 billion. The allocation of these bonds has been completed.

Proposed Solution: Permanently repeal the "essential government function" test currently applied by the Internal Revenue Service (IRS) to tribes who wish to issue tax exempt bonds. On a recurring annual basis, have a TED Bond allocation available to Tribes. Reallocate any unused allocation on a yearly basis.

15) Hypothecation of Coal Resources.

Problem: Many tribes and individual Indians own mineral rights to subsurface coal on split estates where non-Indians own the surface rights. To realize the benefit of the coal resources without affecting the environment or disturbing the non-Indian surface estates, tribes need to be able to hypothecate the coal resources in situ. Through hypothecation, tribes could pledge their coal resources as collateral to secure debts and obtain loans without having to extract the coal.

Proposed Solution: Clarify the law to specifically allow for the hypothecation of coal resources.

Proposed Legislative Text:

(a) PURPOSES.—The purposes of this section are –

(1) To ensure that Indian tribes and individual Indians are able to fully benefit from their coal resources in accordance with the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–396g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108) and other provisions of law that advance those Acts; and

(2) To ensure undiminished protection of the environment and the protection of surface owners under existing split estates.

(b) REVIEW—Notwithstanding any other law, Congress hereby authorizes Indian tribes and individual Indians to hypothecate their coal mineral interests in situ that tribes or individual Indians own within the boundaries of their reservations.

16) Study on Transmission Infrastructure and Access

Problem: Historically Federal and state electric transmission planning overlooked or ignored energy generation potential on Indian lands. Consequently, energy projects on tribal lands lack access to high voltage transmission.

Proposed Solution: Direct DOE to conduct a study of the electric generation potential on Indian lands and related transmission needs. The study should involve Indian tribes, federal agencies, and transmission providers and utilities operating in and around Indian country.

Proposed Legislative Text:

(a) Study.—

(1) IN GENERAL.—The Secretary of Energy, in consultation with Indian tribes, intertribal organizations, the Secretary of the Interior, the Federal Energy Regulatory Commission, the Federal power marketing administrations, regional transmission operators, national, regional, and local electric transmission providers, electric utilities, electric cooperatives, electric utility organizations, and other interested stakeholders, shall conduct a study to assess—

(A) the potential for electric generation on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources; and

(B) the electrical transmission needs relating to carrying that energy to the market.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify potential energy generation resources on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources;

(B) identify existing electrical transmission infrastructure on, and available to provide service to, Indian land;

(C) identify relevant potential electric transmission routes and paths that can carry electricity generated on Indian land to loads;

(D) assess the capacity and availability of interconnection of existing electrical transmission infrastructure;

(E) identify options to ensure tribal access to electricity, if the development of transmission infrastructure to reach tribal areas is determined to be unfeasible;

(F) identify regulatory, structural, financial, or other obstacles that Indian tribes encounter or would encounter in attempting to develop energy transmission infrastructure or connect with existing electrical transmission infrastructure; and

(G) make recommendations for legislation to help Indian tribes overcome the obstacles identified under subparagraph (F).

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).

17) Tribal Energy Efficiency

Problem: There are no ongoing programs to support tribal energy efficiency efforts. DOE's longstanding State Energy Program supporting energy efficiency efforts at the state level does not include tribes.

Proposed Solution: Direct DOE to allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings. Funding should be provided in a manner similar to successful Energy Efficiency Block Grant Program to promote projects and simplify reporting requirements.

Proposed Legislative Text:

Part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) is amended by adding at the end the following:

"(a) Definition of Indian Tribe.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(b) Purpose.—The purpose of the grants provided under subsection (d) shall be to assist Indian tribes in implementing strategies—

"(1) to reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities in a manner that—

"(A) is environmentally sustainable; and

"(B) to the maximum extent practicable, maximizes benefits for Indian tribes and tribal members;

"(2) to increase the energy efficiency of Indian tribes and tribal members; and

"(3) to improve energy efficiency in—

"(A) the transportation sector;

"(B) the building sector; and

"(C) other appropriate sectors.

"(c) Tribal Allocation.—Of the amount of funds authorized to be appropriated for each fiscal year under section 365(f) to carry out this part, the Secretary shall allocate not less than 5 percent of the funds for each fiscal year to be distributed to Indian tribes in accordance with subsection (d).

"(d) Grants.—Of the amounts available for distribution under subsection (c), the Secretary shall establish a competitive process for providing grants under this section that gives priority to projects that—

"(1) increase energy efficiency and energy conservation rather than new energy generation projects;

"(2) integrate cost-effective renewable energy with energy efficiency;

"(3) move beyond the planning stage and are ready for implementation;

"(4) clearly articulate and demonstrate the ability to achieve measurable goals;

"(5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and

"(6) maximize the creation or retention of jobs on Indian land.

"(e) Use of Funds.—An Indian tribe may use a grant received under this section to carry out activities to achieve the purposes described in subsection (b), including—

"(1) the development and implementation of energy efficiency and conservation strategies;

"(2) the retention of technical consultant services to assist the Indian tribe in the development of an energy efficiency and conservation strategy, including—

"(A) the formulation of energy efficiency, energy conservation, and energy usage goals;

"(B) the identification of strategies to achieve the goals—

"(i) through efforts to increase energy efficiency and reduce energy consumption; and

"(ii) by encouraging behavioral changes among the population served by the Indian tribe;

"(C) the development of methods to measure progress in achieving the goals;

"(D) the development and publication of annual reports to the population served by the eligible entity describing—

"(i) the strategies and goals; and

"(ii) the progress made in achieving the strategies and goals during the preceding calendar year; and

"(E) other services to assist in the implementation of the energy efficiency and conservation strategy;

"(3) the implementation of residential and commercial building energy audits;

"(4) the establishment of financial incentive programs for energy efficiency improvements;
"(5) the provision of grants for the purpose of performing energy efficiency retrofits;
"(6) the development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the Indian tribe, including—
"(A) the design and operation of the programs;
"(B) the identification of the most effective methods of achieving maximum participation and efficiency rates;
"(C) the education of the members of an Indian tribe;
"(D) the measurement and verification protocols of the programs; and
"(E) the identification of energy efficient technologies;
"(7) the development and implementation of programs to conserve energy used in transportation, including—
"(A) the use of—
"(i) flextime by employers; or
"(ii) satellite work centers;
"(B) the development and promotion of zoning guidelines or requirements that promote energy-efficient development;
"(C) the development of infrastructure, including bike lanes, pathways, and pedestrian walkways;
"(D) the synchronization of traffic signals; and
"(E) other measures that increase energy efficiency and decrease energy consumption;
"(8) the development and implementation of building codes and inspection services to promote building energy efficiency;
"(9) the application and implementation of energy distribution technologies that significantly increase energy efficiency, including—
"(A) distributed resources; and
"(B) district heating and cooling systems;
"(10) the implementation of activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;
"(11) the purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;
"(12) the replacement of traffic signals and street lighting with energy-efficient lighting technologies, including—
"(A) light-emitting diodes; and
"(B) any other technology of equal or greater energy efficiency;
"(13) the development, implementation, and installation on or in any government building of the Indian tribe of onsite renewable energy technology that generates electricity from renewable resources, including—
"(A) solar energy;
"(B) wind energy;
"(C) fuel cells; and
"(D) biomass; and
"(14) any other appropriate activity, as determined by the Secretary, in consultation with—
"(A) the Secretary of the Interior;
"(B) the Administrator of the Environmental Protection Agency;
"(C) the Secretary of Transportation;
"(D) the Secretary of Housing and Urban Development; and
"(E) Indian tribes.
"(f) Grant Applications.—
"(1) IN GENERAL.—
"(A) APPLICATION.—To apply for a grant under this section, an Indian tribe shall submit to the Secretary a proposed energy efficiency and conservation strategy in accordance with this paragraph.
"(B) CONTENTS.—A proposed strategy described in subparagraph (A) shall include a description of—
"(i) the goals of the Indian tribe for increased energy efficiency and conservation in the jurisdiction of the Indian tribe;
"(ii) the manner in which—
"(I) the proposed strategy complies with the restrictions described in subsection (e); and

"(II) a grant will allow the Indian tribe fulfill the goals of the proposed strategy.

"(2) APPROVAL.—

"(A) IN GENERAL.—The Secretary shall approve or disapprove a proposed strategy under paragraph (1) by not later than 120 days after the date of submission of the proposed strategy.

"(B) DISAPPROVAL.—If the Secretary disapproves a proposed strategy under paragraph (1)—

"(i) the Secretary shall provide to the Indian tribe the reasons for the disapproval; and

"(ii) the Indian tribe may revise and resubmit the proposed strategy as many times as necessary, until the Secretary approves a proposed strategy.

"(C) REQUIREMENT.—The Secretary shall not provide to an Indian tribe a grant under this section until a proposed strategy is approved by the Secretary.

"(3) LIMITATIONS ON USE OF FUNDS.—Of the amounts provided to an Indian tribe under this section, an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements of this section, an amount equal to the greater of—

"(A) 10 percent of the administrative expenses; or

"(B) $75,000.

"(4) ANNUAL REPORT.—Not later than 2 years after the date on which funds are initially provided to an Indian tribe under this section, and annually thereafter, the Indian tribe shall submit to the Secretary a report describing—

"(A) the status of development and implementation of the energy efficiency and conservation strategy; and

"(B) to the maximum extent practicable, an assessment of energy efficiency gains within the jurisdiction of the Indian tribe.".

18) Weatherization of Indian Homes

Problem: Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs funded by DOE. However, very little weatherization funding reaches Indian tribes despite significant weatherization needs. If a tribe wants to receive direct funding from DOE, it must prove to DOE that it is not receiving funding that is equal to what the state is providing its non-Indian population. Currently, out of 565 federally recognized tribes, only two tribes and one tribal organization receive direct weatherization funding from DOE.

Proposed Solution: Pursuant to the federal government's government-to-government relationship with Indian tribes, DOE should directly fund tribal weatherization programs. Training programs should also be supported to ensure availability of energy auditors in Indian Country.

Proposed Legislative Text:

Section 413 of the Energy Conservation and Production Act (42 U.S.C. 6863) is amended by striking subsection (d) and inserting the following:

"(d) Direct Grants to Indian Tribes for Weatherization of Indian Homes.—

"(1) DEFINITIONS.—In this subsection:

"(A) INDIAN AREA.—The term 'Indian area' has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

"(B) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(2) IN GENERAL.—Of the amounts made available for each fiscal year to carry out the Weatherization Assistance Program for Low-Income Persons established under part A of title IV, the Secretary shall allocate for Indian tribes not less than 10 percent.

"(3) REGULATIONS.—

"(A) PROPOSED REGULATIONS.—Not later than 90 days after the date of enactment of the Indian Energy Parity Act of 2010, the Secretary, after consulting with the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, Indian tribes, and intertribal organizations, shall publish in the Federal Register proposed regulations to carry out this subsection.

"(B) FINAL REGULATIONS.—

"(i) IN GENERAL.—Not later than 120 days from the date of enactment of the Indian Energy Parity Act of 2010, the Secretary shall pro-

mulgate final regulations to carry out this subsection, taking into consideration the comments submitted in response to the publication of the proposed regulations described in subparagraph (A).

"(ii) CRITERIA.—Final regulations promulgated by the Secretary to carry out this subsection shall—

"(I) provide a formula or process for ensuring that weatherization funding is available for any Indian tribe that submits a qualifying weatherization funding application under paragraph (4)(C);

"(II) promote efficiency in carrying out this subsection by the Secretary and Indian tribes; and

"(III) consider—

"(aa) the limited resources of Indian tribes to carry out this subsection;

"(bb) the unique characteristics of housing in Indian areas; and

"(cc) the remoteness of Indian areas.

"(4) ALLOCATION OF FUNDING.—

"(A) IN GENERAL.—The Secretary shall provide financial assistance to an Indian tribe from the amounts provided under paragraph (2), if the Indian tribe submits to the Secretary a weatherization funding application.

"(B) CONTENTS.—A weatherization funding application described in subparagraph (A) shall—

"(i) describe—

"(I) the estimated number and characteristics of the persons and dwelling units to be provided weatherization assistance; and

"(II) the criteria and methods to be used by the Indian tribe in providing the weatherization assistance; and

"(ii) contain any other information (including information needed for evaluation purposes) and assurances that are required under regulations promulgated by the Secretary to carry out this section.

"(C) QUALIFYING WEATHERIZATION FUNDING.—A weatherization funding application that meets the criteria under subparagraph (B) shall be considered a qualifying weatherization funding application.

"(D) INITIAL DISTRIBUTION OF FUNDING.—The Secretary shall distribute funding under this subsection to Indian tribes that submit qualifying weatherization funding applications—

"(i) on the basis of the relative need for weatherization assistance; and

"(ii) taking into account—

"(I) the number of dwelling units to be weatherized;

"(II) the climatic conditions respecting energy conservation, including a consideration of annual degree days;

"(III) the type of weatherization work to be done;.

"(IV) any data provided in the most recent version of the Bureau of Indian Affairs American Indian Population and Labor Force Report prepared pursuant to Public Law 102–477 (106 Stat. 2302), or if not available, any similar publication; and

"(V) any other factors that the Secretary determines to be necessary, including the cost of heating and cooling, in order to carry out this section.

"(E) COMPETITIVE GRANTS.—For each fiscal year, if any amounts remain available after the initial distribution of funding described in subparagraph (D), the Secretary shall solicit applications for grants from Indian tribes—

"(i) to carry out weatherization projects and weatherization training;

"(ii) to supply weatherization equipment; and

"(iii) to develop tribal governing capacity to carry out a weatherization program consistent with this subsection.

"(F) REMAINING FUNDING.—For each fiscal year, if any amounts remain available after distribution under subparagraphs (D) and (E), the amounts shall remain available to fulfill the purpose of this subsection in subsequent fiscal years.

"(G) RENEWAL OF QUALIFYING WEATHERIZATION FUNDING APPLICATIONS.—

"(i) IN GENERAL.—To achieve maximum efficiency in the allocation of funding, an Indian tribe that submits a qualifying weatherization funding application may request that the weatherization funding application of the Indian tribe be renewed in subsequent fiscal years.

"(ii) CONTENTS.—A request to renew a qualifying weatherization funding application shall contain such information as the Secretary de-

termines to be necessary to achieve efficiency in the allocation of funding under this subsection.

"(5) USE OF FUNDS.—

"(A) IN GENERAL.—An Indian tribe shall use funds provided under paragraph (4) to carry out weatherization and energy conservation activities that benefit the members of an Indian tribe in Indian areas.

"(B) ELIGIBLE ACTIVITIES.—The weatherization and energy conservation activities described in subparagraph (A) include—

"(i) the provision of existing services under this section;

"(ii) the acquisition and installation of energy-efficient windows and doors and heating and cooling equipment; or

"(iii) the repair, replacement, or insulation of floors, walls, roofs, and ceilings.

"(C) APPLICABILITY OF REQUIREMENTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the use of funds under this paragraph by an Indian tribe shall be subject only to—

"(I) the requirements of this subsection; and

"(II) implementing regulations of the Department of Energy.

"(ii) OTHER REQUIREMENTS OF ACT.—In accordance with the government-to-government and trust relationships between the United States and Indian tribes, the income, energy audit, grant limitation, and other administrative and eligibility requirements of this Act shall not apply to the use of funds under this paragraph by an Indian tribe.

"(6) REPORT.—Not later than 90 days after the closing date of each applicable project year, each Indian tribe that receives funds under this subsection shall submit to the Secretary a simple outcome report that describes, for that project year—

"(A) each activity carried out by the Indian tribe under this subsection, including the amounts used for each such activity;

"(B) the number of Indian households benefitted by the activities of the Indian tribe under this subsection; and

"(C) the estimated savings in energy costs realized in the communities served by the Indian tribe.

"(7) TRAINING AND TECHNICAL ASSISTANCE.—The Secretary shall carry out technical assistance and training activities relating to weatherization under this subsection, including—

"(A) orientation sessions for Indian tribes;

"(B) workshops on planning, operations, and procedures for Indian tribes to use the funding provided under this subsection;

"(C) training relating to carrying out weatherization projects; and

"(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.".

19) Hydroelectric Licensing Preferences

Problem: Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) provides a preference to states and municipalities, but not tribes, when applying for hydroelectric preliminary permits and original licenses.

Proposed Solution: Provide tribes with the same preference as states and municipalities.

Proposed Legislative Text:

Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) is amended—

(1) by striking "In issuing" and inserting "(1) IN GENERAL.—In issuing"; and

(2) in paragraph (1) (as so designated)—

(A) by striking "States and municipalities" and inserting "States, Indian tribes, and municipalities"; and

(B) by adding at the end the following:

"(2) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).".

20) Department of Energy Laboratories Technical Assistance

Problem: DOE's national laboratories have extensive research and technical expertise that is underutilized by Indian tribes.

Proposed Solution: Encourage DOE's national laboratories to reach out to Indian tribes and make research, training, and expertise more accessible to Indian tribes.

Proposed Legislative Text:

Section 2602(b) of the Energy Policy Act of 1992 (25 U.S.C. 3502(b)) is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) TECHNICAL AND SCIENTIFIC RESOURCES.—In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects."

Mr. GOSAR. Thank you.

Ms. CUCH. OK.

Mr. GOSAR. Mr. Fox?

STATEMENT OF FREDERICK FOX, ADMINISTRATOR, TRIBAL ENERGY DEPARTMENT, MHA NATION, NEW TOWN, NORTH DAKOTA

Mr. FOX. Good afternoon, Chairman Gosar and members of the Subcommittee. My name is Fred Fox, and I am the Administrator of the Mandan, Hidatsa, and Arikara Nation Tribal Energy Department. Chairman Hall regrets that he could not be here to testify on this issue of grave importance. I am honored to present this testimony on his behalf, and ask that my written testimony and additional materials be included in the hearing.

Chairman Hall testified last April December [sic] during this Subcommittee's hearing on Indian energy. As you will recall, 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 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.

We continue to work on many of the same issues in Chairman Hall's April testimony, including streamlining the oil and gas permitting process, insufficient Federal staffing, and the Environment Protection Agency's recent decision to require air permits for wells on our Reservation. Of all of the challenges, the biggest issue we face is the inequitable division of tax revenues within the state.

Under the current law, states can tax energy companies on the Reservation lands. Because of the 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 exclusive authority of tribes to raise tax revenues to the Reservation, so that we can rely on the same revenues that state government uses to maintain infrastructure and support economic activity.

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 and get to work. I brought two pictures that show how industry has devastated our roads.

We also need to provide increased law enforcement to protect tribal members and the growing population of oil workers. We need to develop tribal codes, 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. The laws that restrict our ability to raise tax revenues force us to govern with one hand tied behind our back.

It is not fair, and our homelands are suffering the consequences. To avoid dual state and tribal taxation 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.

In the current fiscal year, the state will have a $1 billion budget surplus, and create a $1.2 billion investment account for future infrastructure needs. We have current needs, and our tax revenue should not be going into a state investment account. We actually agree with what State 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 the communities out there.

Apparently, the Governor was not talking about the tribal communities. In 2011, the state collected more than $60 million in tax revenue from the Reservation. But the state expended less than $2 million toward the maintenance of the state and county roads on the Reservation. In 2012, the state is expected to make $112 million in tax revenues from our Reservation.

We agree with Chairman Young it would be good to get the Bureau of Indian Affairs out of the way. But the tax revenues that our government rely on—our tribal governments will never have the staff and resources to run permitting programs, especially in the complicated area of energy development. Without the laws that support tribal taxing authority, we will always be subject to the bureaucratic Federal permit approval process.

This is the perspective we take when we assess H.R. 3973. We support many of the provisions in the bill, and we ask that more be included to ensure that tribes can exercise self-determination and energy development. We support changes in the bill to the appraisal process, standardizing lease permitting, limiting participants in the environmental review process to the affected area, eliminating BLM and oil and gas fees, and providing formal authority of Indian Energy Development Office.

In addition, we ask that you expand the bill to include provisions that will allow MHA Nation to develop the legal and physical infrastructure necessary to support the growing energy industry on the Reservation. Most important, the bill should affirm have exclusive authority to raise taxes from activities on Indian lands. The authority is essential for tribal governments to exercise self-determination over our energy resources. We cannot ask to take over more responsibilities for Federal Government without the ability to raise the revenues needed to support those responsibilities.

In conclusion, I want to thank Chairman Gosar and the members of the Subcommittee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources.

[The prepared statement of Chairman Hall follows:]

Statement of The Honorable Tex G. Hall, Chairman, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation

Good morning Chairman Young and Members of the Subcommittee. My name is Fred Fox. I am the Administrator of the Mandan, Hidatsa and Arikara Nation's (MHA Nation) Tribal Energy Department. Chairman Hall regrets that he could not be here to testify on this issue of great importance. I am honored to present this testimony on his behalf.

Chairman Hall testified last April during the Subcommittee's hearing on Indian energy. As you will recall, 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.

We continue to work on many of the same issues raised in Chairman Hall's April 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 wells on our Reservation.

Of all of the challenges, the biggest issue we face is the inequitable division of tax revenues with the State. 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.

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 brought 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.

The laws that restrict our ability to raise tax revenues force us to govern with one hand tied behind out back. It is not a fair fight and our homelands are suffering the consequences.

To avoid dual state and tribal taxation 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.

In the current fiscal year the State will have a $1 billion budget surplus and created a $1.2 billion investment account for future infrastructure needs. We have current needs and our tax revenues should not be going into a State investment account.

We actually agree with what State 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 collected more than $60 million in tax revenue from the Reservation, but the State expended less than $2 million toward the maintenance of state and county roads on the Reservation. In 2012, the State is expected to make $100 million in tax revenues from our Reservation.

We agree with Chairman Young, it would be good to get the Bureau of Indian Affairs out of the way. But, without the tax revenues that other governments rely on, tribal governments will never have the staff and resources to run permit programs—especially in the complicated area of energy development. Without laws that support tribal taxing authority, we will always be subject to the bureaucratic federal permit approval process.

This is the perspective we take when we assess H.R. 3973. We support many of the provisions in the bill and we ask that more be included to ensure that tribes can exercise self-determination in the area of energy development.

We support changes in the bill to the appraisal process, standardizing lease numbers, limiting participants in the environmental review process to the affected area, eliminating BLM oil and gas fees, and providing formal authority for Indian Energy Development Offices.

In addition to these, we ask that you expand the bill to include provisions that will allow the MHA Nation to develop the legal and physical infrastructure necessary to support the growing energy industry on the Reservation. Most important, the bill should affirm that tribes have exclusive authority to raise taxes from activities on Indian lands. This authority is essential for tribal governments to exercise self-determination over our energy resources. We cannot be asked to take over more responsibilities for the federal government without the ability to raise the revenues needed to support those responsibilities.

We also need to clarify tribal jurisdiction over Reservation activities and any rights-of-way granted by an Indian tribe. Courts have created uncertainty in the law and this uncertainty is yet another disincentive to the energy business.

MHA Nation is also blessed with some of the windiest lands in the Nation. To develop this resource we need to be able to use tax credits and the Western Area Power Authority should treat tribal power as federal power so that we have access to the existing transmission grid to get this energy to the cities that need it.

Finally, the bill should include tribes in federal energy efficiency and weatherization programs.

In conclusion, I want to thank Chairman Young and the members of the Subcommittee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources.

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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Legislative Proposals Submitted by the MHA Nation to the Subcommittee on July 18, 2011:

Proposals That Would Change the Tax Code and Proposals Already Appearing in Introduced Bills Have Been Omitted

1) Delayed Royalties Due to Communitization Agreements

Problem: Current law requires that oil and gas companies pay royalties on producing wells within 30 days of the first month of production. However, when the

well is subject to a Communitization Agreement (CA), without any statutory or regulatory authority, the Bureau of Land Management (BLM) allows oil and gas companies a 90 day grace period before royalties are due. During this period no interest is due. Moreover, the 90 day grace period has been known to extend for a year or more.

Proposed Solution: Where feasible, BLM should require CAs to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account. Once the CA is approved the royalties, plus interest can be paid to the mineral owners.

2) Standardization of Procedures for Well Completion Reports and Enforcement of Late Payments.

Problem: Current regulations only require oil and gas companies to send well completion reports to the BLM. However, at least two other agencies should be aware of this information as soon as possible, the Bureau of Indian Affairs (BIA) and the Office of Natural Resources Revenue (ONRR) within the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). In addition, upon receipt of this information ONRR should inform oil and gas companies of the penalties if royalties are not received in the required time periods, and ONRR needs to be reminded of its enforcement obligations.

Proposed Solution: Require DOI to develop a regulation that requires oil and gas lessees to send oil and gas well completion reports to BLM, BIA and ONRR at the same time. Also require ONRR to inform oil and gas companies of penalties for late payment, and clarify that ONRR is required to collect penalties if payments are late.

3) Inclusion of Tribes in Well Spacing Decisions

Problem: In most states, the BLM defers to state practices and forums when determining oil and gas well spacing on federal lands. The BLM follows this same procedure for determining spacing on Indian lands. Although the BLM ultimately exercises its federal authority and approves the oil and gas well spacing that was originally proposed in state forums, the BLM should more directly consult with and include Indian tribes in spacing determinations on their reservations.

Proposed Solution: Where the BLM is involved in determining spacing units on a tribe's reservation, the BLM should be directed to enter into oil and gas spacing agreements with Indian tribes. These agreements should provide a tribe every opportunity to participate in and ultimately determine spacing units on its reservation.

4) Environmental Review of Energy Projects on Indian Lands

Problem: Environmental review of energy projects on Indian land is often more extensive than on comparable private lands. This extensive review acts as a disincentive to development on Indian lands. In addition, federal agencies typically lack the staff and resources to expeditiously review a project.

Proposed Solution: Similar to the Clean Water Act, Clean Air Act and others, amend the National Environmental Policy Act (NEPA) to include treatment as a sovereign (TAS) provisions. The new provision would allow a tribe to submit an application to the Council on Environmental Quality and once approved, federal authority for performing environmental reviews would be delegated to tribal governments.

5) Minor Source Regulation in Indian Country

Problem: The Environmental Protection Agency (EPA) recently completed new regulations for issuing minor source air permits in Indian Country. EPA's new regulations were completed without meaningful consultation with tribal governments, and EPA does not have the necessary staff throughout Indian Country to implement the new regulations.

Proposed Solution: Require EPA to delay implementation of any new minor source rule until after it consults with tribes on its implementation plan and considers the impacts. In addition, require EPA to ensure appropriate staffing is in place to administer any new permitting requirements.

6) Distributed Generation and Community Transmission

Problem: Areas of Indian Country lack access to electric transmission. 1990 Census data found that 14.2 percent of Indian households lacked access to electric serv-

ice compared to 1.4 percent of all U.S. households—a tenfold difference.[1] In some areas it is not economically feasible to develop large transmission projects. Current Department of Energy (DOE) tribal energy programs are focused on developing the most energy for the most people. There is no program that emphasizes efficient distributed generation and community transmission.

Proposed Solution: Direct DOE to conduct no fewer than 10 distributed energy demonstration projects to increase the energy resources available to Indian and Alaska Native homes, communities, and government buildings. Priority should be given to projects that utilize local resources, and reduce or stabilize energy costs.

Proposed Legislative Text:

(a) Definition of Indian Area.—In this section, the term "Indian area" has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

(b) Energy Demonstration Projects.—The Secretary of Energy shall conduct not less than 10 distributed energy demonstration projects to increase the energy resources available to Indian tribes for use in homes and community or government buildings.

(c) Priority.—In carrying out this section, the Secretary of Energy shall give priority to projects in Indian areas that—

(1) reduce or stabilize energy costs;
(2) benefit populations living in poverty;
(3) provide a new generation facility or distribution or replacement system;
(4) have populations whose energy needs could be completely or substantially served by projects under this section; or
(5) transmit electricity or heat to homes and buildings that previously were not served or were underserved.

(d) Eligible Projects.—A project under this section may include a project for—

(1) distributed generation, local or community distribution, or both;
(2) biomass combined heat and power systems;
(3) municipal solid waste generation;
(4) instream hydrokinetic energy;
(5) micro-hydroelectric projects;
(6) wind-diesel hybrid high-penetration systems;
(7) energy storage and smart grid technology improvements;
(8) underground coal gasification systems;
(9) solar thermal, distributed solar, geothermal, or wind generation; or
(10) any other project that meets the goals of this section.

(e) Incorporation Into Existing Infrastructure.—As necessary, the Director shall encourage local utilities and local governments to incorporate demonstration projects into existing transmission and distribution infrastructure.

(f) Exemptions.—

(1) IN GENERAL.—A project carried out under this section shall be exempt from all cost-sharing requirements of section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).
(2) APPLICATIONS.—An application submitted to carry out a project under this section shall not be subject—
  (A) to any maximum generation requirements; or
  (B) to any requirements for maximizing benefits in relation to the population served.

(g) Reports.—Not later than 2 years after the date on which funds are made available for a project under this section, and annually thereafter, the Secretary shall submit to Congress a report describing—

(1) the activities carried out under the project, including an evaluation of the activity; and
(2) the number of applications received and funded under this section.

7) Surface Leasing Authority

Problem: In general, surface leases on Indian lands are limited to 25 years with one 25 year automatic approval allowed, however, the life of a typical energy project is 50 years.

Proposed Solutions: General surface lease terms should be lengthened to reflect the life of energy projects. These proposals are limited to 50 year lease terms to avoid a lease resulting in de facto ownership of tribal lands by non-Indians, and be-

[1] U.S. Dep't of Energy, Energy Info. Admin., Energy Consumption and Renewable Energy Development Potential on Indian Lands ix (April 2000) *(available at http://www.eia.doe.gov/cneaf/solar.renewables/ilands/ilands.pdf (using information from the 1990 Decennial Census).*

cause other federal laws governing tribal jurisdiction over tribal lands can change over shorter time periods and affect the authority of tribes over lessors. In addition, all tribes should be given the opportunity to assume BIA leasing responsibilities for certain kinds of surface leasing.

a) Amend 25 U.S.C. 415(a), known as the "Indian Long Term Leasing Act," to authorize Indian tribes to lease restricted Indian land for not more than 50 years.

b) Amend 25 U.S.C. 415(e) to allow all tribes to develop leasing regulations, and once approved by the Secretary, the tribes may lease their lands for 25 or 50 years, depending on the circumstance, without having to obtain the approval of the Secretary for each individual leases. This proposal is the similar to the HEARTH Act introduced in the 112th Congress as S. 703 and H.R. 205.

c) Amend the Indian Reorganization Act (25 U.S.C. 477) to authorize Section 17 Corporations to lease Indian land for not more than 50 years.

Proposed Legislative Text:

(a) Long-Term Leasing Act.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) (commonly known as the "Long-Term Leasing Act"), is amended—

(1) by striking the subsection designation and all that follows through "Any restricted" and inserting the following:

"(a) Authorized Purposes; Term; Approval by Secretary.—

"(1) AUTHORIZED PURPOSES.—Any restricted";

(2) in the second sentence, by striking "All leases so granted" through "twenty five years, except" and inserting the following:

"(2) TERM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term of a lease granted under paragraph (1) shall be—

"(i) for a lease of tribally owned restricted Indian land, not to exceed 50 years; and

"(ii) for a lease of individually owned restricted Indian land, not to exceed 25 years.

"(B) EXCEPTION.—Except";

(3) in the third sentence, by striking "Leases for public" and all that follows through "twenty-five years, and all" and inserting the following:

"(3) APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—All"; and

(4) in the fourth sentence, by striking "Prior to approval of" and inserting the following:

"(B) REQUIREMENTS FOR APPROVAL.—Before approving".

(b) Approval of, and Regulations Related to, Tribal Leases.—The Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415) is amended by adding at the end the following:

"(h) Tribal Approval of Leases.—

"(1) IN GENERAL.—At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease 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 an agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

"(B) in the case of a leases for business, public, religious, educational, recreational, or residential purposes, 50 years and with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed 25 years, if such terms are provided for by the regulations issued by the Indian tribe.

"(2) ALLOTTED LAND.—Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

"(3) AUTHORITY OF SECRETARY OVER TRIBAL REGULATIONS.—

"(A) IN GENERAL.—The Secretary shall have the authority to approve or disapprove any tribal regulations issued in accordance with paragraph (1).

"(B) CONSIDERATIONS FOR APPROVAL.—The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations—

"(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

"(ii) provide for an environmental review process that includes—

"(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

"(II) a process for ensuring that—

"(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

"(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

"(4) REVIEW PROCESS.—

"(A) IN GENERAL.—Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

"(B) WRITTEN DOCUMENTATION.—If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

"(C) EXTENSION.—The deadline described in subparagraph (A) may be extended by the Secretary, after consultation with the Indian tribe.

"(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

"(6) DOCUMENTATION.—If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

"(A) a copy of the lease, including any amendments or renewals to the lease; and

"(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

"(7) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

"(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

"(8) COMPLIANCE.—

"(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

"(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.

"(C) DOCUMENTATION.—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

"(i) make a written determination with respect to the regulations that have been violated;

"(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

"(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with—

"(I) a hearing that is on the record; and

"(II) a reasonable opportunity to cure the alleged violation.

"(9) SAVINGS CLAUSE.—Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.".

(c) Indian Reorganization Act.—Section 17 of the Act of June 18, 1934 (25 U.S.C. 477) (commonly known as the "Indian Reorganization Act") is amended in the second sentence by striking "twenty-five" and inserting "50"

8) Partnership with Federal Power Marketing Agencies

Problem: Despite the enormous potential for generating traditional and renewable energy on Indian lands, in many cases, the nation is unable to utilize these resources because they are in remote locations far from population centers where additional energy is needed.

Proposed Solution: Require Federal Power Marketing Agencies, including the Western Area Power Administration and the Bonneville Power Administration, to treat energy generated on Indian lands as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy. This solution would promote the development of traditional and renewable energy projects on tribal lands, and allow the nation to benefit from additional domestic energy supplies. In addition, this solution would provide some compensation through the promotion of tribal energy projects to Indian tribes whose lands were flooded or taken for the generation of federal energy.

Proposed Legislative Text:

Title XXVI of the Energy Policy Act of 1992 (2512 U.S.C. 3501) is amended, by adding at the end a new section:

Section XXXX. Classification of Indian Energy.

(a) IN GENERAL.—The Western Area Power Administration, the Bonneville Power Administration, and all other Federal Power Marketing agencies and related agencies shall consider energy generated on Indian lands the same as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy.

9) Tribal Energy Resource Agreements

Problem: The effect the Tribal Energy Resource Agreement (TERA) program, authorized in Title V of the Energy Policy Act of 2005, on the federal government's trust responsibility is unclear.

Proposed Solution: DOI must do further outreach and education on the TERA program and its impacts on the Secretary's trust responsibility, including revising TERA regulations after further consultation with Tribes.

Proposed Legislative Text:

Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504) is amended by adding at the end—

"(f) FURTHER CONSULTATION.—Within six months after the passage of this act, the Secretary shall engage in further consultation with Indian tribes regarding the regulations for implementing the Tribal Energy Resource Agreement program. Consultation shall pay particular attention to fully explaining and discussing the impacts, if any, of the program on the Secretary's trust responsibility. Following consultation the Secretary shall make revisions to the regulations consistent with that consultation.

10) Tribal Jurisdiction Over Rights-of-Way

Problem: Tribal jurisdiction over some rights-of-way has been limited by federal case law. Without clear jurisdictional authority over rights-of-way tribal governments are unable to provide for the health, safety, and welfare of reservation lands, and state and county governments do not have the resources to provide these services. Legislation is needed to clarify that Indian tribes retain their inherent sovereign authority and jurisdiction for any rights-of-way across Indian lands.

Proposed Solution: Clarify the law to state that Indian tribes retain their inherent jurisdiction over any rights-of-way across Indian lands.

Proposed Legislative Text:

Notwithstanding any other provision of law, Indian tribes retain inherent sovereignty and jurisdiction over Indian and non-Indian activities on any rights-of-way across Indian land granted for any purpose.

11) Need for Tax Revenues

Problem: In addition to taxes levied by Indian tribes, a variety of other governments attempt to tax energy activities on Indian lands. In some cases, the other governments levying the taxes earn more from the project than the tribal government. Dual and triple taxation is a disincentive to energy development on Indian lands and results in decreased revenues for tribal governments. Just to encourage development, many tribes are unable to impose their own taxes or can only impose partial taxes. When tribes are not able to collect taxes on energy development, tribal governments lack the revenues to fund staff and tribal agencies to effectively oversee energy activities and tribes will remain dependent on federal funding and programs.

Proposed Solution: Limit other governments from taxing energy projects on tribal lands. If limited taxation is allowed by other governments, they should only be able to tax a project to the extent needed to cover any impacts from the project on that government's infrastructure.

Proposed Legislative Text:

(a) IN GENERAL.—Indian tribes have exclusive authority to levy or require all assessments, taxes, fees, or levies for energy activities on Indian lands.

(b) REIMBURSEMENT FOR SERVICES.—State and other local governments may enter into agreements with Indian tribes for reimbursement of services provided by the state or local government that are a directly related to the energy activities on Indian lands. Indian tribes, state and local governments are directed to negotiate in good faith in developing such agreements. Any agreement under this section may be reviewed for accuracy by the Secretary of the Interior.

(c) DEFINITIONS.—For the purposes of this section, the terms "Indian tribe" and "Indian land" have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

12) Indian Tribal Energy Loan Guarantee Program.

Problem: Despite the success of federal loan guarantee programs, DOE has not implemented the Indian Energy Loan Guarantee Program from the Energy Policy Act of 2005. This significant loan guarantee program is needed to help tribes finance energy projects.

Proposed Solution: Require DOE to implement the program in the same way that the Energy Policy Act required a national non-Indian loan guarantee program (the Title XVII program) to be implemented within one year after the passage of this act. The Title XVII program required DOE to develop regulations establishing the program and providing for its implementation. Once the program was established, then appropriations were provided by Congress to fund the program.

Proposed Legislative Text:

Section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) is amended—

(1) in paragraph (1)—

(A) by striking the paragraph designation and all that follows through "may provide" and inserting the following:

"(1) REQUIREMENT.—Subject to paragraph (4), not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall provide"; and

(B) by striking "any loan made to an Indian tribe for energy development" and inserting "such loans made to Indian tribes or tribal energy development organizations for energy development, energy transmission projects, or the integration of energy resources as the Secretary determines to be appropriate";

(2) in paragraph (3), by striking the paragraph designation and all that follows through "made by—" and inserting the following:

"(3) ELIGIBLE PROVIDERS OF LOANS.—A loan for which a loan guarantee is provided under this subsection shall be made by—";

(3) in paragraph (4)—

(A) by striking "(4) The aggregate" and inserting the following:

"(4) LIMITATIONS.—

"(A) AGGREGATE OUTSTANDING AMOUNT.—The aggregate"; and

(B) by adding at the end the following:

"(B) SPECIFIC APPROPRIATION OR CONTRIBUTION.—No loan guarantee may be provided under this subsection unless—

"(i) an appropriation for the cost of the guarantee has been made; or

"(ii) the Secretary of Energy has—

"(I) received from the borrower a payment in full for the cost of the obligation; and

"(II) deposited the payment into the Treasury.";

(4) in paragraph (5), by striking the paragraph designation and all that follows through "may issue" and inserting the following:

"(5) REGULATIONS.—The Secretary of Energy shall promulgate"; and

(5) in paragraph (7), by striking "1 year after the date of enactment of this section" and inserting "2 years after the date of enactment of the Indian Energy Parity Act of 2010".

13) Coordination of Agency Funding and Programs

Problem: Funding for Indian energy activities is spread across many agencies. Individual funding sources are typically too small to meet the financial needs of developing energy projects. Tribal administration costs are increased because each agency requires different application and reporting requirements.

Proposed Solution: Allow tribes to integrate and coordinate energy funding from the departments of Agriculture, Commerce, Energy, EPA, Housing and Urban Development (HUD), Interior, Labor and Transportation to ensure efficient use of existing federal funding. The proposal is modeled after the successful Pub.L.102–477 employment training integration program. The proposal would allow individual agencies to retain discretion over approval of individual projects.

Proposed Legislative Text:

(a) Definitions.—In this section:

(1) AGENCY.—The term "agency" has the meaning given the term in section 551 of title 5, United States Code.

(2) AGENCY LEADER.—The term "Agency leader" means 1 or more of the following:

(A) The Secretary of Agriculture.

(B) The Secretary of Commerce.

(C) The Secretary of Energy.

(D) The Secretary of Housing and Urban Development.

(E) The Administrator of the Environmental Protection Agency.

(F) The Secretary of the Interior.

(G) The Secretary of Labor.

(H) The Secretary of Transportation.

(3) TRIBAL ENERGY DEVELOPMENT ORGANIZATION.—The term "tribal energy development organization" has the meaning given the term in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

(b) Single Integrated Program.—

(1) IN GENERAL.—An Indian tribe or tribal energy development organization may submit to the Secretary, and to applicable Agency leaders, a plan to fully integrate into a single, coordinated, comprehensive program federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

(2) NO ADDITIONAL REQUIREMENTS.—The Agency leaders shall not impose any additional requirement or condition, additional budget, report, audit, or supplemental audit, or require additional documentation from, an Indian tribe or tribal energy development organization that has satisfied the plan criteria described in subsection (c).

(3) PROCEDURE.—

(A) IN GENERAL.—On receipt of a plan of an Indian tribe or a tribal energy development organization described in paragraph (1) that is in a form that the Secretary determines to be acceptable, the Secretary shall consult with the applicable Agency leaders to determine whether the proposed use of programs and services is in accordance with the eligibility rules and guidelines on the use of agency funds.

(B) INTEGRATION.—If the Secretary and the applicable Agency leaders make a favorable determination pursuant to subparagraph (A), the Secretary shall authorize the Indian tribe or tribal energy development organization—

(i) to integrate and coordinate the programs and services described in paragraph (4) into a single, coordinated, and comprehensive program; and

(ii) to reduce administrative costs by consolidating administrative functions.

(4) DESCRIPTION OF ACTIVITIES.—The activities referred to in paragraph (1) are federally funded energy-related activities and programs (including programs

for employment training, energy planning, financing, construction, and related physical infrastructure and equipment), including—

(A) any program under which an Indian tribe or tribal energy development organization is eligible to receive funds under a statutory or administrative formula;

(B) activities carried out using any funds an Indian tribe or members of the Indian tribe are entitled to under Federal law; and

(C) activities carried out using any funds an Indian tribe or a tribal energy development organization may secure as a result of a competitive process for the purpose of planning, designing, constructing, operating, or managing a renewable or nonrenewable energy project on Indian land.

(5) INVENTORY OF AFFECTED PROGRAMS.—

(A) REPORTS.—Not later than 90 days after the date of enactment of this Act, the Agency leaders shall—

(i) conduct a survey of the programs and services of the agency that are or may be included in the plan of an Indian tribe or tribal energy development organization under this subsection;

(ii) provide a description of the eligibility rules and guidelines on the manner in which the funds under the jurisdiction of the agency may be used; and

(iii) submit to the Secretary a report identifying those programs, services, rules, and guidelines.

(B) PUBLICATION.—Not later than 60 days after the date of receipt of each report under subparagraph (A), the Secretary shall publish in the Federal Register a comprehensive list of the programs and services identified in the reports.

(c) Plan Requirements.—A plan submitted by an Indian tribe or tribal energy development organization under subsection (b) shall—

(1) identify the activities to be integrated;

(2) be consistent with the purposes of this section regarding the integration of the activities in a demonstration project;

(3) describe—

(A) the manner in which services are to be integrated and delivered; and

(B) the expected results of the plan;

(4) identify the projected expenditures under the plan in a single budget;

(5) identify each agency of the Indian tribe to be involved in the administration of activities or delivery of the services integrated under the plan;

(6) address any applicable requirements of the Agency leaders for receiving funding from the federally funded energy-related activities and programs under the jurisdiction of the Agency leaders, respectively;

(7) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe recommends to be waived to implement the plan, including any of the requirements described in paragraph (6); and

(8) be approved by the governing body of the affected Indian tribe.

(d) Approval Process.—

(1) IN GENERAL.—Not later than 90 days after the receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary and applicable Agency leaders shall coordinate a single response to inform the Indian tribe or tribal energy development organization in writing of the determination to approve or disapprove the plan, including any request for a waiver that is made as part of the plan.

(2) PLAN DISAPPROVAL.—Any issue preventing approval of a plan under paragraph (1) shall be resolved in accordance with subsection (e)(3).

(e) Plan Review; Waiver Authority; Dispute Resolution.—

(1) IN GENERAL.—On receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary shall consult regarding the plan with—

(A) the applicable Agency leaders; and

(B) the governing body of the applicable Indian tribe.

(2) IDENTIFICATION OF WAIVERS.—

(A) IN GENERAL.—In carrying out the consultation described in paragraph (1), the Secretary, the applicable Agency leaders, and the governing body of the applicable Indian tribe shall identify the statutory, regulatory, and administrative requirements, policies, and procedures that must be waived to enable the Indian tribe or tribal energy development organization to implement the plan.

(B) WAIVER AUTHORITY.—Notwithstanding any other provision of law, the applicable Agency leaders may waive any applicable regulation, admin-

istrative requirement, policy, or procedure identified under subparagraph (A) in accordance with the purposes of this section.

(C) TRIBAL REQUEST TO WAIVE.—In consultation with the Secretary and the applicable Agency leaders, an Indian tribe may request the applicable Agency leaders to waive a regulation, administrative requirement, policy, or procedure identified under subparagraph (A).

(D) DECLINATION OF WAIVER REQUEST.—If the applicable Agency leaders decline to grant a waiver requested under subparagraph (C), the applicable Agency leaders shall provide to the requesting Indian tribe and the Secretary written notice of the declination, including a description of the reasons for the declination.

(3) DISPUTE RESOLUTION.—

(A) IN GENERAL.—The Secretary, in consultation with the Agency leaders, shall develop dispute resolution procedures to carry out this section.

(B) PROCEDURES.—If the Secretary determines that a declination is inconsistent with the purposes of this section, or prevents the Department from fulfilling the obligations under subsection (f), the Secretary shall establish interagency dispute resolution procedures involving—

(i) the participating Indian tribe or tribal energy development organization; and

(ii) the applicable Agency leaders.

(4) FINAL DECISION.—In the event of a failure of the dispute resolution procedures under paragraph (3), the Secretary shall inform the applicable Indian tribe or tribal energy development organization of the final determination not later than 180 days after the date of receipt of the plan.

(f) Responsibilities of Department.—

(1) MEMORANDUM OF AGREEMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Agency leaders shall enter into an interdepartmental memorandum of agreement that shall require and include—

(A) an annual meeting of participating Indian tribes, tribal energy development organizations, and Agency leaders, to be co-chaired by a representative of the President and a representative of the participating Indian tribes and tribal energy development organizations;

(B) an annual review of the achievements made under this section and statutory, regulatory, administrative, and policy obstacles that prevent participating Indian tribes and tribal energy development organizations from fully carrying out the purposes of this section;

(C) a forum comprised of participating Indian tribes, tribal energy development organizations, and agencies to identify and resolve interagency or Federal-tribal conflicts that occur in carrying out this section; and

(D) the dispute resolution procedures required by subsection (e)(3).

(2) DEPARTMENT RESPONSIBILITIES.—The responsibilities of the Department include—

(A) in accordance with paragraph (3), developing a model single report for each approved plan of an Indian tribe or tribal energy development organization regarding the activities carried out and expenditures made under the plan;

(B) providing, subject to the consent of an Indian tribe or tribal energy development organization with an approved plan under this section, technical assistance either directly or pursuant to a contract;

(C) developing a single monitoring and oversight system for the plans approved under this section;

(D) receiving and distributing all funds covered by a plan approved under this section; and

(E) conducting any required investigation relating to a waiver or an interagency dispute resolution under this section.

(3) MODEL SINGLE REPORT.—The model single report described in paragraph (2)(A) shall—

(A) be developed by the Secretary, in accordance with the requirements of this section; and

(B) together with records maintained at the Indian tribal level regarding the plan of the Indian tribe or tribal resource development organization, contain such information as would allow a determination that the Indian tribe or tribal energy development organization—

(i) has complied with the requirements incorporated in the applicable plan; and

(ii) will provide assurances to each applicable agency that the Indian tribe or tribal energy development organization has complied with all directly applicable statutory and regulatory requirements.

(g) No Reduction, Denial, or Withholding of Funds.—No Federal funds may be reduced, denied, or withheld as a result of participation by an Indian tribe or tribal energy development organization in the program under this section.

(h) Interagency Fund Transfers.—

(1) IN GENERAL.—If a plan submitted by an Indian tribe or tribal energy development organization under this section is approved, the Secretary and the applicable Agency leaders shall take all necessary steps to effectuate interagency transfers of funds to the Department for distribution to the Indian tribe or tribal energy development organization.

(2) COORDINATED AGENCY ACTION.—As part of an interagency transfer under paragraph (1), the applicable Agency leader shall provide the Department a 1-time transfer of all required funds by not later than October 1 of each applicable fiscal year.

(3) AGENCIES NOT AUTHORIZED TO WITHHOLD FUNDS.—If a plan is approved under this section, none of the applicable Agency leaders may withhold funds for the plan.

(i) Administration; Recordkeeping; Overage.—

(1) ADMINISTRATION OF FUNDS.—

(A) IN GENERAL.—The funds for a plan under this section shall be administered in a manner that allows for a determination that funds from a specific program (or an amount equal to the amount attracted from each program) shall be used for activities described in the plan.

(B) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section requires an Indian tribe or tribal energy development organization—

(i) to maintain separate records relating to any service or activity conducted under the applicable plan for the program under which the funds were authorized; or

(ii) to allocate expenditures among those programs.

(2) ADMINISTRATIVE EXPENSES.—

(A) COMMINGLING.—Administrative funds for activities under a plan under this section may be commingled.

(B) ENTITLEMENT.—An Indian tribe or tribal energy development organization shall be entitled to the full amount of administrative costs for the activities of a plan under this section, in accordance with applicable regulations.

(C) OVERAGES.—No overage of administrative costs for the activities of a plan under this section shall be counted for Federal audit purposes, if the overage is used for the purposes described in this section.

(j) Single Audit Act.—Nothing in this section interferes with the ability of the Secretary to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act").

(k) Training and Technical Assistance.—

(1) IN GENERAL.—The Department, with the participation and assistance of the Agency leaders, shall conduct activities for technical assistance and training relating to plans under this section, including—

(A) orientation sessions for Indian tribal leaders;

(B) workshops on planning, operations, and procedures for employees of Indian tribes;

(C) training relating to case management, client assessment, education and training options, employer involvement, and related topics; and

(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.

(2) ADMINISTRATION.—To effectively administer the training and technical assistance activities under this subsection, the Department shall collaborate with an Indian tribe that has experience with federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

14) Tribal Economic Development Bonds

Problem: Section 1402 of the American Recovery and Reinvestment Act of 2009, P.L. 115–5, 123 Stat. 115 (2009) authorized tribal governments to issue, on a temporary basis, tribal economic development bonds (TED Bonds) without satisfying the

essential government function test. The bond limitation was set at $2 billion. The allocation of these bonds has been completed.

Proposed Solution: Permanently repeal the "essential government function" test currently applied by the Internal Revenue Service (IRS) to tribes who wish to issue tax exempt bonds. On a recurring annual basis, have a TED Bond allocation available to Tribes. Reallocate any unused allocation on a yearly basis.

15) Hypothecation of Coal Resources.

Problem: Many tribes and individual Indians own mineral rights to subsurface coal on split estates where non-Indians own the surface rights. To realize the benefit of the coal resources without affecting the environment or disturbing the non-Indian surface estates, tribes need to be able to hypothecate the coal resources in situ. Through hypothecation, tribes could pledge their coal resources as collateral to secure debts and obtain loans without having to extract the coal.

Proposed Solution: Clarify the law to specifically allow for the hypothecation of coal resources.

Proposed Legislative Text:

(a) PURPOSES.—The purposes of this section are –

(1) To ensure that Indian tribes and individual Indians are able to fully benefit from their coal resources in accordance with the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–396g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108) and other provisions of law that advance those Acts; and

(2) To ensure undiminished protection of the environment and the protection of surface owners under existing split estates.

(b) REVIEW—Notwithstanding any other law, Congress hereby authorizes Indian tribes and individual Indians to hypothecate their coal mineral interests in situ that tribes or individual Indians own within the boundaries of their reservations.

16) Study on Transmission Infrastructure and Access

Problem: Historically Federal and state electric transmission planning overlooked or ignored energy generation potential on Indian lands. Consequently, energy projects on tribal lands lack access to high voltage transmission.

Proposed Solution: Direct DOE to conduct a study of the electric generation potential on Indian lands and related transmission needs. The study should involve Indian tribes, federal agencies, and transmission providers and utilities operating in and around Indian country.

Proposed Legislative Text:

(a) Study.—

(1) IN GENERAL.—The Secretary of Energy, in consultation with Indian tribes, intertribal organizations, the Secretary of the Interior, the Federal Energy Regulatory Commission, the Federal power marketing administrations, regional transmission operators, national, regional, and local electric transmission providers, electric utilities, electric cooperatives, electric utility organizations, and other interested stakeholders, shall conduct a study to assess—

(A) the potential for electric generation on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources; and

(B) the electrical transmission needs relating to carrying that energy to the market.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify potential energy generation resources on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources;

(B) identify existing electrical transmission infrastructure on, and available to provide service to, Indian land;

(C) identify relevant potential electric transmission routes and paths that can carry electricity generated on Indian land to loads;

(D) assess the capacity and availability of interconnection of existing electrical transmission infrastructure;

(E) identify options to ensure tribal access to electricity, if the development of transmission infrastructure to reach tribal areas is determined to be unfeasible;

(F) identify regulatory, structural, financial, or other obstacles that Indian tribes encounter or would encounter in attempting to develop energy

transmission infrastructure or connect with existing electrical transmission infrastructure; and

(G) make recommendations for legislation to help Indian tribes overcome the obstacles identified under subparagraph (F).

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).

17) Tribal Energy Efficiency

Problem: There are no ongoing programs to support tribal energy efficiency efforts. DOE's longstanding State Energy Program supporting energy efficiency efforts at the state level does not include tribes.

Proposed Solution: Direct DOE to allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings. Funding should be provided in a manner similar to successful Energy Efficiency Block Grant Program to promote projects and simplify reporting requirements.

Proposed Legislative Text:

Part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) is amended by adding at the end the following:

"(a) Definition of Indian Tribe.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(b) Purpose.—The purpose of the grants provided under subsection (d) shall be to assist Indian tribes in implementing strategies—

"(1) to reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities in a manner that—

"(A) is environmentally sustainable; and

"(B) to the maximum extent practicable, maximizes benefits for Indian tribes and tribal members;

"(2) to increase the energy efficiency of Indian tribes and tribal members; and

"(3) to improve energy efficiency in—

"(A) the transportation sector;

"(B) the building sector; and

"(C) other appropriate sectors.

"(c) Tribal Allocation.—Of the amount of funds authorized to be appropriated for each fiscal year under section 365(f) to carry out this part, the Secretary shall allocate not less than 5 percent of the funds for each fiscal year to be distributed to Indian tribes in accordance with subsection (d).

"(d) Grants.—Of the amounts available for distribution under subsection (c), the Secretary shall establish a competitive process for providing grants under this section that gives priority to projects that—

"(1) increase energy efficiency and energy conservation rather than new energy generation projects;

"(2) integrate cost-effective renewable energy with energy efficiency;

"(3) move beyond the planning stage and are ready for implementation;

"(4) clearly articulate and demonstrate the ability to achieve measurable goals;

"(5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and

"(6) maximize the creation or retention of jobs on Indian land.

"(e) Use of Funds.—An Indian tribe may use a grant received under this section to carry out activities to achieve the purposes described in subsection (b), including—

"(1) the development and implementation of energy efficiency and conservation strategies;

"(2) the retention of technical consultant services to assist the Indian tribe in the development of an energy efficiency and conservation strategy, including—

"(A) the formulation of energy efficiency, energy conservation, and energy usage goals;

"(B) the identification of strategies to achieve the goals—

"(i) through efforts to increase energy efficiency and reduce energy consumption; and

"(ii) by encouraging behavioral changes among the population served by the Indian tribe;

"(C) the development of methods to measure progress in achieving the goals;

"(D) the development and publication of annual reports to the population served by the eligible entity describing—

"(i) the strategies and goals; and

"(ii) the progress made in achieving the strategies and goals during the preceding calendar year; and

"(E) other services to assist in the implementation of the energy efficiency and conservation strategy;

"(3) the implementation of residential and commercial building energy audits;

"(4) the establishment of financial incentive programs for energy efficiency improvements;

"(5) the provision of grants for the purpose of performing energy efficiency retrofits;

"(6) the development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the Indian tribe, including—

"(A) the design and operation of the programs;

"(B) the identification of the most effective methods of achieving maximum participation and efficiency rates;

"(C) the education of the members of an Indian tribe;

"(D) the measurement and verification protocols of the programs; and

"(E) the identification of energy efficient technologies;

"(7) the development and implementation of programs to conserve energy used in transportation, including—

"(A) the use of—

"(i) flextime by employers; or

"(ii) satellite work centers;

"(B) the development and promotion of zoning guidelines or requirements that promote energy-efficient development;

"(C) the development of infrastructure, including bike lanes, pathways, and pedestrian walkways;

"(D) the synchronization of traffic signals; and

"(E) other measures that increase energy efficiency and decrease energy consumption;

"(8) the development and implementation of building codes and inspection services to promote building energy efficiency;

"(9) the application and implementation of energy distribution technologies that significantly increase energy efficiency, including—

"(A) distributed resources; and

"(B) district heating and cooling systems;

"(10) the implementation of activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;

"(11) the purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;

"(12) the replacement of traffic signals and street lighting with energy-efficient lighting technologies, including—

"(A) light-emitting diodes; and

"(B) any other technology of equal or greater energy efficiency;

"(13) the development, implementation, and installation on or in any government building of the Indian tribe of onsite renewable energy technology that generates electricity from renewable resources, including—

"(A) solar energy;

"(B) wind energy;

"(C) fuel cells; and

"(D) biomass; and

"(14) any other appropriate activity, as determined by the Secretary, in consultation with—

"(A) the Secretary of the Interior;

"(B) the Administrator of the Environmental Protection Agency;

"(C) the Secretary of Transportation;

"(D) the Secretary of Housing and Urban Development; and

"(E) Indian tribes.

"(f) Grant Applications.—

"(1) IN GENERAL.—

"(A) APPLICATION.—To apply for a grant under this section, an Indian tribe shall submit to the Secretary a proposed energy efficiency and conservation strategy in accordance with this paragraph.

"(B) CONTENTS.—A proposed strategy described in subparagraph (A) shall include a description of—

"(i) the goals of the Indian tribe for increased energy efficiency and conservation in the jurisdiction of the Indian tribe;

"(ii) the manner in which—

"(I) the proposed strategy complies with the restrictions described in subsection (e); and

"(II) a grant will allow the Indian tribe fulfill the goals of the proposed strategy.

"(2) APPROVAL.—

"(A) IN GENERAL.—The Secretary shall approve or disapprove a proposed strategy under paragraph (1) by not later than 120 days after the date of submission of the proposed strategy.

"(B) DISAPPROVAL.—If the Secretary disapproves a proposed strategy under paragraph (1)—

"(i) the Secretary shall provide to the Indian tribe the reasons for the disapproval; and

"(ii) the Indian tribe may revise and resubmit the proposed strategy as many times as necessary, until the Secretary approves a proposed strategy.

"(C) REQUIREMENT.—The Secretary shall not provide to an Indian tribe a grant under this section until a proposed strategy is approved by the Secretary.

"(3) LIMITATIONS ON USE OF FUNDS.—Of the amounts provided to an Indian tribe under this section, an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements of this section, an amount equal to the greater of—

"(A) 10 percent of the administrative expenses; or

"(B) $75,000.

"(4) ANNUAL REPORT.—Not later than 2 years after the date on which funds are initially provided to an Indian tribe under this section, and annually thereafter, the Indian tribe shall submit to the Secretary a report describing—

"(A) the status of development and implementation of the energy efficiency and conservation strategy; and

"(B) to the maximum extent practicable, an assessment of energy efficiency gains within the jurisdiction of the Indian tribe.".

18) Weatherization of Indian Homes

Problem: Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs funded by DOE. However, very little weatherization funding reaches Indian tribes despite significant weatherization needs. If a tribe wants to receive direct funding from DOE, it must prove to DOE that it is not receiving funding that is equal to what the state is providing its non-Indian population. Currently, out of 565 federally recognized tribes, only two tribes and one tribal organization receive direct weatherization funding from DOE.

Proposed Solution: Pursuant to the federal government's government-to-government relationship with Indian tribes, DOE should directly fund tribal weatherization programs. Training programs should also be supported to ensure availability of energy auditors in Indian Country.

Proposed Legislative Text:

Section 413 of the Energy Conservation and Production Act (42 U.S.C. 6863) is amended by striking subsection (d) and inserting the following:

"(d) Direct Grants to Indian Tribes for Weatherization of Indian Homes.—

"(1) DEFINITIONS.—In this subsection:

"(A) INDIAN AREA.—The term 'Indian area' has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

"(B) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(2) IN GENERAL.—Of the amounts made available for each fiscal year to carry out the Weatherization Assistance Program for Low-Income Persons established under part A of title IV, the Secretary shall allocate for Indian tribes not less than 10 percent.

"(3) REGULATIONS.—

"(A) PROPOSED REGULATIONS.—Not later than 90 days after the date of enactment of the Indian Energy Parity Act of 2010, the Secretary, after consulting with the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, Indian tribes, and intertribal organizations, shall publish in the Federal Register proposed regulations to carry out this subsection.

"(B) FINAL REGULATIONS.—

"(i) IN GENERAL.—Not later than 120 days from the date of enactment of the Indian Energy Parity Act of 2010, the Secretary shall promulgate final regulations to carry out this subsection, taking into consideration the comments submitted in response to the publication of the proposed regulations described in subparagraph (A).

"(ii) CRITERIA.—Final regulations promulgated by the Secretary to carry out this subsection shall—

"(I) provide a formula or process for ensuring that weatherization funding is available for any Indian tribe that submits a qualifying weatherization funding application under paragraph (4)(C);

"(II) promote efficiency in carrying out this subsection by the Secretary and Indian tribes; and

"(III) consider—

"(aa) the limited resources of Indian tribes to carry out this subsection;

"(bb) the unique characteristics of housing in Indian areas; and

"(cc) the remoteness of Indian areas.

"(4) ALLOCATION OF FUNDING.—

"(A) IN GENERAL.—The Secretary shall provide financial assistance to an Indian tribe from the amounts provided under paragraph (2), if the Indian tribe submits to the Secretary a weatherization funding application.

"(B) CONTENTS.—A weatherization funding application described in subparagraph (A) shall—

"(i) describe—

"(I) the estimated number and characteristics of the persons and dwelling units to be provided weatherization assistance; and

"(II) the criteria and methods to be used by the Indian tribe in providing the weatherization assistance; and

"(ii) contain any other information (including information needed for evaluation purposes) and assurances that are required under regulations promulgated by the Secretary to carry out this section.

"(C) QUALIFYING WEATHERIZATION FUNDING.—A weatherization funding application that meets the criteria under subparagraph (B) shall be considered a qualifying weatherization funding application.

"(D) INITIAL DISTRIBUTION OF FUNDING.—The Secretary shall distribute funding under this subsection to Indian tribes that submit qualifying weatherization funding applications—

"(i) on the basis of the relative need for weatherization assistance; and

"(ii) taking into account—

"(I) the number of dwelling units to be weatherized;

"(II) the climatic conditions respecting energy conservation, including a consideration of annual degree days;

"(III) the type of weatherization work to be done;.

"(IV) any data provided in the most recent version of the Bureau of Indian Affairs American Indian Population and Labor Force Report prepared pursuant to Public Law 102–477 (106 Stat. 2302), or if not available, any similar publication; and

"(V) any other factors that the Secretary determines to be necessary, including the cost of heating and cooling, in order to carry out this section.

"(E) COMPETITIVE GRANTS.—For each fiscal year, if any amounts remain available after the initial distribution of funding described in subparagraph (D), the Secretary shall solicit applications for grants from Indian tribes—

"(i) to carry out weatherization projects and weatherization training;

"(ii) to supply weatherization equipment; and

"(iii) to develop tribal governing capacity to carry out a weatherization program consistent with this subsection.

"(F) REMAINING FUNDING.—For each fiscal year, if any amounts remain available after distribution under subparagraphs (D) and (E), the amounts

shall remain available to fulfill the purpose of this subsection in subsequent fiscal years.

"(G) RENEWAL OF QUALIFYING WEATHERIZATION FUNDING APPLICATIONS.—

"(i) IN GENERAL.—To achieve maximum efficiency in the allocation of funding, an Indian tribe that submits a qualifying weatherization funding application may request that the weatherization funding application of the Indian tribe be renewed in subsequent fiscal years.

"(ii) CONTENTS.—A request to renew a qualifying weatherization funding application shall contain such information as the Secretary determines to be necessary to achieve efficiency in the allocation of funding under this subsection.

"(5) USE OF FUNDS.—

"(A) IN GENERAL.—An Indian tribe shall use funds provided under paragraph (4) to carry out weatherization and energy conservation activities that benefit the members of an Indian tribe in Indian areas.

"(B) ELIGIBLE ACTIVITIES.—The weatherization and energy conservation activities described in subparagraph (A) include—

"(i) the provision of existing services under this section;

"(ii) the acquisition and installation of energy-efficient windows and doors and heating and cooling equipment; or

"(iii) the repair, replacement, or insulation of floors, walls, roofs, and ceilings.

"(C) APPLICABILITY OF REQUIREMENTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the use of funds under this paragraph by an Indian tribe shall be subject only to—

"(I) the requirements of this subsection; and

"(II) implementing regulations of the Department of Energy.

"(ii) OTHER REQUIREMENTS OF ACT.—In accordance with the government-to-government and trust relationships between the United States and Indian tribes, the income, energy audit, grant limitation, and other administrative and eligibility requirements of this Act shall not apply to the use of funds under this paragraph by an Indian tribe.

"(6) REPORT.—Not later than 90 days after the closing date of each applicable project year, each Indian tribe that receives funds under this subsection shall submit to the Secretary a simple outcome report that describes, for that project year—

"(A) each activity carried out by the Indian tribe under this subsection, including the amounts used for each such activity;

"(B) the number of Indian households benefitted by the activities of the Indian tribe under this subsection; and

"(C) the estimated savings in energy costs realized in the communities served by the Indian tribe.

"(7) TRAINING AND TECHNICAL ASSISTANCE.—The Secretary shall carry out technical assistance and training activities relating to weatherization under this subsection, including—

"(A) orientation sessions for Indian tribes;

"(B) workshops on planning, operations, and procedures for Indian tribes to use the funding provided under this subsection;

"(C) training relating to carrying out weatherization projects; and

"(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.".

19) Hydroelectric Licensing Preferences

Problem: Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) provides a preference to states and municipalities, but not tribes, when applying for hydroelectric preliminary permits and original licenses.

Proposed Solution: Provide tribes with the same preference as states and municipalities.

Proposed Legislative Text:

Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) is amended—

(1) by striking "In issuing" and inserting "(1) IN GENERAL.—In issuing"; and

(2) in paragraph (1) (as so designated)—

(A) by striking "States and municipalities" and inserting "States, Indian tribes, and municipalities"; and

(B) by adding at the end the following:

"(2) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).".

20) Department of Energy Laboratories Technical Assistance

Problem: DOE's national laboratories have extensive research and technical expertise that is underutilized by Indian tribes.

Proposed Solution: Encourage DOE's national laboratories to reach out to Indian tribes and make research, training, and expertise more accessible to Indian tribes.

Proposed Legislative Text:

Section 2602(b) of the Energy Policy Act of 1992 (25 U.S.C. 3502(b)) is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) TECHNICAL AND SCIENTIFIC RESOURCES.—In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects."

Mr. GOSAR. Thank you.

Ms. Sweeney?

STATEMENT OF TARA SWEENEY, SENIOR VICE PRESIDENT, ARCTIC SLOPE REGIONAL CORPORATION, ANCHORAGE, ALASKA

Ms. SWEENEY. [Speaks in native language.] Honorable Chairman Young, Congressman Gosar, Ranking Member Boren, and distinguished members of the Subcommittee, my name is Tara Sweeney, and I am an Inupiaq Eskimo from Barrow, Alaska.

I serve as the Senior Vice President for External Affairs for Arctic Subregional Corporation, or ASRC. And I am here representing the interests of 11,000 Inupiaq Eskimo shareholders of ASRC. We are an Alaska Native corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 for the area that encompasses the entire North Slope of Alaska. We own approximately 5 million acres of surface and subsurface estate on Alaska's North Slope conveyed to the corporation under ANCSA as a settlement of our aboriginal land claims.

ASRC is the largest private land owner on the North Slope, and the North Slope is a national energy province. It covers 50 million acres of the northern portion of our state. It is adjacent to both the Beaufort and Chukchi Seas, which overlie the most prospective hydrocarbon basins of Alaska's Outer Continental Shelf.

Energy development on Native lands is familiar to ASRC, and we recognize that this is very important legislation. Despite the fact that there are significant known energy resources in Alaska, prospects lie fallow because there is a near-shutdown of new onshore and offshore development. A significant disincentive to develop these resources is the continuous administrative and legal challenges brought by third parties whose sole mission is to prevent further development in Alaska.

No one would suffer greater harm than our people in the event of mismanagement of our lands. It is for this reason that we welcome a robust discussion about safe and responsible development. This legislation contains a mechanism that would require that a

party seeking a preliminary injunction or administrative stay regarding the issuance of permits, licenses, or other permissions for Native energy projects post a bond in support of that challenge. If the litigant ultimately fails to prevail on the merits of the challenge, it would forfeit the bond in favor of the permitting agency entity.

As it stands now, the risks and the costs are all on the side of impacted Native communities and sponsors of Native energy projects. It would be more equitable to require a bond to be posted by parties seeking to challenge such projects. Congress would remove one of the significant disincentives of production of resources on Native-owned lands by balancing the risks between those who seek to responsibly develop Native energy projects and—between those who seek to prevent the delay of those projects from being developed.

Without a provision like this, the financial burden on Native communities may be too great to move an energy project forward because of endless litigation. In fact, we respectfully suggest expanding the language to further include mining or, in a more general sense, natural resource development projects on or near Native lands.

We are not advocating for, nor do we favor, attempts to restrict parties from legitimate challenges to projects that do not adhere to applicable Federal and state requirements. We do not want to limit our ability to challenge projects that fail to meet regulatory requirements designed to ensure that such projects do not adversely impact our Inupiaq shareholders, our subsistence lifestyle, or cultural resources.

This legislation strikes an appropriate balance by removing incentives for filing ideologically based challenges designed simply to delay those projects, while preserving the right to bring meritorious challenges.

It is important to note that the North Slope of Alaska is the place that our people have called home since time immemorial. We depend on the land and the sea for subsistence resources. This defines who we are as people. We recognize and accept that our community survival depends on continued energy production from our region. Energy developed from resources that are located on Native land can play a substantial role in domestic energy production, contribute to energy independence, and further promote economic growth. Consistent with Federal Indian policy, Congress should do everything in its power to ensure such resources can be safely and responsibly developed without undue delay.

Thank you again for allowing me to share our views regarding this legislation.

[The prepared statement of Ms. Sweeney follows:]

Statement of Tara M. Sweeney, Senior Vice President, External Affairs, Arctic Slope Regional Corporation

Honorable Chairman Young, ranking member Boren, and distinguished members of the subcommittee, my name is Tara Sweeney and I am an Iñupiaq Eskimo from Barrow, Alaska.

I serve as the senior vice president of External Affairs for Arctic Slope Regional Corporation, or ASRC, and I am here representing the interests of over 11,000 Iñupiaq shareholders of ASRC.

ASRC is an Alaska Native corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for the area that encompasses the entire North Slope of Alaska. Shareholders of ASRC include nearly all residents of eight villages on the North Slope, Point Hope, Point Lay, Wainwright, Atqasuk, Barrow, Nuiqsut, Kaktovik and Anaktuvuk Pass.

ASRC owns approximately five million acres of surface and subsurface estate on Alaska's North Slope, conveyed to the corporation under ANCSA, as a settlement of aboriginal land claims. ASRC is the largest private landowner on the North Slope. Under the terms of both ANCSA and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), village and regional corporations like ASRC were charged with developing their assets, including the ANCSA-conveyed lands, for the benefit of their Alaska Native shareholders. The unique character of this relationship and these lands, founded in federal Indian law and the most significant Native claims settlement in U.S. history, must be recognized by Congress and the Federal government in making any land management decisions, including decisions that impact the ability to develop energy resources on Native lands. ASRC lands are located in areas that either have known resources or are prospective for oil, gas, coal, and minerals. We remain committed to developing these resources and bringing them to market in a manner that respects Iñupiat subsistence values and ensures proper care of the environment, habitat and wildlife.

As part of this commitment to fulfill our Congressionally-mandated obligation to develop resources for the benefit of our shareholders, we constantly look to increase economic and individual development opportunities within our region, while preserving Iñupiat culture and traditions. ASRC has fostered a balanced resource development agenda by adhering to the traditional values of protecting the land, the environment, and the culture of the Iñupiat, while promoting development which improves the quality of life in the Arctic Slope communities.

Alaska's North Slope is a national energy province. It covers 50 million acres of the northern portion of our state and hosts many well known energy resource prospects and production areas including Prudhoe Bay and nearby oil fields, the National Petroleum Reserve in Alaska (NPR–A), the Coastal Plain of the Arctic National Wildlife Refuge and many others. It is adjacent to both the Beaufort and Chukchi Seas, which overlie the most prospective hydrocarbon basins of Alaska's Outer Continental Shelf (OCS).

Energy development on Native lands is familiar to ASRC, and we recognize that this is very important legislation. By facilitating development of energy on Indian lands, the proposed legislation would mark an important step in advancing the causes of energy security and providing for economic development in Indian communities. ASRC commends this subcommittee for making a significant effort to improve the laws which are intended to encourage, but sometime discourage, energy development on Indian lands.

Our communities realize that our survival depends on a healthy environment and upon resource development that exists in our region. Safe, responsible oil and gas development is the only industry that has remained in our region long enough to foster improvements to our remote communities. We formed our regional government in part to exercise permitting control on the explorers and producers of these energy resources and to benefit from the property tax revenues contributed by the industry that built energy infrastructure in our region.

Despite the fact that there are significant known energy resources in Alaska that could contribute significantly to both domestic oil and gas production and the continued livelihood of Alaska natives, prospects lie fallow today because there is a near shutdown of new onshore and offshore development. This is due at least in part to a mixture of federal policy and land use decisions that have chilled exploration and development. However, another significant disincentive to development of these resources has been the reality that seemingly every stage of every project has been and continues to be the subject of administrative and legal challenges, brought by third parties whose sole mission is to prevent further development in Alaska.

Recognizing that the responsible development of Indian energy resources both serves the national interest and allows Indian tribes to pursue greater economic development and self-sufficiency, we are pleased to see that the legislation that is the subject of today's hearing contains a mechanism that is designed to reduce the uncertainties associated with such responsible development.

The mechanism would require that a party that seeks a preliminary injunction or administrative stay regarding the issuance of permits, licenses or other permissions for Indian energy projects post a bond in support of that challenge. If the litigant ultimately fails to prevail on the merits of the challenge, it would forfeit the bond in favor of the permitting entity.

Currently, the risks and costs are all on the side of the sponsor of an Indian energy project—we believe it would be more fair and equitable to require a bond to be posted so that parties seeking to challenge such projects are encouraged to more fully consider the merits of a challenge and face some risk (similar to the risks faced by the project developer) in challenging the projects. By balancing the risks between those who seek to develop Indian energy projects and those who seek to prevent those projects from being developed, we believe that Congress would be removing one of the significant disincentives that currently exists that has prevented greater energy production from resources in Alaska, including on lands owned by Native Corporations.

Similarly, we believe that the manner in which courts have awarded attorneys' fees to litigants under the Equal Access to Justice Act is skewing the litigation process, particularly where attorneys' fees are awarded even in cases where there is no final judgment for the litigant challenging the project. This provides an inequitable incentive for such litigants to file challenges to every proposed project. In light of the trend towards awarding attorneys' fees in all but the rarest of cases, we believe that it is necessary (and equitable) to remove this financial incentive to challenge every step of every Indian energy project.

We further suggest expanding the language to include mining, or in a more general sense, natural resource development projects on or near Native lands.

Please note that we are not advocating for, nor do we favor, attempts to restrict parties from legitimate challenges to projects that do not adhere to applicable federal and state requirements. Indeed, we have been very involved in ensuring that energy exploration and development on the North Slope and elsewhere in Alaska does not adversely impact the subsistence lifestyle of our Iñupiaq shareholders. We have pushed project developers to implement extra measures to avoid conflict with our subsistence hunters, and we do not want to limit our ability to challenge projects that fail to meet regulatory requirements designed to ensure that such projects do not adversely impact our Iñupiaq shareholders, their subsistence lifestyle, or their cultural resources. We believe that the legislation strikes an appropriate balance in terms of the risks and costs of Indian energy projects by removing incentives for filing meritless challenges designed simply to delay those projects, while preserving the right to bring meritorious challenges.

In conclusion, it is important to remember that the North Slope of Alaska is the place that our people have called home since time immemorial. The North Slope Iñupiat community subsists off the land and the sea that continue to provide the resources that support our survival. In addition to the substantial potential value that responsible development of the area's natural resources holds for our people, the land and its resources are essential to our subsistence way of life.

Congress must take a leadership role in developing sound energy policy for our nation. The federal government continues to send mixed messages about domestic energy production, and now is the time for Congress to act in the best interests of Americans with respect to domestic energy and energy supply. Energy developed from resources that are located on Indian land, including land owned by Native Corporations under ANCSA, can play a substantial role in domestic energy production, and Congress should do everything in its power to ensure that such resources can be safely and responsibly developed, and without undue delay. ASRC stands ready to be part of the domestic energy supply solution for Congress.

We find that our community survival depends on continued energy production from our region. Let me be clear, without development in our region our communities will not survive. Thank you again, Committee members, for allowing me to share our views regarding this important legislation.

Mr. GOSAR. Thank you.

Mr. King?

STATEMENT OF RANDALL KING, CHAIRMAN, SHINNECOCK NATION BOARD OF TRUSTEES, SOUTHAMPTON, NEW YORK

Mr. KING. Good afternoon, Chairman Young, Congressman Gosar, Ranking Member Boren, and members of the Subcommittee. My name is Randy King; I am the Chairman of the Shinnecock Indian Nation Board of Trustees. Thank you for the opportunity to testify today on H.R. 3973, the Native American Energy Act.

I must apologize in advance, due to tight travel restrictions, if I have to leave early. I will have a wife soon at the train station not knowing whether she is coming or going, and I take full responsibility for that, for the record.

[Laughter.]

Mr. KING. The Shinnecock Nation's Reservation is located in Suffolk County, New York, on Long Island. We have lived on Long Island as a self-governing nation exercising jurisdiction over our land since time immemorial. Despite this long history, we were only recently acknowledged by the Federal Government as a Federally recognized Indian tribe. Federal acknowledgment opens up new opportunities for us to provide for the critical needs of our communities, including the development and management of our energy resources.

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. Our energy planning includes developing sustainable energy projects that will serve the immediate needs of the nation, and longer-term adaptation that will be needed in the face of climate change impacts over time.

In order to be self-sufficient, the Shinnecock people will need reliable sources of energy, not just energy generation, but also energy efficiency and weatherization measures that will help us control energy costs. We are currently working on a potential partnership with a local university, Stony Brook University at Long Island Southampton Campus, to develop a hydrokinetic project. Hydrokinetic power offers a clean, reliable, domestic source of energy that could have far-reaching benefits for all coastal communities. We hope that this project will help diversify our economy, provide energy experience for tribe members, and be a demonstration project for others.

We support H.R. 3973 and believe that the bill is consistent with our energy-planning goals. We specifically support the bill's reforms to the appraisal process, the environmental review process, and the creation of Indian energy development offices. In addition to what is already in H.R. 3973, we ask that the Subcommittee include additional changes needed for small coastal communities like ours.

First, we appreciate Chairman Young's work to support hydrokinetic projects by cosponsoring another bill, H.R. 2994, which will improve marine and hydrokinetic renewable energy research and development. We request that the Subcommittee consider including the provisions of H.R. 2994 in this Indian energy bill. Or, if that is not possible, we ask that you work with the bill's sponsors to ensure the tribes are included in H.R. 2994, as eligible entities for grant funds to implement hydrokinetic test facilities.

Second, the need for energy security and sound domestic energy supply justifies an expedited fee to trust process for tribal energy projects. This, however, 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 for-

ward with social welfare and economic development projects such as new, more efficient housing and renewable energy projects.

Third, we aspire to make the President's executive order on stewardship of the ocean, our coast, and Great Lakes a reality. We plan to examine opportunities for development of ocean energy technology. This would be a monumental step toward energy security and conservation for the entire northeast region. In order to be successful in this pursuit, we will need the ability to permit such facilities and have access to Federal programs and funds that promote the development of offshore energy projects. We ask that the Subcommittee help to make sure that tribes are included in programs and legislation supporting offshore energy projects.

Fourth, we recommend that the Subcommittee ensure that tribes are 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.

Finally, the Nation supports many of the other suggestions made by tribes at this hearing. Like many tribes, the Nation wants to exercise 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 Young, Congressman Gosar, Ranking Member Boren, and members of the Subcommittee for the opportunity to present this testimony on behalf of the Nation. I am available to answer any questions.

Thank you.

[The prepared statement of Mr. King follows:]

Statement of The Honorable Randy King, Chairman, Shinnecock Indian Nation

Good afternoon Chairman Young, Ranking Member Boren, and Members of the Subcommittee on Indian and Alaska Native Affairs. My name is Randy King. I am the Chairman of the Shinnecock Nation Board of Trustees. Thank you for the opportunity to testify today on H.R. 3973, the Native American Energy Act.

The Shinnecock Nation's Reservation is located within the geographic boundaries of Suffolk County, New York—on Long Island. The Nation has maintained its existence 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 bears 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 partnering with local organizations, including 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 the 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 Tribe supports H.R. 3973. Promoting Indian energy and tribal management of energy resources is consistent with the Nation's energy planning and goals described above. The Nation specifically supports the bill's reforms to the appraisal process, the environmental review process and the creation of Indian Energy Development Offices. In addition to what is already in H.R. 3973, the Nation requests that the Subcommittee 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 Subcommittee 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. Below, we provide some specific examples of how these 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.

First, the Nation appreciates Chairman Young's work to support hydrokinetic projects by co-sponsoring another bill, H.R. 2994, which will improve marine and hydrokinetic renewable energy research and development. The Nation requests that the Subcommittee consider including the provisions of H.R. 2994 it this Indian energy bill. Or, if that is not possible, the Nation asks that the Subcommittee work with the bill's sponsor, Congressman Inslee, to ensure that tribes are included as

eligible entities for grant funds to implement hydrokinetic test facilities. Currently, H.R. 2994 does not include tribes as an eligible entity. The Nation request that the legislation be amended to include federally recognized tribes so that the Nation has an equal opportunity to apply for such funding and participate with other entities on Long Island as an equal partner for implementation of this important project.

Second, the Nation also has an opportunity to purchase a tract 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 including legislation in this bill that would require the DOI to expedite fee to trust applications for tribal energy projects.

Third, the Subcommittee should consider exemptions from DOI approvals for energy projects in Indian country. As an alternative to DOI approvals, tribes could conduct their own environmental review and approval programs. While the Tribal Energy Resource Agreement provisions of the 2005 Energy Policy Act already allow tribes to do this, not every tribe has the resources to develop a TERA application. Every tribe is at a different place it is capacity to oversee energy projects and alternatives should be available for tribes to take over some DOI approvals, but not necessarily the whole program.

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 Subcommittee help to make sure that tribes are included in programs and legislation supporting offshore energy projects.

Fifth, the Nation looks to the Subcommittee 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 allows 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, 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.

Fifth, 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. The bill should also 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.

Sixth, 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.

Seventh, the bill 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.

The bill should also require the DOE to send weatherization funding directly to tribal governments. Currently, DOE sends the money to state non-profits and tribes barely see a dime. 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 suggestions made by tribes at this hearing. Like many tribes, the Nation wants to exercise 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 Young, Ranking Member Boren and members of the Subcommittee for the opportunity to present this testimony on behalf of the Nation.

Shinnecock Indian Nation
P.O. Box 5006
Southampton, NY 11969

February 24, 2012

The Honorable Don Young
Chairman
Subcommittee on Indian and
Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Dan Boren
Ranking Member
Subcommittee on Indian and
Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Clarifications to Testimony on H.R. 3973, the Native American Energy Act

Dear Congressman Young and Congressman Boren:

Thank you again for the opportunity to testify at the Subcommittee on Indian and Alaska Native Affairs' Legislative Hearing on H.R. 3973, the Native American Energy Act. I write today to clarify two points in my testimony provided to the Subcommittee. Please include this letter in the Subcommittee's hearing record so that these clarifications can accompany my testimony.

First, my testimony describes a potential partnership with Stony Brook University's Southampton Campus to develop a hydrokinetic project. In my testimony, when this potential partnership is first mentioned, it is only referred to as a "partnership." I wanted to clarify that the partnership has not yet been finalized and should be referred to as a "potential partnership" throughout my testimony.

Second, my testimony describes land that the Nation has an opportunity to purchase for a solar facility on eastern Long Island. My testimony refers to this land as a single "tract of land." I would like to clarify that the Nation has the 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.

I appreciate the Subcommittee's attention to these clarifications and inclusion of this letter in the hearing record so that it may accompany my testimony. The Nation seeks these clarifications as a part of its high level of commitment to energy planning and developing responsible energy projects that will benefit the Nation, eastern Long Island and the entire Northeast Region. The Nation hopes that these clarifications will prevent any confusion by the Nation's partners and surrounding communities about our energy actions and plans.

Sincerely,

Randy King /REW

Randy King, Chairman
Shinnecock Nation Board of Trustees

Mr. GOSAR. Chairman King, thank you very much, and I know you have to run. I know that feeling.

At this time I would like to acknowledge Mr. Groen.

Mr. Groen?

STATEMENT OF WILSON GROEN, PRESIDENT AND CEO, NAVAJO NATION OIL AND GAS COMPANY EXPLORATION AND PRODUCTION (ARIZONA/NEW MEXICO/UTAH), WINDOW ROCK, ARIZONA

Mr. GROEN. Thank you, Chairman Young, Congressman Gosar, Ranking Member Boren, other distinguished members. I am Wilson Groen, President and CEO of Navajo Nation Oil and Gas Company. Accompanying me today is Louis Denetsosie, our General Counsel, former Attorney General for the Navajo Nation, and the first Chairman and President of Navajo Oil and Gas.

Again, I want to thank——

Mr. GOSAR. Can you pull that microphone closer to you, so we can all hear?

Mr. GROEN. OK.

Mr. GOSAR. There you go.

Mr. GROEN. That better? OK. We again want to thank Chairman Young and all those present for their support of this bill. We feel it is a very positive step forward, as we move forward with energy development in Indian Country.

Navajo Oil and Gas is a for-profit energy corporation that was formed to reacquire, develop, and optimize the value of the Nation's energy resources, and to do these in an efficient, sustainable, and environmentally and culturally sensitive manner. I want to stress that. Because that is what we feel is critical, not only the development of it but the environmental and cultural sensitivity.

As you know, the Nation is larger than the State of West Virginia. It has vast oil and gas, helium, wind, coal, solar resources. On your right is a map showing the size of the Nation. The Nation is—an NNOGC—is in a robust growth mode. It has returned significant royalty, taxes, right-of-way, and lease payments to the Navajo Nation. We also support an active scholarship program for the development of the Navajo Nation students. And the future of our company is the Navajo Nation people itself.

On the Navajo Nation's production, oil was discovered back in the 1920s on the Navajo Nation lands. In the 1950s, one of the largest oil fields in the lower 48 states was discovered, Aneth Field. The graph that you see on your left shows in the mid-1990s a very rapid decline.

There is a 6 to 10 percent decline in the oil production from the Nation. The flattening that you see that starts in 2004 and the subsequent increase, is a result of Navajo Oil and Gas, in coordination with Resolute Energy acquiring the properties from major oil companies, putting significant resources into that, and then now moving forward toward—in flattening that decline and moving it toward increased production on the Nation. This is all very critical to the overall Nation's energy self-sufficiency and the economic development of the Nation.

As we move forward on to the development of these, how do we develop our Nation's resources and accelerate this economic

growth, become a self-sustainable Nation? The energy development is the key to this. The Nation's general revenue fund, nearly all, probably 90-plus percent of it, comes from energy-related sources: royalty, taxes, and other type of benefits.

We strongly support the Native American Energy Act, and our focus is actually on Section 11 of that, and it will very clearly help us reduce the Federal interference and the duplication and oversight of Federal agencies from the Navajo Nation agencies.

The Nation has a very extensive and well-founded energy program in which we have an environmental protection agency, historic preservation, fish and wildlife, and a minerals department. H.R. 3973 will help us continue this growth of the company, and will extend and accelerate our ability to develop economic resources of the Nation.

We again thank Chairman Young, and Congressmen Boren and Gosar.

We appreciate your leadership and support of this energy effort. And we do think it will continue to lead to self-sufficiency of the Navajo Nation. Thank you.

[The prepared statement of Mr. Groen follows:]

Statement of Wilson Groen, President & Chief Executive Officer, Navajo Nation Oil and Gas Exploration and Production

Introduction

Good afternoon Chairman Young, Ranking Member Boren, Congressman Gosar and members of this distinguished Subcommittee.

My name is Wilson Groen and I am the President and Chief Executive Officer of the Navajo Nation Oil and Gas Exploration and Production (NNOGC), an oil and gas exploration, development and distribution company wholly-owned by the Navajo Nation.

I want to thank Chairman Young, Ranking Member Boren, and our Congressman, Paul Gosar, for consulting with tribal leaders and experts in the energy sector in the development and introduction of H.R. 3973. I would also like to thank the Chairman and Ranking Member for the February 8, 2012 letter to Secretary Salazar calling his attention to the fact that the Bureau of Land Management's proposed hydraulic fracturing regulation will provide additional, harmful and unnecessary regulatory burdens on energy producers in Indian Country on top of those already in place.

History of the NNOGC

The Zah/Plummer administration issued the Navajo Nation Energy Policy (Energy Policy) in January 1992. The Energy Policy was formulated with input from energy specialists, environmentalists, economic development specialists, lawyers, and political leaders of the Navajo Nation. The Energy Policy observed that the Navajo Nation was resource rich, but that it was neither obtaining proper value for its minerals nor, more importantly, participating in the energy industry as a business owner. The oil and gas leases issued by the BIA had relegated the Navajo Nation to the role as passive lessor, and that needed to be changed.

NNOGC is a direct outgrowth of the 1992 Energy Policy. The Navajo Nation Council created the Navajo Nation Oil and Gas Company, Inc., in 1993 as a tribal corporation for the purpose of engaging in oil and gas production as an integrated, for-profit business entity. The goal of the Council was to address the minimal values accruing to the Nation from oil and gas production on Navajo Nation trust lands.

NNOGC received $500,000 in start-up capital from the Navajo Nation Division of Economic Development and, with a three-year grant from the BIA, produced a comprehensive business plan which initially concentrated on so-called "downstream" activities—service stations and convenience stores—and on increasing revenues to the Nation by taking oil royalties "in kind" and marketing that oil at better prices than by the Nation's lessees.

Since its creation, NNOGC has acquired and now operates an 87-mile crude oil pipeline, acquired and is continuing to acquire significant oil and gas working interests in the Greater Aneth, Utah, oil fields, and expanded its retail and wholesale

business. While NNOGC is still in a robust growth mode, it has returned significant royalty payments, taxes, right-of-way payments, lease payments, scholarships and other contributions to the Navajo Nation and host communities, which these entities use to provide employment and services to the Navajo People.

NNOGC commenced operations in 1995, building two Chevron stations in Window Rock and Kayenta and acquiring another at Chinle. NNOGC immediately elevated the standards of service and cleanliness for stations on the Reservation; some stations did not even have toilets for the employees, much less the traveling public. Because of the favorable decision in *Oklahoma Tax Comm'n v. Chickasaw Nation,* 515 U.S. 450 (1995), NNOGC was able to lawfully bring gasoline into the Navajo Nation without State gasoline excise taxes, and NNOGC became the distributor of choice on the Reservation. NNOGC then purchased crude oil gathering and transmission pipelines when the right-of-way for those lines was about to expire. Those activities made NNOGC profitable and increased revenues to the Nation significantly.

After the Internal Revenue Service issued Revenue Ruling 94–16, it became clear to NNOGC that it should operate as a Federal corporation chartered under section 17 of the Indian Reorganization Act, as amended. The Navajo Nation Council petitioned the Secretary of the Interior for such a charter by Resolution in January 1997, and the Secretary issued the charter in December 1997. The Council ratified that charter by unanimous vote in February 1998. The Navajo-chartered corporation merged into the new Federal corporation shortly thereafter.

The State of Arizona sought a fuel excise tax agreement with the Nation. NNOGC negotiated that agreement on behalf of the Nation, and it has proved valuable to both the State and the Navajo Nation, which now retains 96.5% of those taxes and devotes that money to road construction and maintenance. While NNOGC lost its competitive advantage after the tax-sharing agreement was signed, the Council allocated Navajo funds to launch NNOGC into the "upstream" (exploration and production) part of the business.

NNOGC's Oil and Gas Production

From 1998 to 2004, oil and gas production on Navajo lands in southeastern Utah had been in decline from 6% to 10% annually. Since then, NNOGC, in partnership with Resolute Energy Corporation ("Resolute"), has improved production levels and enhanced oil and gas recovery and the Nation is enjoying an increase in annual production, and consequently oil and gas royalty revenues. It is critical to the development of a sustained Navajo Nation economy to continue oil and gas resource development on Navajo lands. Approval of the proposed amendments to 25 U.S.C. § 415(e) will increase the likelihood that a sustainable reservation economy can be achieved.

NNOGC and Resolute have now reversed the decline curve, and production from the Aneth Field has actually increased. The investments of NNOGC and Resolute have had other benefits, including increasing employment and adding to economic prosperity in the Four Corners Area.

NNOGC, often with industry partners, is also leasing and developing additional tracts of land within and near the Navajo Reservation. NNOGC has recently partnered with another company to develop oil and gas reserves in Montana. NNOGC has also obtained rights to 150,000 acres of land within the Navajo Nation to develop coal bed methane, oil and conventional gas resources. NNOGC is also exploring the feasibility of developing helium reserves on the Reservation. All of this activity contributes not only to the self-sufficiency of the Navajo Nation, but also to the energy security of the United States.

NNOGC has expanded from its main office near Window Rock, Arizona, with an exploration and development office in Denver. NNOGC's generous scholarship program seeks to educate and train capable Navajo students who want to participate in this dynamic field at the highest levels. NNOGC has returned significant royalty payments, taxes, right-of-way payments, rentals, bonuses, scholarships and other contributions to the Navajo Nation and our host communities, and that money is devoted to essential governmental services by the Nation.

NNOGC's continued growth is critical to the development of a sustained Navajo Nation economy. Approval of the amendments to 25 U.S.C. § 415(e) as contained in section 11 of the "Native American Energy Act" will facilitate that growth and encourage Navajo self-determination by removing federal delays and unnecessary obstacles from the process.

Comments on "The Native American Energy Act"

The NNOGC fully supports the objectives of the bill, namely to eliminate or reduce undue Federal interference in tribal energy resource development, strengthen tribal self determination, and boost energy resource production on Indian lands. We

support the provisions of the bill and, in particular, believe the following sections will go a long way to achieve these objectives.

Section 3 of H.R. 3973 amends existing law to reform the costly and inflexible appraisal process and places a 30-day limit on the Interior Secretary's review and approval (or disapproval) of the appraisal. This section also authorizes tribes to waive the appraisal requirement, provided it releases the United States from liability for damages as a result of the lack of an appraisal.

Section 5 amends the existing law to reform the environmental review process triggered under the National Environmental Policy Act by limiting the distribution of required environmental documents to members of the relevant Indian tribe and other individuals residing "within the affected area." We believe this language will serve to reduce often-frivolous challenges made to energy projects on Indian lands.

Section 6 of the legislation would direct the Secretary to establish 5 "Indian Energy Development Offices" to (1) provide energy-related information and resources to tribes and tribal members; (2) coordinate meetings and outreach among tribes, tribal members, energy companies, and relevant governmental agencies; (3) oversee the timely processing of energy applications, permits, licenses, and other documents subject to development, review or processing by specifically named Federal agencies; and (4) consult with Indian tribes to determine what services, information, facilities or programs would best expedite the responsible development of energy resources.

We understand the objectives of section 6 but, as far as the Navajo Nation and the NNOGC are concerned, believe a more effective option is that included in section 11 of H.R. 3973.

As the Subcommittee knows, there is a long list of impediments to energy resource development on Indian lands. The NNOGC supports section 7 of the bill which will eliminate some of the financial challenges and prohibits the Secretary, from collecting any fee (1) for applications for permits to drill; (2) to conduct any oil or gas inspection activity; or (3) on any oil or gas lease for nonproducing acreage.

Just as section 5 would reform the NEPA process, section 8 will provide disincentives to those who would challenge energy projects on Indian lands by requiring the posting of surety bonds and payment of attorneys fees if the challenge is solely for purposes of frustrating such energy projects. The NNOGC supports this section and believes it, will level the playing field when it comes to frivolous lawsuits and dilatory administrative tactics that prevent energy projects from being pursued in Indian Country.

Likewise, the NNOGC supports sections 9 and 10 which will, establish a Tribal Biomass Demonstration Project, and provide that tribal resource management plans approved by the Secretary shall be considered "sustainable management practices" for purposes of any Federal standard, benefit or requirement that requires a demonstration of such sustainability.

In close collaboration with the Navajo Nation, the NNOGC is appreciative of the inclusion of section 11 in H.R. 3973. We are also very appreciative of the strong support we have received from Congressman Paul Gosar.

Section 11. Leases of Restricted Lands for the Navajo Nation

In 2000, the Navajo Nation requested Congress to amend the Long Term Leasing Act (25 U.S.C. § 415) to authorize Nation to develop and execute its own business, home-site, agricultural and other leases without the approval of the Interior Secretary. The Nation made this request because member-owned businesses were not developing on tribal lands due to the overlay of tribal and Federal authority in granting business leases and other barriers such as bonding requirements, requirements for appraisals, and delays in lease processing and obtaining financing.

The Congress responded by adopting 25 U.S.C. section 415(e)—the Navajo Nation Surface Leasing Act—which authorizes the Navajo Nation to execute its own leases without Federal approval, provided that the leases are issued pursuant to regulations approved by the Secretary and leases are limited to 25 years, subject to a right of renewal.

The 25-year limitation has hindered financing of improvements and thus discouraged long-term investment in the business site leases, and the Navajo Nation Council has, by resolution, requested that this limitation be removed and that the Nation be permitted to issue such leases with terms of up to 99 years, as is permitted on other reservations and was permitted on the Navajo Reservation when Congress passed the Navajo Nation Surface Leasing Act in 2000.

The Nation has promulgated leasing regulations, approved by the Secretary, and has been operating its own surface leasing regime without event for approximately seven years. All business site leases require surveys, geo-tech studies, archaeological clearances, and environmental assessment taking into account the impacts on the natural and human environment pursuant to the Navajo Nation's business leasing

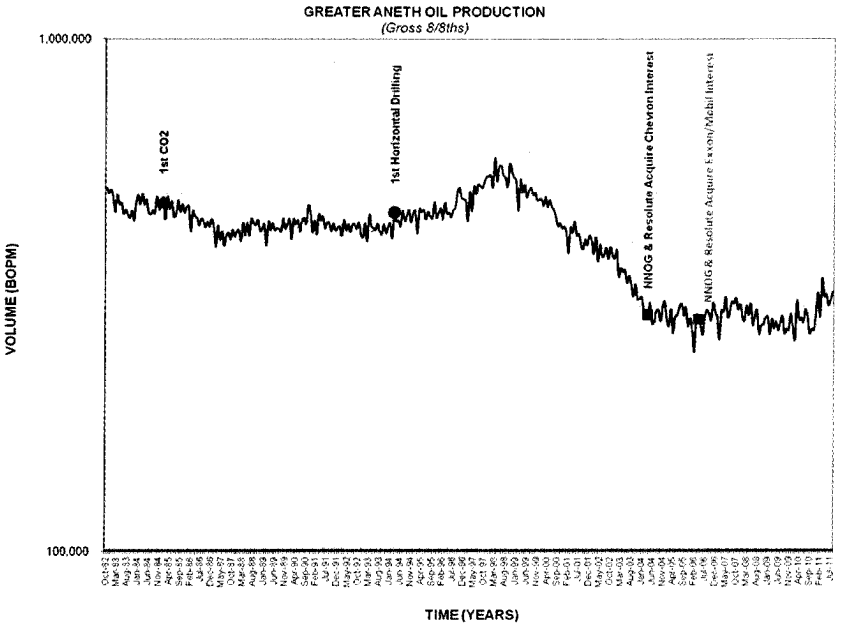
and environmental laws. The various agencies and offices of the Navajo Nation, which are the most advanced in Indian Country, have more than ten years experience in performing these studies and assuring regulatory compliance. The Navajo Nation successfully manages the Navajo Nation Environmental Protection Agency, Department of Historic Preservation, Fish and Wildlife Department, the Minerals Department, and the Navajo Land Department.Section 11 of H.R. 3973 would continue to advance Navajo Nation self-determination and self-sufficiency by amending the Nation's leasing authority to permit business and agricultural and other surface leases for terms up to 99 years, and by further amending 25 U.S.C. § 415(e) to provide the Navajo Nation the ability to execute mineral leases, again, under the regulations approved by the Secretary of the Interior, for a term of 25 years, and potential renewal for an additional term of 25 years, the customary terms of minerals agreements approved by the Navajo Nation Council since approximately 1985.

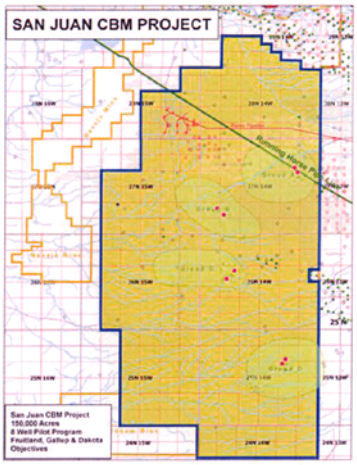
Conclusion

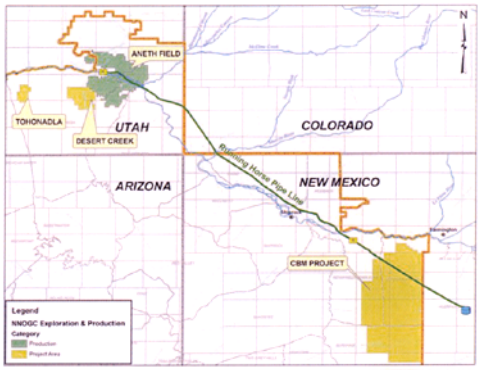
In conclusion, I want to thank Chairman Young, Ranking Member Boren, and Congressman Gosar for their leadership and vision in developing and introducing "The Native Energy Act."

It is our hope that the Subcommittee and the Full Committee on Resources will quickly and favorably report this important legislation to the House Floor for its consideration.

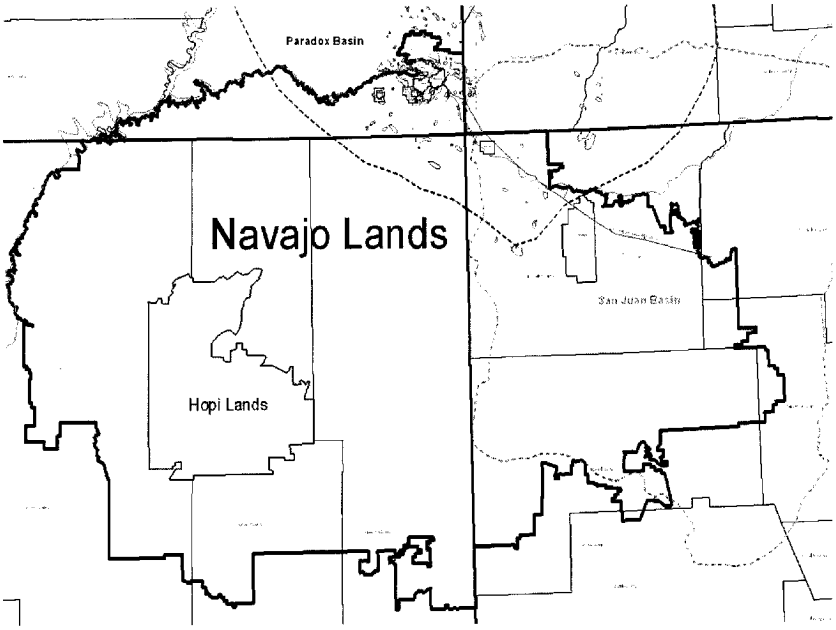
At this juncture, I would be happy to answer any questions you have.







Navajo Nation with Active Areas of Operations & Basins



Mr. GOSAR. I thank you all for your testimony. We are going to go to the questioning aspect. We are going to try to keep it to five minutes. But if Members have more questions, we can go to a second round.

We are going to go to the Ranking Member, Mr. Boren, who has got to leave.

Mr. BOREN. OK. Thank you very much, Mr. Chairman. I have a couple comments, and then just a few questions. Ms. Sweeney, thank you for traveling so far. And I know you are going to be getting back on another plane again is what my sources tell me. And so thank you for traveling so far. And I have been on that flight, and I know the Chairman has, many a time. So thank you for being here.

Mr. Fox, please give Mr. Hall our best. He is one of my favorites, with the big old cowboy hat and everything. And he is a great guy.

Mr. Groen, I want to talk or ask you a couple questions about the Navajo Nation and in regards to hydraulic fracturing. You mentioned that there was some oil production on these lands. There is also a lot of natural gas activity going on. And let me ask you. What would happen if Secretary Salazar, you know, whoever it may be, says, "We are just going to stop fracking on these lands"? Would there be a steep drop-off? First question.

And of course, I think fracking is a very useful tool, but that is the first question. The second question is, you know, a lot of tribes—you know, we have tribes, as an example, in Oklahoma, the Osage Nation, who has been very good at, you know, producing its resources. We are not a reservation-state, but let me ask you this. Do you all have the infrastructure and the governmental capacity to administer the sub-surface leasing program?

You know, obviously, not all tribes are alike. Some are larger, some are smaller. Do you all have the infrastructure to do that, currently? And that is—you know, as we talk about self-determination and a lot of other things, the Chairman, as he crafts this bill—do you all have that capability? It would be interesting to see if you all do have that.

And then also, we would love to hear your thoughts on fracking.

Mr. GROEN. Thank you, Congressman Boren. First off, the extensive hydraulic fracturing that is going on in the Bakken area and so on is not extensively used on the Nation at this particular point. We do fracking in the Aneth Field, and it has been an ongoing practice for some time. And some of the peeks that you see in that curve are when some of that new technology was applied.

Having said that, we are in the process of developing a new play which has many similarities to the Bakken. And these restrictions would have a very negative impact on going forward with this play development. It is referred to as the Mancos Shale. So yes, there would be.

The Navajo Nation has a very extensive regulatory department. They have their own environmental protection agency. It has primacy in a number of issues in air and water-related activities. They also regulate the underground injections programs, they oversee some of that. Additionally, we have fish and wildlife, historic preservation, cultural sensitivity, and minerals departments that are fairly extensive and well-established departments. They have been around for many years, so I do believe the Nation has that regulatory capacity.

Mr. BOREN. Thank you. That is a great response, and good to hear. And with that I yield back, Mr. Chairman.

Mr. GOSAR. At this time I would recognize the Chairman of the Committee, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman. How do you like that, Mr. Chairman? You like that pretty good?

[Laughter.]

Mr. YOUNG. I want to thank all the witnesses. And, Mr. King, do me a favor—you got good legal people around you—about tax credits. If you are a Nation, why couldn't you offer those credits yourselves to the interested people in Kinetic Energy, et cetera? That is the thing. I understand what you are trying to do, but you are still dealing with the Federal Government. And I would prefer, if you possibly could, do it within your own organization or your own tribe.

Mr. KING. With self-determination, tribes want to be in charge of their own projects. And, you know, we want to be able to have options in how we finance these projects. Tribes want to be able to collect tax credits, and to have ownership options of these projects. These tax incentives can reduce the cost of projects by up to 30 percent. Tribes, as government or non-profit entities, cannot currently take advantage of these incentives. The Indian energy bill must include provisions that allow for tribes to monetize these incentives to allow for an even playing field for energy development in Indian Country.

Mr. YOUNG. You are getting to where I want to. You want to have that ability.

Mr. KING. Yes.

Mr. YOUNG. You don't want tax credit from the Federal Government; you want the ability of the tribes to issue the tax credits to anybody who wants to invest in resources on your land.

Mr. KING. Correct.

Mr. YOUNG. OK, and that is something I support. I say this without any hesitation.

The key to this, and the reason for this bill, is the impediment of the Federal Government, including, by the way, the environmental thing—and I appreciate the Navajo tribe—you can reach all the same standards, but you don't have to wait for all the permits and all the studies and all the possible lawsuits. And I don't know who is a lawyer out there. Can a Nation be sued? Anybody know that?

Mr. KING. We have sovereign immunity from——

Mr. YOUNG. So you can't be sued. So as long as you meet the standards—that keeps the bird dogs off our back—then there shouldn't be any reason why this wouldn't go forth. And that—the tenant of this whole bill is about—and I am—thank you, because we are going to try to expand it to all resource development, just not energy, because I think that is the right thing. If someone can sue the agency—you see, that is—they don't sue you. They sue the agency that supposedly has to issue the permit, which delays the ability to develop your resources. It is a delaying tactic, they are famous about that.

So, if you have the right, you can't be sued, you have sovereign immunity, and you can go—keep the standards themselves, they can't sue you but it keeps the bird dogs off your back about, you know, you are not meeting the standards, you are trying to cheat the standards, but you can move the project forward—the delay

factor is what killed most of our projects, you know. I just—little comment about that.

And I do appreciate you all. And Tara, how is your movie going?

Ms. SWEENEY. Fine.

Mr. YOUNG. It is going fine. Her son is in a movie. And if you haven't seen it, go. It is called "The Big Miracle." It is really a good show. And it is about whales in Alaska and all these other good things. You will enjoy it, by the way.

I don't have any other questions at this time. I will in a moment. So go to the other candidates, please.

Mr. GOSAR. Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I—first of all, I do want to commend Chairman Young for introducing—developing this piece of legislation. And I would like to include my name as a cosponsor of this bill, as we move forward, hopefully, to get it out of the Committee and on to the House Floor.

I also would like to tell Mr. Fox to please do extend my regards also to Tex when you get back to see him, and give him my regards.

It is very unfortunate that we are not able to get a member of the Administration to come and testify, because I believe that they should be here. And for some reason or another I don't know why they are not here. But I sincerely hope, Mr. Chairman, that we will continue to make this effort to get the Administration to participate, because it is very critical that we need to know their position, and what they have taken to resolve some of these difficult problems that we have with our Indians.

I was just curious if any of the member—representatives of these tribes are members of the Council on Energy Resources Tribes. That is based out of Colorado. I don't know if—are any of you affiliated with this—I think it is composed of about 39 tribes that have energy-related resources. I was just curious. Mr. Fox, are you——

Mr. FOX. We were at one time. And I believe it has transferred over to COLT. There is also COLT, also. But Council of Energy Resource Tribes is, I believe, no longer existing.

Mr. FALEOMAVAEGA. I noticed with interest, too, that we have the involvement of both the Department of the Interior and the Department of Energy involved in energy-related issues for our Indian tribes. Do you see that sometimes that, having to deal with both of these agencies, there seem to be duplication of efforts in this regard? Has it been your experience to find that you go to the Interior Department and they refer you to the Department of Energy? Are you getting the runaround from both of these agencies in the process?

[No response.]

Mr. FALEOMAVAEGA. I am just asking generally to any members of the panel to respond.

Mr. YOUNG. Will the gentleman yield for a moment?

Mr. FALEOMAVAEGA. I gladly yield to——

Mr. YOUNG. Mr. King, you are excused if you wish to go. You are sitting there getting a little nervous, so—I think you are.

[Laughter.]

Mr. YOUNG. Remember, I know who runs the ship around here, and it is the lady friend.

Mr. KING. My wife thanks you.

[Laughter.]

Mr. FALEOMAVAEGA. Here is what I am trying to get to. And obviously, what we are trying to resolve here is just the simple bureaucratic layers and layers of things that you have to go through, and the process.

We had a hearing, Mr. Chairman, as you recall, about two months ago. After 10 years, a tribe from Oklahoma is still getting the runaround in trying to get permits and trying to get approval of the process. And I just wanted just to get a sense from all of you. Do I understand that all of you have this common experience? You are getting the bureaucratic run-around, period. And you are simply asking not only to simplify, but to make the process work, practical, and it resolves your issues and your problems. Tara?

Ms. SWEENEY. That—yes, that is an accurate assessment.

We—there has been a project in Alaska that was subject to significant regulatory delay. It is called the CD-5 project. And it was a project that was widely supported by the city, the tribe, the village corporation, the regional corporation, the county government, and the State of Alaska. We generally never agree at one juncture on widespread projects. It is tough to find that agreement. We were all in agreement for the CD-5 project to go forward, and there was significant delay with that project inside the Federal Government.

Mr. FALEOMAVAEGA. Anybody care to comment?

Mr. FOX. Yes——

Mr. FALEOMAVAEGA. Which—go ahead.

Ms. CUCH. Yes. I just wanted to reply on the Council of Energy Resource Tribes. I believe the Ute tribe is—or I don't know if we are still—member, if that organization still exists. But we were a chartered member of the Council of Energy Resource Tribes. We haven't heard too much about them, or we haven't attended any of their meetings, so I don't know if they are still in existence. But I understand they may be still there.

I just wanted to comment that, yes, I believe the permitting process is bureaucratic. It is a maze of Federal agencies. And it takes 49 steps to obtain 1 permit. Indian energy development offices would bring all of the agencies into the same room, and would streamline processing, and that way it could be—then we won't be, you know, be given the run-around.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Thank you.

Mr. GOSAR. I am going to go ahead and I will acknowledge myself for five minutes.

Mr. Groen, Navajo Nation, 20 years ago, made energy development a key economic part of its economy. How important are the revenues generated by Navajo Nation Oil and Gas, in terms of the Navajo general fund?

Mr. GROEN. Congressman, Gosar, thank you. The total energy-related revenues to the Nation are nearly 100 percent. They are—well over 90 percent of the general revenue funds come from royalties, taxes, right-of-way fees, projects related to that. And Navajo Oil and Gas themselves contribute to 10 to 15 percent or more of that total revenue. The other comes from other energy companies, and our rate is rapidly increasing.

I may also comment that relative to the energy delays, our very first Navajo Nation issues—what are called operating agreements, not standard BIA leases—the first operating agreement that the Council approved took over 400 days for BIA approval. The more recent one was still approximately nine months. These type of days, when the company paid out in excess of $4 million to the Nation's general fund for the rights to explore this land, are just economic—huge economic hurdles that we have to overcome.

Mr. GOSAR. I know that you are fully owned by the Navajo Nation, and you have been experiencing some robust growth. Do you have any plans to add employees to the Navajo Oil and Gas?

Mr. GROEN. Yes. We are—in fact, we are in the process of preparing our fiscal year budget which begins April 1st. And we are looking at a 20 to 30 percent staff increase in the—for the—just for our company at this time.

Mr. GOSAR. Now, I know your core business right now is oil and gas. What percentage oil and gas at this current time?

Mr. GROEN. At this current time we are 90 percent oil, and just a small percentage of gas. One of the things that the Nation has besides—has vast energy resources. And one that is very unique that we are in the process of working on developing is helium resources, also. So the Nation has some of the richest helium resources in the world, and we are working on developing those, also.

Mr. GOSAR. Any others, besides helium? Because you went right into my next question.

Mr. GROEN. CO_2, because that is used in enhanced oil recovery. That is one of the reasons that you see that reverse of that production curve, is that we are injecting CO_2 into the ground. So the Nation has CO_2 resources, coal, wind, solar. Vast.

Mr. GOSAR. Now, based on your experience with the Navajo Nation and government, does the Nation have strong governmental capacity sufficient to administer a sub-surface leasing program?

Mr. GROEN. Yes, I believe it does. You know, as I indicated earlier, they have a very extensive environmental—in fact they have recently passed a—something equivalent—and I think it is stricter standards than the nation's CERCLA Superfund laws. So they have that. They have primacy in water, air. So they have a number of organizations that are well tested.

And from my personal experience, I worked in the region since 1975. And in the 1980s they were very definitely—the historical preservation office and the fish and wildlife were already presenting detailed reviews of our projects before we would do any surface disturbance. So they have a very—a long history of supervision of these type of activities.

Mr. GOSAR. In fact, if I remember, when I was there they were orchestrating something like a project manager, so that things weren't doing—you know, not seeing things in a linear fashion. They were doing them all at the same time, if I am not mistaken. Were they not?

Mr. GROEN. Yes, that is right.

Mr. GOSAR. Way ahead of the curve. My time is just up, and I am going to acknowledge Mr. Luján.

Mr. LUJÁN. Thank you very much, Mr. Chairman. Mr. Groen, just for clarification, the Navajo Nation Oil and Gas Company is privately owned, correct? It is not owned by the Navajo Nation.

Mr. GROEN. No, we are a Federal Section 17 corporation wholly owned by the Navajo Nation.

Mr. LUJÁN. Very good. OK. With that being said, Mr. Chairman—and I think that the Chairman touched on some of my questions pertaining to the percentages of oil and gas, as well—a couple of questions that I have outside of that scope pertain to a rule that is currently being discussed through the Department of the Interior, that they are reforming this notion of a one-size-fits-all Federal leasing regulation for the 56 million surface acres the Federal Government holds in trust for tribes and individual Indians to further encourage and speed up economic development in Indian Country.

The proposed rule incorporates a number of the principles in H.R. 3973 by establishing a separate, simplified process for residential, business, and renewable energy development. The proposed regulation incorporates many changes requested by tribal leaders during extensive consultations over the past year to better meet the goals of facilitating and expediting the leasing process for trust lands. And BIA is expected to publish the final rule in 2012.

So, my questions inherently are related to the two. With some of the testimony that was given, would you be in favor of H.R. 3973, if it meant expressly absolving the Federal Government of its trust responsibility for tribes? And I would ask Vice President Sweeney or Administrator Fox.

Mr. FOX. Just like our testimony that we have given for Chairman Hall, a lot of the infrastructure that we have—that is with the three affiliated tribes, or MHA Nation, we would have the ability, but a lot of times we don't have the revenue that is coming in to create that infrastructure that would eliminate the Bureau of Indian Affairs.

Today, just for example——

Mr. LUJÁN. But specifically—because my time is running out, and I apologize for——

Mr. FOX. OK.

Mr. LUJÁN [continuing]. For interrupting, Mr. Fox. If the Federal Government absolved—if the trust responsibilities were absolved, is that something you would support?

Mr. FOX. That is—you know, it all depends on what—you know, the process we would have to go through. I think, you know, it would have to go through our government, and maybe one of the other ones could answer the question.

Mr. LUJÁN. Ms. Sweeney?

Ms. SWEENEY. Thank you. The Federal Government's relationship with Alaska Native corporations is very—is different than the trust responsibility that tribes have with the Department of the Interior, with the Federal Government in general. So I am happy to provide background information about the Alaska Native Claims Settlement Act and that relationship.

But the trust responsibility that tribes have as a government-to-government relationship with the Federal Government is very different than the relationship that——

Mr. LUJÁN. That is fair. And I am not suggesting that Chairman Young's legislation would move in that direction. It is a question that I had, just for clarification for the Chairman.

The other question that I have is—and it was brought up from the perspective of posting the bond with the concern associated with litigation. My concern is this. Although uranium hasn't been talked about today, and we talked about all energy resources, I have a concern with something that happened back in 1979 on the Navajo Nation with the Church Rock uranium spill. It has been compared to Three Mile Island. It never got the support or attention that Three Mile Island got, because we were in a rural state. The clean-up still hasn't taken place. We have people suffering from kidney disease and cancer disease.

Myself, I have a piece of legislation called the Radiation Exposure Compensation Act. Senator Udall has it in the U.S. Senate. I still can't get cosponsors of that legislation here, because they are concerned about the price tag of people that are sick and have died because of that.

And I say that only that we need to be careful in our approach. While I agree that we need to make sure we are alleviating concerns where it doesn't make sense, for instance, with utility easements, where you have a utility easement for telephone and then you are going to go in and put—add additional bandwidth or electrical services there, that you go through another ridiculous process, but we also have to keep in mind that when there is something bad that happens, we have to make sure that the tribes are in a position to recoup what needs to be done without having to post additional dollars themselves, and that we can go and clean up what needs to be cleaned up.

So, with that, Mr. Chairman, I yield back and I look forward to the second round of questions.

Mr. GOSAR. Mr. Chairman?

Mr. YOUNG. I want to assure everybody there is no attempt in this bill to lose the trust responsibility to the tribes. It never has been. And I am sure the gentleman understands that. There is the intent here to make sure that tribes have an opportunity to fulfill the benefits of their lands for the benefit of their tribal members without being impeded by 12 months, 16 months, 10 years of nonsense.

And being an agency that is being sued by an interest group because the agency issued a permit to a tribe after four years, this is not the way to go.

And Tara, I want to remind you, don't mention the numbers. What was that project that was held up?

Ms. SWEENEY. There have been several.

Mr. YOUNG. That one project that you talked about. What was it?

Ms. SWEENEY. CD-5.

Mr. YOUNG. Yes, I know, but what was it?

Ms. SWEENEY. It is——

Mr. YOUNG. What was the project?

Ms. SWEENEY. It is a development project on Native lands within the national——

Mr. YOUNG. In fact, it was a bridge.

Ms. SWEENEY. It was a bridge.

Mr. YOUNG. Yes. Now, I have never understood—it was Native land, they had the land here, and they owned the land over here, and they owned the land in between. All they wanted to do was build a bridge from one field to another field. And an interest group came along and said, "Oh, no. The alternative to that is to put the so-called pipe 60 feet under the river and bring it up on the other side," which is very nearly impossible, terribly environmentally dangerous.

Yet it was Native land. This was not Federal land. But they claimed, because the water flowed through their area—and then they based it upon a view effect—I don't know how many of you know what a "view effect is." It disturbs the view. Now, who in the world is going to see it to begin with, other than people in—that is the only people who are going to see it. So they stopped that project for, what, four years? Three years?

Ms. SWEENEY. There was significant delay, yes.

Mr. YOUNG. Yes. So that is what I am trying to avoid.

Chairman—how do you pronounce that, Olguin? OK. Are you aware the Department of the Interior is drafting rules regarding hydraulic fracturing on Federal lands, that the Department's view in terms of Federal lands also means lands held by trust to the tribes?

Yesterday an article reported that Secretary Salazar defended the hydraulic fracturing rules—fracking rules on the grounds that American people have the right to have their public lands used in a responsible way. I interpret this to mean the Secretary believes tribal lands are really public lands that belong to all American people.

And I ask your view. Do you think tribes' lands are public lands that belong to all American people? Anyone want to answer that? Yes, sir.

Mr. OLGUIN. Yes. My last name is Olguin, just——

Mr. YOUNG. Olguin?

Mr. OLGUIN. Yes.

Mr. YOUNG. Olguin?

Mr. OLGUIN. Yes.

Mr. YOUNG. OK.

Mr. OLGUIN. No, I do not believe tribal lands are public lands.

Mr. YOUNG. And neither do I. OK.

Mr. OLGUIN. Straightforward.

Mr. YOUNG. But that goes—what I am saying is now here comes the Secretary, that is proposing fracking rules that apply to lands other than public lands, to Native lands. And that is against the rules, if you recognize the sovereignty of those Nations. And if these fracking rules go in place, you can forget New Mexico. In fact, any other place.

This is being driven by, I think, a misinformed audience, and there is no reason why—you can set rules about how you frack. But most of those so-called instances of gas spillage is because of bad piping or old wells that they frack through. Now it is your land, you can say, "OK, you are going to frack," you are going to put a new stem in, you don't have any problems. And that is your respon-

sibility. I just think that that is what people don't quite understand.

And, by the way, has the Department contacted any of you on this new fracking rule?

Mr. OLGUIN. Yes.

Mr. YOUNG. They have?

Mr. OLGUIN. Yes.

Mr. YOUNG. What did they tell you?

Mr. OLGUIN. Well, there was a meeting held with the Bureau of Land Management, and the tribe did provide its comments in regards to the fracking.

Mr. YOUNG. Have they responded at all?

Mr. OLGUIN. No, not yet.

Mr. YOUNG. OK. That is another thing that concerns me.

Irene, you indicated the BIA is the most important agency in charge of supporting Indian energy. Yet there is an office of Indian Energy Policy and Programs under the Department of Energy. Now, you got one in the Department of Energy, you got one in the BIA. How often have you contacted the Department of Energy? I mean—yes, the Department of Energy?

Ms. CUCH. The one in BIA is in charge of permitting.

Mr. YOUNG. And the Energy Department is another thing?

Ms. CUCH. The Energy——

Mr. YOUNG. The reason I am asking, this is a classic example. You have the BIA over here, you got the Energy Department over here. Neither one knows what they are doing.

[Laughter.]

Mr. YOUNG. And how do you get anything done? That is our biggest challenge.

I just—you know, that is one of the things that—nobody consults with you guys, really, in seriousness. They will tell you why you can't do it, but they won't help you get it done. Now—and even the proposal, the regulations coming out the gentleman from New Mexico mentioned, that is another shell game, guys. That is why this legislation is important. It is a shell game. They will slow-walk you, slow-talk you, and nothing will happen. I want to make sure this can be done. I yield back. I don't have no more time left.

Mr. GOSAR. Acknowledge the Ranking Member.

Mr. LUJÁN. And thank you again, Mr. Chairman. And just to clarify with Chairman Young is that, again, as we talk about trust responsibilities, I appreciate the mentorship and advocacy that has come from Chairman Young in these areas, and I think that there will be ways—Mr. Chairman, the reason I brought it up is there were some questions that were brought to my attention, and I know that we will make every effort to clarify that that is not something that will happen. So I appreciate that very much.

Again, when we are talking about impacted individuals, and we look at the problems and where the BIA needs to be simplified, to ease the way that we conduct business is something that I believe in. I have learned that more has to be done, and I support the approach that this Subcommittee is taking and will continue to take to make sure that we address those important principles. And I appreciate the conversations that I have had with the Chairman on those issues.

But again, as we talk about some of the impacts with experiences from the past, so that we don't repeat them going forward is where my concern is. Again, with impacted areas in New Mexico and across the country, the spill that I referred to flowed 80 miles from New Mexico down into Arizona. Water streams, sheep, livestock that people ate, and waterways that people drank from were impacted.

How do we assure ourselves that if something like that happens, that the tribe or some of those individual tribal members that are impacted—I appreciate where the concern is coming from with the surety bond, but how do we assure, and what provisions do you have, or do you feel it is important that we have a path forward to be able to provide those protections? And I would invite comment from any one of our distinguished panelists today. Tara?

Ms. SWEENEY. Congressman Luján, thank you for the opportunity to respond.

Arctic Slope Regional Corporation—I can only speak to what we have experienced in the past in Alaska with respect to energy projects on our native lands. And so, I will respond in that vein.

We fully embrace a process where legitimate concerns can be raised, and we fully support a process where we also are preserving our right to challenge projects. That is something coming from the North Slope of Alaska, remote area of the country, where our people depend on those subsistence resources. We subsist off the land and the sea. Whether it is whaling or hunting caribou, we certainly want to preserve our right to challenge projects.

And so, we too are looking for an alternative. Because delays to projects on our lands have material—also material impacts on the benefits that we provide to our shareholders. And Congress mandated that Alaska Native corporations provide benefits for their shareholders. We are a beast of Congress. And so we have to find ways to continue to provide scholarships, dividends, employment and training opportunities, medical, travel, and death benefits for our shareholders.

And so, we are open to working within Indian Country to find an acceptable solution that, one, preserves our ability to challenge projects and put forward legitimate challenges, but also minimizing the impacts of frivolous lawsuits that could endlessly delay meaningful projects, tying it up through litigation. So I think that somewhere in there we do—there is a balance that we can strike.

And so, while we do support the language that is in the proposed legislation, we are also open to reasonable alternatives, as well.

Mr. LUJÁN. Very good. So you would be open, as long as you could streamline the process to make sure that adequate protections were in there for the tribe, for the tribal members, as well?

Ms. SWEENEY. Yes.

Mr. LUJÁN. And Mr. Groen, if you would comment, would you be open to that as well, to ensure that in that catastrophic incident that I described—and I hope that we never see another one like it, but that we have the ability in place to protect the tribe and the tribal members, the people that could be impacted?

Mr. GROEN. Yes. I agree with Tara's comments. That is a very—you know, some sort of a compromise, being able to move the projects forward in a safe and environmentally sensitive area, that

is the key to the complete development of these projects. We definitely do not want to move forward with projects in a manner that damages the environment. But they have to keep moving forward.

Mr. LUJÁN. Thank you. Thank you, Chairman, and thank you, Chairman Young, for your leadership on this issue.

Mr. YOUNG. I just want to—again, if I can, would the gentleman—who let the leases go for the uranium?

Mr. LUJÁN. Mr. Chairman, in the instance of the Church Rock incident?

Mr. YOUNG. Yes.

Mr. LUJÁN. The leases were engaged with the Navajo Nation.

Mr. YOUNG. And the BIA.

Mr. LUJÁN. And the BIA, yes, sir.

Mr. YOUNG. Yes. Because, see, I want to stress that. I think the Navajo Nation could probably have done a better job. And I am going to ask each one of you here—we just finished a lawsuit, which I did not agree with, as far as the amount of monies—I started that many years ago, I wanted $27 billion, not $2.5 billion.

How much money do you think you lost through the process of the BIA leasing to companies, and you had no say in it? Anybody want to comment on that? I know you can't give—but you follow what I am saying? A lot of times you didn't have anything to do with it. Is that correct? BIA put the lease up for oil and gas exploration and other things. Am I wrong in this? Tell me if I am wrong. Yes, any one of you, I don't care.

Mr. GROEN. I guess I will comment quickly. Yes, the standard BIA leases have been—royalty rates have been 12-1/2 to 16-2/3 percent. Under the operating agreements that the Nation has been issuing, there is a variety of them but they start at 20 percent, and a lot of them have a sliding scale royalty based on the cost of the—or the value of the product.

Mr. YOUNG. But you don't have much say if—is it—am I correct? The BIA is the one that manages the leases on most reservations now. Is that correct?

Mr. GROEN. Yes, in the—historically on the Navajo Nation, though the Navajo Nation has not authorized a BIA lease since the 1970s. So the Navajo Nation is quite different from that.

Mr. YOUNG. OK. But the rest of the Reservation—but I am saying do you not believe, if you have your own minerals management agency, you could negotiate a better lease for your tribal members than through the BIA?

Mr. GROEN. Absolutely. And that is what the Navajo Nation is doing at this time.

Mr. YOUNG. You think you can do the same thing?

Mr. FOX. I think we really could do the same thing. You know, a lot of our tribes or reservations are not the same as the Navajo Nations. The Fort Berthold Reservation, you know, we do have 530,000 acres in trust, probably about 320,000 are allotted tribal members. So they do negotiate their own tribal mineral leases themselves.

Now, you know, the tribe does have 210,000 mineral acres that they negotiate for themselves also. But with the infrastructure that is needed, like I have said in our testimony, with the tax infrastructure that is built in the state, you know, the tribe can do a

lot better at administering these leases for ourselves and for our tribal members if we had the infrastructure in our tribal——

Mr. YOUNG. And an expedited process, too.

Mr. FOX. Yes, we can, sir.

Mr. YOUNG. OK, good. I don't——

Mr. OLGUIN. Mr. Chairman?

Mr. YOUNG. Yes, go ahead.

Mr. OLGUIN. Yes, I would like to respond to your question. $90 million is what our impact was for delays from the Bureau of Indian Affairs in approving right-of-ways. And those——

Mr. YOUNG. $90 million?

Mr. OLGUIN. $90 million.

Mr. YOUNG. Holy bejeezus. Think how many kids you can educate with that.

Mr. OLGUIN. That is a lot of kids.

Mr. YOUNG. How many clinics you could open with that. You know, that is what we are trying to address here. Very good. I don't have any more.

Ms. CUCH. Mr. Chairman?

Mr. YOUNG. Oh, excuse me.

Ms. CUCH. I would like to also——

Mr. YOUNG. Go ahead, ma'am.

Ms. CUCH. Yes, Mr. Chairman. I would also like to mention that we do have our own energy and minerals department. But they are involved in the permitting process, but BIA still has the final approval. In talking about—we need 10 times as many permits to be approved, and would benefit from one-shop stop. I think your—the bill does mention the one-shop stop.

Currently we have about 48 applications permit to drill, and they are—and we have that many that are approved each year for oil and gas operation on the Reservation. We estimate that about 450 APDs would be needed each year, as we expand operation.

And I believe in your one-stop shop, we would encourage the Bureau of Indian Affairs to hire staff with energy expertise. The BIA may be most important Federal agency charged with supporting Indian energy, yet there are only a handful of BIA employees with energy expertise. I would just like to make that comment.

Mr. YOUNG. I appreciate that. Again, I am trying to get the BIA out of this business. I want you to know that. If we have to have them, I believe in the one-stop shop. But I also think you can do it better on your own, because that has been the whole problem we have got. I have been in this business 40 years, and I have heard the same story, "We are going to do better next time, we are going to put a new system in place, it is going to work this time." And it hasn't worked.

And I talked to Larry Echo Hawk, and he admits it hasn't worked, because you have sort of an ingrained incestuous type of individuals that don't really want it to work. And that bothers me. I would rather have the responsibility on each one of you. And if it doesn't work, they will throw you out, your tribal members will. And that is how it should be.

Mr. Chairman, I have no other questions.

Mr. GOSAR. I have just got a quick question. I know the monetary amounts that you said, but what is the average waiting time?

Mr. OLGUIN. For an application to permit to drill, we are looking at about two-and-a-half years.

Ms. CUCH. In our Ute tribe, one year.

Mr. FOX. We are down to anywhere from three to four months on our application permit to drill. Currently we do have 589 that were submitted since 2008. Right now there are 237 pending. So coming up with this up-and-coming summer program for drilling, I guarantee you they will probably double that.

Mr. GROEN. On the Navajo Nation they are typically one year to a year-and-a-half, or more in some cases.

Mr. GOSAR. Wow. And that is not figured into your——

Mr. YOUNG. Then you get a lawsuit.

Mr. GOSAR. Yes.

Ms. CUCH. Yes, I——

Mr. GROEN. It is figured into it.

Mr. GOSAR. It is?

Mr. FOX. It is.

Mr. GOSAR. Wow.

Ms. CUCH. I mentioned one year for the Ute tribe, but it—we lose, for every permit that isn't drilled, $1 million a year.

Mr. GOSAR. But—so the dollars you quoted about what it is costing you, you are not figuring in the lost time. Time is money.

Mr. OLGUIN. Plus, when the prices drop, that is a big impact.

Mr. GOSAR. Absolutely. I yield—I know the Ranking Member has got a couple more questions.

Mr. LUJÁN. Thank you, Chairman. And just quickly, more of an observation. Chairman Young, one of the problems, as I understood it, with—and I know that we are talking about the process associated with moving work forward—and I keep going back to the one example with Church Rock, but one of the problems, as I recall, and if I have this correctly, is one of the reasons Church Rock did not get the support that they needed to at the time from the Federal Government was at the time the Governor didn't offer a—or issue a Declaration of Emergency, which was a major problem. And I know this has happened in other areas where there has been devastating fires.

So, whether we talk about energy or we talk about fires or natural disasters, is maybe along these lines. One of the things we could do to work together is to alleviate that. And if there is an emergency or a declaration of emergency on tribal lands, as opposed to waiting for the Governor of that state to declare an emergency, to allow them to go directly to FEMA and declare that emergency as if it was coming from a Governor of a state—and maybe there is room for us to have a conversation about that, Mr. Chairman.

So, with that, I yield back the balance of my time.

Mr. YOUNG. I agree. The sense is you don't lose the trustability [sic] for the Federal Government. And if we could go government-to-government, I think that is a responsibility, to get it done. And especially your fires. That was a disaster down there, too. So that is a good idea. We will work on it.

Mr. LUJÁN. Thank you, Chairman.

Mr. GOSAR. Any other questions? Well, I would like to thank the witnesses for coming, and especially from such a far, far way. Thanks to all the Members for their participation.

Members of the Subcommittee may have additional questions. If they do, they will submit them to you to respond in writing.

If there is no further business, without objection the Subcommittee stands adjourned.

[Whereupon, at 4:02 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement submitted for the record by the Crow Nation

I. Introduction

The Crow Nation is a sovereign government located in southeastern Montana. The Crow Nation occupies a reservation of approximately 2.2 million acres, with abundant natural resources including coal, oil, natural gas, and bentonite. We also are also actively working to develop hydropower and wind power projects utilizing renewable energy resources within our reservation. The Crow Nation is uniquely positioned to contribute to the energy independence of our country.

We are encouraged to see the Subcommittee working to address many of the issues that impact energy opportunities in Indian Country. Eliminating obstacles to energy project development in Indian Country, along with providing incentives to secure and expand Indian energy projects, will build additional national capacity to create more jobs in the national economy. We must work together to address the barriers that currently limit project development in order to fully realize the potential for energy development that exists in Indian Country, and for the nation.

We believe that H.R. 3973 makes significant strides toward eliminating many of the regulatory hurdles that have hindered energy project development in Indian Country. Based on our experiences working with industry partners in the coal, oil, and natural gas extraction industries, we will also suggest additional provisions that would further promote these objectives, and would expand the impact of the Native American Energy Act in addressing longstanding disparities in energy project development.

II. Comments on Section 3—Appraisals

Despite holding substantial natural resources, the Crow Nation has encountered numerous problems in developing energy projects on the Crow Reservation. The Crow Nation and our energy development partners have experienced, and continue to experience, systematic problems in creating energy development and creating new jobs associated with that development. The Bureau of Indian Affairs ("BIA") consistently creates barriers and delays to resource development.

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 land records necessary for project evaluation and development. The BIA lacks the staffing necessary to provide accurate information on Reservation surface and mineral ownership, and to resolve additional questions that arise. This makes our projects less competitive with off-reservation development. Many companies view this, in addition to other problems, as another prohibitive cost of doing business on the Crow Reservation. The Crow Nation has worked closely with BIA staff to facilitate its energy development projects.

In most cases, BIA staff have worked to be as responsive as staffing shortages and regulatory requirements would allow. However, despite our best efforts, BIA staff shortages and OST appraisal requirements have resulted in a much more difficult and time-consuming process in developing a large energy project on the Crow Reservation than would be the case off-reservation. The delays and added costs have hindered the development of energy projects of all scales in the past, and have been a major source of frustration for project developers as well as for the Crow Nation and its citizens.

The Crow Nation believes that the provisions of H.R. 3973, especially Section 3, address these obstacles and provide alternate methods for compliance with the requirements in federal laws and regulations governing Indian lands. These provisions will assist Indian Nations in realizing the goal of efficient energy project development.

III. Comments on Section 7—BLM Oil and Gas Fees

The current version of H.R. 3973 includes language prohibiting collection of any fee by the Secretary of Interior, through the Bureau of Land Management, for any application for a permit to drill on Indian land, for conducting any oil or gas inspection activity on Indian land, or on any oil or gas lease for nonproducing acreage on Indian land. These provisions address a longstanding concern of the Crow Nation.

Beginning with the FY 2008 Appropriations Act for the Department of Interior, Congress required the Bureau of Land Management 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.

This $6,500 fee compares to drilling permit fees of less than $100 off the Reservation in the State of Montana. Obviously, this creates 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 these types of wells is less than $150,000 each, so the APD Fee substantially increases and also comprises 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 speculative, 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 APDs for another couple of wells, 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 in developing a handful of new wildcat wells, in addition to adding tens of thousands of dollars of non-productive costs that limit the Crow Nation's ability to charge taxes and collect royalties on future production.

We are extremely encouraged to see this issue addressed by the provisions in Section 7 of H.R. 3973. The APD fee is a hindrance to the Crow Nation's goal of developing its oil and gas resource. The language eliminating the collection of APD fees on Indian lands will eliminate the disparity that currently exists between drilling on Crow lands and drilling on adjacent State fee lands. This provision will enable expanded and more efficient oil and gas development on the Crow Reservation. It also conforms to our longstanding belief that Indian Nations should not be penalized for nor damaged by the federal government's exercise of its trust responsibility over Indian lands and resources.

IV. Comments on Section 11—Leases of Restricted Lands

The Crow Nation seeks authority to lease surface rights for not more than 99 years and has proposed language amending the same section that H.R. 3973 includes for the Navajo Nation. Crow seeks to be added to the long list in 25 USC 415 (a) after "Ohkay Owingeh Pueblo." Having the authority to provide longer term surface leases will allow Crow to more effectively attract energy partners considering costly, long-term equipment installations, like power plants.

The language proposed by Crow is as follows:

SEC.___. EXTEND LEASE PERIODS FOR THE CROW NATION

In General—Section 415 of Title 25, United States Code, is amended

(a) by inserting ", and lands held in trust for the Crow Tribe of Montana," after "Ohkay Owingeh Pueblo", and

(b) by deleting "and" before "lands held in trust for Ohkay Owingeh Pueblo"

V. Additional Areas to Consider for H.R. 3973—Need to provide certainty in 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 for energy in particular, the Indian Coal Production Tax Credit. However, the accelerated depreciation provision 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 are set to expire at the end of 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 power generation 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. Permanent extensions and appropriate modifications to these existing tax incentives will facilitate job creation and economic development, particularly in energy development, on the Crow Reservation and for all of Indian Country.

A. Indian Coal Production Tax Credit

The Crow Nation has leased a portion of its coal reserves for 37 continuous years to Westmoreland Resources Inc ("WRI"). WRI owns and operates the Absaloka Mine, a 15,000-acre single pit surface coal mine complex near Hardin, Montana, on the northern border of the Crow Reservation. The Absaloka Mine was expressly developed to supply Powder River Basin coal to Midwestern utilities and has produced over 172.6 million tons of coal to date. WRI annually pays substantial production taxes and coal royalties to the Crow Nation; $9.9 million of taxes and $9.1 million in royalties were paid to the Crow Nation in 2010. The significant portion of the Crow Nation's non-federal budget, approximately two-thirds, comes from the Absaloka Mine. Additionally, WRI employs a 70% tribal workforce, with an average annual salary of over $62,000, and averages a total annual employment expense of approximately $16 million. The Absaloka Mine is the largest private employer of Crow Tribal members on the Crow Reservation, where the unemployment rate exceeds 47%. The importance of the Absaloka Mine to the economy of the Crow Reservation cannot be overstated. 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.

Several factors have contributed to the longevity of the Absaloka Mine and the partnership between the Crow Nation and WRI, but a critical element in keeping the Absaloka Mine in operation has been the Indian Coal Production Tax Credit ("ICPTC"). The Absaloka Mine has struggled financially to compete with larger Powder River coal mines, as well as 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 2005 Energy Policy Act provided the ICPTC 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 was an effort to neutralize the impact of price differentials created by sulfur (SO2) emissions allowances, thereby keeping Indian coal competitive in the regional market. Without the credit, the Absaloka Mine would have lost its supply contract and would likely have closed in 2005, which would have had a devastating impact on the Nation. The ICPTC has worked to keep the Absaloka mine competitive and open. This tax credit remains critically important because, without it, the Absaloka Mine's economic viability would be in serious jeopardy. The tax credit remains critical to the current operation of the existing Absaloka Mine and provides sufficient incentive to help us attract additional investment for future energy projects. In order to protect existing operations and encourage growth, the ICPTC should be made permanent, should be allowed to be used against alternative minimum tax, and the requirement that the coal be sold to an unrelated person should be deleted to allow and encourage facilities owned, in whole or in part, by Indian Nations to participate and benefit from the credit.

The continued operation of the mine has been significantly facilitated by the tax benefits made possible by the ICPTC. Without the ICPTC, the Absaloka Mine would have ceased to operate, thereby ending a substantial revenue source for the Crow Nation. Continuance of the ICPTC is critical to the future of the Absaloka Mine and the stability of revenue to the Crow Nation. The Crow Nation seeks to ensure the continued economic viability of the Absaloka Mine, as the revenue and jobs that it brings to the Nation are an overriding imperative for the Nation and its citizens.

B. 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 tan-

dem 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 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 holding vast untapped natural resources; 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 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 available Indian resources.

C. Indian Employment Wage Credit

The 1993 Act also included an "Indian employment wage credit" with a cap not to exceed twenty percent (20%) of the excess of qualified wages and health insurance costs that an employer pays or incurs. "Qualified employees" are defined as enrolled members of an Indian tribe or the spouse of an enrolled member of an Indian tribe, where substantially all of the services performed during the period of employment are performed within an Indian reservation, and the principal residence of such employee while performing such services is on or near the reservation in which the services are to be performed. *See* 26 U.S.C. 45(c)(1)(A)-(C). The employee will not be treated as a "qualified employee" if the total amount of annual employee compensation exceeds $35,000. As written, the wage tax credit is completely ineffective and does not attract private-sector investment in energy projects within Indian country. The provision is too complicated and private entities conclude that the cost and effort of calculating the credit outweighs any benefit that it may provide. We therefore propose that the wage and health credit be revised along the lines of the much-heralded Work Opportunity Tax Credit, which is less complicated and more likely to be used by the business community. We propose retaining the prohibition contained in the existing wage and health credit against terminating and rehiring an employee and propose to alter the definition of the term "Indian Reservation" to capture legitimate opportunities for employing tribal members who live on their reservations, even though the actual business activity may be off-reservation. This amendment would allow the Indian Employment Wage Credit to more effectively fulfill the purpose for which it was originally enacted.

D. Alternative Fuel Excise Tax Credit

Several coal-to-liquids ("CTL") projects have been announced in the United States. 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. The Crow Tribe's Many Stars CTL Project is not immune to these challenges. Among other potential actions that the federal government could

take to encourage the development of new technology in this area, the extension of the Alternative Fuel Excise Tax Credit is critical.

The current Alternative Fuel Excise Tax Credit provides for a 50-cent per gallon credit. We would propose to extend the expiration of the 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 this project to be fully planned, implemented, and operational, investors raise the concern that the incentives will expire before the plant starts operation. We would address this concern by providing the tax credit for a period of 10 years following start-up for those projects starting construction prior to 2015.

VI. Conclusion

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 aspires to develop its vast natural resources not only for itself, but to assist the United States realize a new goal—achieving energy independence, securing a domestic supply of energy, and reducing dependence on foreign oil. These goals are consistent with the provisions in H.R. 3973, and can be furthered by the additional provisions we suggest adding to the Bill.

Thank you for the opportunity to provide these comments, share our experiences, and suggest additional measures to encourage energy development in Indian Country.

[A letter submitted for the record by REDOIL follows:]

REDOIL1
P.O Box 74667
Fairbanks, AK 99701

February 27, 2012

The Honorable Ed Markey Ranking Member
Subcommittee on Indian and Alaska Native Affairs
Natural Resources Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

We provide this letter of testimony concerning the hearing held February 15, 2012 on H.R. 3973, the Native American Energy Act. We have serious and profound concerns regarding H.R. 3973.

We write today on behalf of Resisting Environmental Destruction on Indigenous Lands (REDOIL), a movement of Alaska Natives of the Inupiat, Yupik, Aleut, Tlingit, Eyak, Gwich'in and Denaiana Athabascan Tribes who are challenging the oil and mining industries and demanding our rights to a safe and healthy environment conducive to subsistence. We aim to address the human and ecological health impacts brought on by unsustainable development practices of the fossil fuel and mineral industries, and the ensuing effect of catastrophic climate change. We strongly support the self-determination right of tribes in Alaska, as well as a just transition from fossil fuel and mineral development to sustainable economies and sustainable development.

The three core focus areas of REDOIL are:

- Climate Change and Climate Justice
- Ecological and Human Health
- Sovereignty and Subsistence Rights

H.R. 3973 contains sweeping changes that would diminish review of impacts from oil, gas, coal, shale gas, oil shale, and other energy projects, on Indian lands, Alaska Native Claims Settlement Act (ANCSA) corporate lands, and the cumulative impacts across even broader areas. Oil and natural gas exploration, development and production, coal mining and generation, shale gas, and other energy production poses risks to air and water quality that damage human health, and devastating environmental and cultural impacts of Native Americans, as we describe below.

We recognize the self-determination framework for federally recognized tribal governments and tribal members, and it is important to ensure that energy and other development decisions adequately address all of the impacts of those decisions, some of which occur well beyond the project site, and that the public has the ability to participate.

Expansive provisions of H.R. 3973 would decrease tribal sovereignty of federally recognized tribes in Alaska to uphold their obligations to current and future generations to sustain culture, traditional way of life, and health and quality of their traditional lands.

As described below, the entire bill should clearly exclude Alaska Native Claims Settlement Act corporations with respect to how it defines "Indian Tribe" and "Indian land" in order to uphold tribal sovereignty.

We are concerned that sections 5 and 8 of H.R. 3973 eliminate broad public participation for projects on Indian land and will have a significant chilling effect on the ability of the public (including tribal members) to seek judicial review of a decision related to an energy project on Indian land or proposed by (or done in partnership with) an Indian tribe. We are also concerned that section 3 on appraisals would give sovereign powers for land valuations to ANCSA corporations, and provide detail on the bill's language later in this letter. Therefore REDOIL and our members strongly reject the provisions of H.R. 3973 we highlight in this letter.

Next we provide the broader context under which this legislation must be viewed regarding fossil fuel development and impacts on Alaska's indigenous peoples. Finally, we will provide detailed comments on specific provisions of the bill.

Fossil Fuel Development and Alaska's Indigenous Peoples

Global warming is leading to shifts in the world environment that are resulting in a significant increase in devastating and alarming weather patterns. Effects of global warming in Alaska alone include altered weather patterns, more severe storms, erosion of coastal areas, greater precipitation, thawing permafrost, melting sea ice, receding glaciers, increased instance of spruce bark beetle infestation, increased and severe forest fires, declining fish populations, migratory and habitat disruptions of key subsistence resources, and disruption of all natural cycles of life.

Climate change impacts lead to loss of subsistence resources and rights, relocation of communities, and to negative social statistics related to human health. One of the major impacts is Alaska Native communities are struggling with forced relocation as coastlines no longer protected by sea ice erode, they in essence are now becoming environmental refugees or climate refugees. Alaska truly is the canary in the mine when it comes to Climate Crisis, and the canary is on life support.

The current impacts of climate change on Alaska's Indigenous peoples are perpetuated by the incessant demand for energy to feed the high consumption appetite of America. Current energy policy disproportionately targets our homelands and marine ecosystems and continually puts our subsistence way of life at risk. The sovereign authority of Alaska Native federally-recognized Tribes is undermined as our ancestral ways of life and homelands are imperiled by devastating proposals for further resource extraction of fossil fuels and minerals. The devastation is compounded by climate change and vice versa.

The reality in Alaska is that federally-recognized Tribes are defending the remaining areas that provide for our subsistence way of life in the face of massive proposals to exploit the resources despite the impact of loss to our subsistence and cultural lifestyles that such projects pose. As we read through the Native American Energy Act it is very clear that the intent of this bill is to diminish our capacity to defend our homelands and marine ecosystems from unjust energy proposals within our subsistence use areas. The Alaska Native Claims Settlement Act is one unjust act that streamlined massive exploitation of our homelands in Alaska as well as left a legacy of pollution within Alaska Native ancestral territories. To make the point, first you must understand ANCSA in the view of Sovereign Tribal Governments.

The discovery of oil at Prudhoe Bay established an alignment of the oil companies and the US federal government to promote their combined interests. This alliance provoked an urgency to settle Indigenous land claims in Alaska in order to provide a right-of-way for the Trans-Alaska Oil Pipeline. The US Congress unilaterally passed the Alaska Native Claims Settlement Act (known as ANCSA) in 1971 to legitimize US ownership and governance over Indigenous peoples, our lands, and access to our resources. The lands, which were taken from us through this Act, became "corporate assets" of newly created state chartered limited liability for-profit Native Regional and Village corporations. ANCSA conveyed indigenous ancestral lands to corporations instead of the existing Indigenous traditional governing structures because our governments were perceived as an impediment to assimilation.

ANCSA changed the dynamics of how Alaskan Natives relate to the land, but also how we relate to one another. State and Federal promoted economic development interests are aligned with these Native corporations that pursue lands and marine ecosystems for economic gain despite adamant opposition by Alaska Native Tribes whose subsistence way of life is endangered by economic development proposals.

The difference between the Native Corporations and Tribes is very simple:

The corporation's bottom line is profit at all cost and business interests. Whereas for Alaska the Sovereign federally recognized Tribal Governments bottom line is the health and well being of the peoples. These are two very different and conflicting values.

If the effort to recognize Corporations as Tribes is allowed within Energy Policy, you basically will have the "fox guarding the henhouse" in Alaska. H.R. 3973 gives authority illegitimately to entities that by their very nature are the very ones all too often in partnership to exploit our homelands and resources for profit which undermines and threatens our "subsistence" way of life. No Corporation should be granted sovereign status; it can be likened to granting BP or Shell Oil sovereignty. In reality, this insidious language will perpetuate and streamline continued assaults on subsistence use lands by Native Corporations, only now there will be far less oversight and the public will be shut out of the process to give input to protect human and ecological health.

This language diminishes and undermines Sovereign Tribes here in Alaska as well as the Federal Trust Responsibility. To correct this, this language must be stricken from the Bill immediately. The definition of Tribes should only be for Federally Recognized Tribes not ANCSA Corporations throughout this bill. H.R. 3973 dishonors the Sovereign Tribes of Alaska as well as our ancestors and future generations and puts our subsistence homelands at risk further.

Specific Comments

In order to uphold the Tribal sovereignty of the federally recognized tribes in Alaska and their obligations to current and future generations to sustain culture, traditional way of life, and health and quality of their traditional lands, it is critical that ANCSA corporations are not considered Tribes.

- In key sections of this bill, "Indian tribe" and "Indian land" are defined to also encompass Alaska Native Claim Settlement Act (ANCSA) corporations. The ANCSA Corporation lands are not owned by a federally recognized tribal government, but are owned by for-profit corporations that are state-chartered entities.
- In particular, Section 3—Appraisals, Section 5—Environmental Reviews, and Section 8—Bonding Requirements, give inappropriate authorities and shield for-profit ANCSA corporations from federal responsibilities including to address potential impacts from major project to the human and natural environment.
- For the entire bill, "Indian Tribe" and "Indian land" should clearly exclude ANCSA corporations by definition.

We have specific concerns about three sections of H.R. 3973, Sections 3, 5, and 8. Two sections of the bill (Sections 5 and 8) would severely restrict public involvement in the development not only in oil, gas, coal and other energy developments but also any major project on Indian lands—including ANCSA corporation lands—and also insulate energy projects on such lands, or projects done in partnership with an Indian tribe on non-Indian lands, from judicial review.

This bill would have a major chilling effect on public participation in environmental reviews that provide important information in the decision-making process. It would also harm the full rights of tribal members to participate and seek legal redress in major actions that impact their subsistence resources, traditional practices and livelihood, cultural protection, human health, and human rights.

Section 3—Appraisals

- The definition of "Indian tribe" and "Indian land" in this section should not include ANCSA Corporations.
- It is inappropriate for the state-chartered ANCSA corporations to gain full authority to conduct appraisals, especially in the context of land exchanges involving the federal government trading land with an ANCSA corporation.
- Many land swaps have been very controversial in Alaska. For example, the recent proposed Yukon Flats National Wildlife Refuge land trade in Alaska that had been proposed by an ANCSA Corporation was opposed by the largest tribe in the area, and was ultimately halted by the federal government. Other controversial land trades and proposals in the past involved the Arctic National Wildlife Refuge.

Section 5—Environmental Reviews

- This section makes major changes to the National Environmental Policy Act of 1969 (NEPA). This is the fundamental environmental law for public involvement in government decisions from projects affecting the natural and human environment, and ensuring informed decision-making.

- Under Section 5, the EIS for any major federal action on Indian lands (including ANCSA corporation lands) by an Indian Tribe (including ANCSA corporations) "shall only be available for review and comment by the members of the Indian tribe and by any other individual residing within the affected area." There is a question whether such EIS's would still be available to the public and other important entities?
- Most people would be cut out of the process of review and comment on EISs, and severely limits how the public can participate in informing the decision making process, as well as later judicial review (which is then further restricted in Section 8).
- The public, or even tribes located farther from the project, who could be affected by air or water pollutions, spills, health, or effects to resources they depend on such as migratory species, would also be excluded from review and comment on cumulative impacts under Section 5.
- If a major energy or other project is proposed on ANCSA corporation lands, would federally recognized tribal members, or long-time community members who are not residing in the affected area continue to be able to review and comment on EISs for projects that affect the resources they depend on?

Section 8—Bonding and other limitations of Judicial Review

- The section seeks to insulate oil, gas, coal, shale gas, and other energy projects on Indian lands, or those projects undertaken in partnership with an Indian tribe on any lands, from judicial review.
- This is poor policy to eliminate the critical check on oil, gas, coal, and other major energy projects held by the federal government to uphold the requirements of the law that are essential for protecting the environment, human health, and culture.

  Members of the public who bring legal challenges could be potentially liable for massive monetary damages if they do not ultimately prevail;

  Tribal members or others concerned about impacts would have to post expensive, hard-to-get bonds;

  Tribal members and others would have a harder time getting legal representation because of changes to public interest legal fee rules.
- Section 8, subsection (d)(3) defines "energy related action" broadly to include projects undertaken by "any person or entity to conduct activities on Indian land" as well as projects undertaken by "any Indian Tribe, or organization of two or more entities, at least one of which is an Indian tribe, to conduct activities. . .regardless of where such activities are undertaken."
- This provision invites partnering of energy corporations with Indian tribes for the purpose of limiting judicial review of projects.
- Insulating these decisions from review would thus only lead to unsupported, poorly analyzed, or irrational, agency decisions.

Conclusions

This bill is a sweeping green light for a broad range of "energy related actions" which include exploration, development, production or transportation of oil, gas, coal, shale gas, oil shale, geothermal resources, wind or solar resources, underground coal gasification, biomass, or the generation of electricity.

Corporate interests and energy development in Indian Country should not compromise or be prioritized over our economic, social, and cultural rights. Alaska Natives and all indigenous peoples within the U.S. are now more endangered than ever by national energy development policy proposals within the Native American Energy Act H.R. 3973.

Respectfully,

Faith Gemmill, Executive Director
Resisting Environmental Destruction on Indigenous Lands (REDOIL)

Statement submitted for the record by the National Congress of American Indians, Embassy of Tribal Nations, Washington, DC

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 Subcommittee on Indian and Alaska Native Affairs to supplement the legislative hearing on the Native American Energy Act (H.R. 3973).

NCAI thanks the Subcommittee on Indian and Alaska Native Affairs for their attention to the matter of tribal energy and finding legislative solutions to make this important sector of tribal economies viable. With improved legislation, tribes are poised to engage in the energy sector with greater sophistication and self-determination. Legislative action is crucial to increasing tribal ownership and control over their own resources, and ensuring that those resources help provide for the future of Indian Country.

An NCAI resolution regarding energy development is attached. PDX–11–072, describes the tribal energy issues most important to tribes and supports provisions included in the bill being considered in the Senate, 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 the Native American Energy Act (H.R. 3973) as well as key provisions that NCAI would like to see added.

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.

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.

Amendments to Energy Policy Act 2005 to make TERAs usable

NCAI believes that the TERA process, when amended, could offer a successful solution to many of the administrative and regulatory hurdles to tribal energy development. TERAs would help tribes corral the sufficient capacity to take on energy development and skip many of the bureaucratic obstacles. To date, no Indian tribe has successfully navigated the burdensome TERA process. Helpful legislation would streamline the criteria for approval by setting time limits for the approval process, and shifting the burden from the Indian tribe to the federal agency to disapprove a TERA application, of course necessitating the tribe meeting 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 is also strongly supportive of the proposal for Tribal Energy Development Organizations, this is a mechanism that would enable Indian tribes to form partnerships with established energy development companies and take advantage of their expertise and capital in developing the myriad of conventional and emerging energy resources on Indian reservations.

Agency Collaboration (DOE and DOI)

NCAI would like to see a 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 DOE make its expertise available to tribes. The DOE OIEPP is making critical strides to leverage the immense expertise of the 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.

Key Barriers 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. H.R. 3973 directly removes APD fees, however other barriers remain. 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 becomes a complicated issue. NCAI would like to see the renewable energy tax credits made assignable and tradable to help tribal renewable energy 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.

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 (SO2) 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, yet 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.

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.

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.

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 Subcommittee's attention to H.R. 3973 and urges timely action so that a long awaited tribal energy bill can be passed during this session.

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NATIONAL CONGRESS OF AMERICAN INDIANS

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