

THE GAO REPORT ON INDIAN ENERGY  
DEVELOPMENT: POOR MANAGEMENT BY BIA  
HAS HINDERED DEVELOPMENT ON INDIAN  
LANDS

---

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

OCTOBER 21, 2015

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

99-901 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON INDIAN AFFAIRS

JOHN BARRASSO, Wyoming, *Chairman*  
JON TESTER, Montana, *Vice Chairman*

JOHN MCCAIN, Arizona	MARIA CANTWELL, Washington
LISA MURKOWSKI, Alaska	TOM UDALL, New Mexico
JOHN HOEVEN, North Dakota	AL FRANKEN, Minnesota
JAMES LANKFORD, Oklahoma	BRIAN SCHATZ, Hawaii
STEVE DAINES, Montana	HEIDI HEITKAMP, North Dakota
MIKE CRAPO, Idaho	
JERRY MORAN, Kansas	

T. MICHAEL ANDREWS, *Majority Staff Director and Chief Counsel*  
ANTHONY WALTERS, *Minority Staff Director and Chief Counsel*

## CONTENTS

---

Hearing held on October 21, 2015 .....	Page 1
Statement of Senator Barrasso .....	1
Statement of Senator Daines .....	5
Statement of Senator Franken .....	4
Statement of Senator Heitkamp .....	53
Statement of Senator Hoeven .....	4
Statement of Senator Lankford .....	55
Statement of Senator Tester .....	2

### WITNESSES

Cuch, Cameron J., Vice President of Government Affairs, Crescent Point Energy U.S. Corporation .....	32
Prepared statement .....	34
Olguin, Hon. James “Mike”, Tribal Council Member, Southern Ute Indian Tribe .....	18
Prepared statement .....	20
Roberts, Lawrence S., Principal Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior .....	6
Prepared statement .....	8
Rusco, Frank, Director, Natural Resources and Environment, U.S. Govern- ment Accountability Office .....	12
Prepared statement .....	13
Stafne, Hon. Grant, Councilman, Fort Peck Assiniboine and Sioux Tribes .....	26
Prepared statement .....	27

### APPENDIX

Chapoose, Shaun, Chairman, Ute Indian Tribe of the Uintah and Ouray Reservation Business Committee, prepared statement .....	71
Fox, Hon. Mark, Chairman, Mandan Hidatsa and Arikara Nation, Fort Berthold Reservation, prepared statement .....	63
Response to written questions submitted by Hon. Steve Daines to Lawrence S. Roberts .....	76



# **THE GAO REPORT ON INDIAN ENERGY DEVELOPMENT: POOR MANAGEMENT BY BIA HAS HINDERED DEVELOPMENT ON INDIAN LANDS**

**WEDNESDAY, OCTOBER 21, 2015**

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

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

The CHAIRMAN. I will ask the witnesses to please head to the table in order to testify and we will move along with the hearing.

As the witnesses are taking their seats, I am going to call to order this hearing. We will examine today the Government Accountability Office June of 2015 report on Indian Energy Development. I requested this report on January 4th, 2014, for several reasons. Energy development holds much promise for Indian communities. According to the Department of the Interior, in 2014, revenues for tribal energy development exceeded \$1.1 billion dollars. That figure should be much higher.

Over the years, this Committee has received concerns from Indian tribes and energy developers regarding the complexity of Federal regulation and decision-making relating to Indian lands. These issues either drive up costs and drive away developers or delay the payment of royalties to Indian land owners. In fact, the Government Accountability Office report noted that one private energy developer reported that an oil and gas well developing Indian resource generally costs almost 65 percent more for regulatory compliance than a similar well for private resources.

In another instance highlighted in the report, an eight-year delay by the Bureau of Indian Affairs in reviewing tribal documents caused the tribe an estimate \$95 million in lost permitting fees, severance tax and royalty revenues. To improve energy development on Indian lands, we needed to get to the bottom of this complexity and the delays.

This report confirms several issues this Committee has been working to address in a bipartisan way. On January 21st, 2015, the Vice Chairman, Senator Tester, and I introduced S. 209, the Indian

Tribal Energy Development and Self-Determination Act Amendments of 2015. This bill would reduce much of the bureaucracy and delays associated with the Secretarial review of leases, business agreements and rights-of-way for Indian energy development.

The Committee unanimously passed this bill and it is being hotlined for Senate consideration. Congress needs to pass this bill this year so the tribes may begin energy development without these continued delays.

Other management and interagency challenges were highlighted in the report. I look forward to hearing from the Department of Interior on the progress made in addressing these issues.

I just want to remind the Department of the Interior that when we send out invitations to testify, they are non-transferable. There is an expectation that when we confirm appointees to these bureaus that these appointees will be responsive to the Committee and come back to testify upon request.

Mr. Roberts, I know you are the messenger for the Interior Department today. Please pass on my remarks to the Secretary.

The GAO report noted the overlap of agency responsibilities in Indian energy development. It stands to reason that officials with overlapping responsibility would be responsive to this Committee.

With that, I would like to welcome the witnesses and I look forward to the testimony.

Senator Tester, any opening statement?

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

Senator TESTER. Yes, thank you, Mr. Chairman, and thank you for holding this hearing on energy development in Indian Country today. We have had similar hearings in the past to discuss Indian energy bills, the delays in energy development on tribal lands. This hearing is in that same vein. I think it is warranted, as we discussed. The GAO's recent report detailing concerns with Indian energy development.

Quite frankly, it is the same conversation we have had on these issues for quite a while. I remember when Senator Dorgan was sitting in your chair, and it was earlier on in his chairmanship. We had a visit about dysfunction in energy development in Indian Country. The Department of Interior has not been good at enabling tribal energy development. And the GAO report echoes what tribes have been saying for years.

There are staffing issues. The BIA doesn't have enough staff to process all the leases. The staff it does have isn't always qualified to work specifically on oil and gas or renewable energy project leases. Staffing issues probably start with funding. You can't always hire the right staff if the agencies don't have the funding that they need to hire those staff.

But it is also a process issue. Tribes and the GAO report talk about delays due to the lack of proper information systems and multiple agencies being involved. I just don't understand why this is this difficult. We have trust responsibilities to help tribes develop their resources. I would think that responsibility would mean tribes should be getting in on the ground floor any time there is a boom in the industry or new markets open up.

But that doesn't happen. Tribes are always several steps behind and we need to get this done in a more prompt way.

I remember Senator Dorgan, when the Bakken was first being developed, talking about oil wells everywhere except in Indian Country. That is unacceptable. I think the primary solution is to get as much of the decision-making as possible in the hands of tribes. They know their resources and their communities' priorities. Self-governance has proven to be an effective policy for the last 40 years.

That is why I co-sponsored the Indian Energy bill with the Chairman to help fix the Tribal Energy Resource Agreement process. TERAs would give tribes the authority to develop their own energy resources without further involvement from the DOI.

But since the passage of the 2005 Tribal Energy Bill that created TERAs, no tribe has entered into one. There are a number of reasons for that. I think it is a good idea to fix the TERA process, but I am more than happy to go straight to the HEARTH Act-like model for tribal energy if that is what we need to do. That model has worked for surface leasing, and I think tribes would make it work for minerals.

I would like to hear what the witnesses today think about that. I am fine with doing both, fixing the TERA process and utilizing the HEARTH Act model as an alternative. If we can only pass a tribal energy bill once in 10 or 15 years, I want to do as much as we can to improve energy development in Indian Country.

I also want to commend the Administration for its proposal to coordinate energy development by placing all the agencies under one roof. If you are going to have multiple agencies involved, the least you can do is put them in a room together to make sure they are talking to one another. But if we don't have the right people involved, the right process in place and the right funding behind the idea, it simply is not going to be efficient.

That is why I am glad we are having this hearing today. We need to get out of this rut so the tribes can develop their resources. I think everyone wants that to happen. So I hope we hear some new ideas, some good ideas today about how to address these issues.

Finally, I want to thank Grant Stafne for coming all the way out from Fort Peck Indian Reservation. Energy development in the past has been a big driver of Fort Peck's economy, and it can be again in the future. You have been serving your community on the council for a number of years now. I want to commend you for that. I look forward to getting your input today. I am glad you came. I want to make sure the Committee and the Congress are giving the tribes and the BIA the tools they need for success.

I appreciate everyone who is going to speak today. I look forward to the question rounds. Once again, the 2,000-mile hike you made, Grant, we appreciate it.

The CHAIRMAN. Thank you very much, Senator Tester. Since you mentioned Senator Dorgan, we have two Senators from North Dakota on the Committee right now. You will remember that map of the State of North Dakota that he brought to this Committee. It showed all of the oil and gas activity and the energy activity. There was a big area that was completely blocked off, and we wondered

how it was that the resources had followed such a perfect line as not being there.

In fact, the resources were there but just were being blocked. So I appreciate the continued efforts in a bipartisan way with the two Senators from North Dakota here who are clearly aware of the situation.

Any other members have opening statement they would like to make? Senator Franken.

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

Senator FRANKEN. Actually, Mr. Chairman, I don't have one prepared, but we have had these hearings, very dramatic hearings, on things like suicide, child suicide. And there is a vicious circle in terms of housing and economic development and addictions and domestic violence. When you are housed with another family, exponentially being exposed to that.

One thing that I think we all agree on is there is nothing like economic development. When we heard from Pine Ridge, from Red Lake, the conclusion they came to is that we have to do everything we can to create economic development. This testimony says that there is energy there, both in renewable and in non-renewables. I want energy projects in Indian Country to create jobs, create economic activity so that we can do something to break this cycle. Anything we can do. I don't care, you know me, I am Mr. Global Warming is a Real Problem. But if they find a coal mine on a reservation, let's use it.

So I want to do everything I can——

The CHAIRMAN. Save that videotape.

[Laughter.]

Senator FRANKEN. Oh well. I wanted to jolly up the Chairman.

The CHAIRMAN. Oh, well, we are inviting you to sit on this side of the dais. Come on over.

[Laughter.]

Senator FRANKEN. There is also sun, there is also wind. To me, there is nothing more important than finding a way to get jobs in Indian Country. This is definitely a way that we can do it. That is my opening statement.

The CHAIRMAN. Senator Hoeven?

**STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Mr. Chairman, just picking up on comments made by both yourself and the ranking member, in 2008 I was Governor in North Dakota and signed an agreement with the Three Affiliated Tribes. At that time, there was one well on the Three Affiliated Tribes' reservation.

Essentially what that agreement did is it brought parity between the regulation on and off the reservation, so that the regulations off-reservation in North Dakota and on the reservation in North Dakota were the same. Since then, they have drilled hundreds of wells. I think now if the Three Affiliated Tribes were an independent State, they would be the ninth largest oil-producing State in the Nation.



So if we find a way to make it easier to do business, companies respond. Investments are made, jobs are created, Senator Franken. So that is what this hearing today is about.

It is not just the investment to produce more energy. That investment also produces better environmental stewardship, because we get the investment in the new technologies and the gathering systems and the pipelines we need in order to move gas to market rather than throwing it off, which I look very much forward to talking about.

I thank both of you for calling this hearing today.

The CHAIRMAN. Thank you, Senator Hoeven. Senator Daines?

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thanks, Mr. Chairman. I want to thank you as well as Ranking Member Tester for this hearing today.

As I travel across Indian Country in Montana, I hear about the challenges associated with energy development. Senator Franken, I look forward to touring with you the coal operations at the Crow Reservation in Montana. We have more recoverable coal than any State in the Union.

Senator FRANKEN. Let me be clear. I am sorry to interrupt you. But that coal in Indian Country would replace coal being mined elsewhere in Wyoming.

[Laughter.]

Senator DAINES. There are always conditions.

But to that point, the unemployment rate today on the Crow Reservation is north of 40 percent. Without those coal-mining jobs, the unemployment rate is over 80 percent. This is a key to future prosperity, certainly in these energy jobs.

I too want to welcome Councilman Stafne. Thanks for making the long trek from Montana, from the Fort Peck Reservation. As you are going to hear in his written testimony, it is rich in oil and gas reserves coming from that Bakken Formation that the Governor, now Senator from North Dakota was talking about, the Bakken Three Forks Formation. It also has significant wind potential as well.

As the GAO report and the witnesses are going to tell us today, energy development in Indian lands is laden with red tape. It is expensive. It is detaching investors. It ignores the most important responsibility of the Federal Government to uphold its trust responsibility with Indian nations. Frankly, I think it is a disgrace that the Federal Government has not done more to ensure that our Indian nations can foster their own tribal sovereignty doing the best they can to create a better livelihood for their members.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Daines.

I want to welcome the witnesses again, and remind you that your complete statements will be part of the record and ask you to keep your statements to five minutes or less.

Today we are going to hear from Mr. Larry Roberts, who is Principal Deputy Assistant Secretary of Indian Affairs at the Department of the Interior; Mr. Frank Rusco, Director, Natural Resources and Environment, U.S. Government Accountability Office; the Hon-

orable James “Mike” Olguin, who is the Tribal Council Member from the Southern Ute Indian Tribe in Colorado; Mr. Grant Stafne, who has been welcomed by your two Senators from Montana; and Mr. Cameron Cuch, who is the Vice President of Government Affairs, Crescent Point Energy, U.S. Corporation, from Denver.

Mr. Roberts?

**STATEMENT OF LAWRENCE S. ROBERTS, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. ROBERTS. Thank you, Chairman Barrasso, Vice Chairman Tester, members of the Committee.

My name is Lawrence Roberts. I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of Interior. I am a member of the Oneida Nation of Wisconsin. I thank you for the opportunity to testify today.

I have with me today BIA Director Mike Black, Acting Director of Indian Energy and Economic Development Office; Jack Stevens and our Division Chief, Steve Many Deeds, and staff from his office.

As many of you have noted in your statements, energy is critically important to tribes. Commercial and community scale tribal energy development is a priority for this Administration because it provides significant economic and social benefits to tribes and individual Indians.

Working closely with tribes, we have seen revenues from tribal energy development grow from just under \$400 million in 2009 to over \$1.9 billion in 2014. While most of the increase in the revenue has been in the area of conventional energy, several tribes are now well situated to develop substantial renewable energy resources, including solar and wind energy.

The Bureau of Indian Affairs and the Indian Energy and Economic Development Office work closely with the tribes testifying today. The Southern Ute is a well-recognized leader in the field, and their testimony speaks to the importance of retaining committed and engaged local staff, such as agency superintendent Priscilla Bancroft.

At Fort Peck, we recently provided a substantial grant to investigate potential petroleum reserves that exist on the reservation and make recommendations as to where new opportunities are located. We have also installed our NIOGEMS system at the tribal energy office and at the BIA agency office. Our work with the Ute Tribe has included providing staff to work on site to expedite well permitting, onsite inspections and environmental review, as well as installing the NIOGEMS system at the tribal energy office.

Our work across Indian Country touches on all aspects of energy development. At this moment, we are either funding or providing technical assistance to energy and mineral projects in over 70 different tribal communities. For example, we have funded business planning for the Salish and Kootenai Tribes on their hydroelectric project.

More recently, we have seen growing interest in smaller renewable energy projects, ranging from 250 kilowatts to 3 megawatts.

The projects are distinguished from those utility-scale projects where power is sold and used off-reservation.

These smaller projects have lower capital expense, they allow for 100 percent tribal ownership, benefits accrue locally and provide an alternative to high local energy rates. For example, we have assisted the Blue Lake Rancheria in developing a small scale biomass combined heat and power facility that will generate modest income and jobs.

Senator Tester spoke about the success under the HEARTH Act. Congress's enactment of that HEARTH Act in 2012 has been extremely successful. Over 20 tribes have utilized the HEARTH Act for many business, solar and wind energy developments. The HEARTH Act is an example of how Congress and the Administration can work together to foster tribal self-governance and self-determination in energy development.

The GAO report makes a number of recommendations that we agree with and that we are working to implement. For example, we agree that GIS mapping and a tracking system is exceedingly important. The Department's NIOGEMS system is a tool that can provide this mapping and tracking service for oil and gas development. We are working to improve it to include other forms of energy development.

NIOGEMS is available to our other Federal agencies. It is available to tribes and it is available to our local staff on the ground. It is used at a number of locations, including Wind River, Navajo, Jicarilla Apache and others. In addition, we are actively working with BLM to identify the needs for cadastral surveys. Further, we agree with GAO's recommendation to develop TERA guidance and to evaluate the effectiveness of our capacity grants.

As the GAO report underscores, the Department and Congress working together can do much to promote tribal energy development. For example, Assistant Secretary Washburn testified last Congress on what is now Chairman Barrasso's bill, S. 209. There is a lot the Department likes about that Act, and there is a need to improve the 2005 Act.

Finally, the GAO report underscores the lengthy review times and the need to improve efficiency and transparency. We have sought to address this problem by proposing in the 2016 budget to establish an Indian Energy Service Center located in Denver, Colorado. That would include personnel from the various Interior agencies that must coordinate energy development in Indian Country, including BIA, IEED, the Office of Natural Resource Revenue, BLM, and the Office of Special Trustee.

Thank you for providing this opportunity to testify today. The Department will continue to work with tribes to promote energy development and will continue to work closely with this Committee as well as our Federal and State partners to address energy development issues and solutions. I am happy to answer any questions the Committee may have.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF LAWRENCE S. ROBERTS, PRINCIPAL DEPUTY ASSISTANT  
SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Barrasso, Vice-Chairman Tester, and Members of the Committee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary of Indian Affairs at the Department of the Interior (Department). Thank you for this opportunity to testify on the June 2015, GAO Report "Indian Energy Development, Poor Management by BIA Has Hindered Energy Development on Indian Lands."

Energy is critically important to tribes. Commercial and community scale tribal energy development is a priority for this Administration because it provides significant economic and social benefits to tribes, and individual Indians. The Administration has worked very hard to help tribes assess, develop and market conventional energy resources, while also assisting supporting tribes as they explore development of renewable energy resources, such as wind and solar energy. Working closely with tribes, we have seen revenues from tribal energy development grow from just under \$400 million when President Obama took office in 2009 to over \$1.1 billion in 2014. While most of the increase in revenue has been in the area of conventional energy, several tribes are also now well-situated to develop substantial renewable energy resources, including solar and wind energy. We will continue to support tribes in both areas, conventional and renewable, to ensure that tribes play a crucial role in America's energy future.

Yet, as the GAO report shows, the Department and Congress, working together, can do much more to promote tribal energy development. As discussed in more detail below, the Department largely agrees with GAO's recommendations and, despite fiscal challenges, we are working to implement widespread improvements. We have been working hard to address each of the subjects raised by the GAO report and have substantial progress to report. For example, the GAO report underscores the lengthy review times and the need to improve efficiency and transparency. We have sought to address this problem by breaking down the silos that create obstacles to close coordination in the federal bureaucracy. As detailed in the President's 2016 Budget, the Department proposes to establish an Indian Energy Service Center (Service Center) centrally located in Denver, Colorado, to address this need. The Service Center will include personnel from the various Interior Agencies that must coordinate energy development in Indian Country including the Bureau of Indian Affairs (BIA), the Office of Indian Energy and Economic Development (IEED), the Office of Natural Resource Revenue (ONRR), the Office of the Special Trustee for American Indians (OST), and the Bureau of Land Management (BLM). The Service Center would provide expertise, policy guidance, standardized procedures, and technical assistance across a broad spectrum of services. The idea has been well-received by energy-producing tribes because it would provide a centralized, one-stop shop for energy services.

The GAO Report provides seven (7) recommendation areas. My testimony today will summarize how we are working to implement solutions in those areas and conclude with further detail about the Indian Energy Service Center

**Recommendation 1: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should take steps to complete its GIS mapping module in TAAMS.**

The GAO report recommended that the Geographic Information System (GIS) mapping module be added to the Trust Asset and Accounting Management System (TAAMS). TAAMS represents a significant, long-term investment in the Department's efforts to meet its trust responsibility. As we explained in our discussions with GAO, TAAMS was not designed as a geospatial mapping system, but simply to reflect legal descriptions as they appear on documents recorded as required by federal law.

We agree, however, that GIS mapping of Indian lands is exceedingly important. As we discussed with GAO, the Department has developed the National Indian Oil and Gas Evaluation Management System (NIOGEMS), which is a map-oriented GIS computer application, for managing reservation lease, well, and production data for oil and gas and other energy/mineral resources. NIOGEMS assists energy producing Indian tribes by allowing tribal, BIA and other Interior resource managers to gain ready access to financial, realty, geo-technical information and complex resource data aggregated from other data systems/sources, for tracking and making decisions on leasing, developing, and managing energy/mineral resources.

NIOGEMS incorporates aggregated data and presents information in concise user-friendly data view and map-based forms, and allows generation of reports, sharable maps, and data extractions for use in other analytical software. While no system is perfect, NIOGEMS has helped us improve our performance of our responsibilities to Tribes and individual trust owners. As the DOI's Inspector General's Report No.:

CR–EV–BIA–0001–2011 stated in its list of promising technologies and practices for oil and gas in Indian country:

“[T]he National Indian Oil and Gas Evaluation Management System (NIOGEMS) . . . represents a significant improvement over the current Trust Asset and Accounting Management System database for managing oil and gas activities, including leasing and production data, by incorporating geospatial information as well as a digital mapping capability. The Wind River Agency in Wyoming reported a tenfold improvement in productivity for certain realty activities after implementing NIOGEMS.”

NIOGEMS can provide regularly updated mapped ownership tracts, energy Leases, as well as BLM agreements data for Tribes, BIA agencies, and supporting federal agencies for a large set of reservations. Staff also develops and gathers an array of Indian energy resource data, for regional areas and in detail on a reservation project area basis. For the reservations supported in NIOGEMS, this data is combined in the NIOGEMS database to meet the need for comprehensive data to identify ownership and resources available for energy development, particularly oil and gas. Though it began with oil and gas related information, NIOGEMS is expanding to include additional energy/mineral resource data and supporting functionality. We will begin visiting reservation sites to train staff on how to log onto NIOGEMS from the Albuquerque server.

We are also taking steps to develop a land boundary and ownership repository that will be incorporated into TAAMS for all tribal lands. Our goal is that legal land descriptions entered in TAAMS from these conveyance documents will be regularly extracted and aligned with BLM survey data to produce GIS products that illustrate current Indian land ownership. In sum, we are continuing to invest heavily in TAAMS and related systems that have improved our ability to meet our various responsibilities. We are committed to avoiding past mistakes and having the technical resources that we need to manage vast tribal resources successfully.

**Recommendation 2: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should work with BLM to identify cadastral survey needs.**

In more than a century since the establishment of Indian reservations, the federal government has not yet fully surveyed all Indian reservation lands. For example, in the nearly 150 years since establishment of the Navajo Reservation, portions of that reservation have never been fully surveyed. A survey is an important step in developing a full inventory of trust resources. The GAO report recommended that the BIA and BLM work together to identify cadastral survey needs. As in years past, the BIA and the BLM, in a coordinated and focused effort, have prepared a Reimbursable Service Agreement (RSA) between the two agencies to identify and deliver survey-related products and services needed to identify and address the realty and boundary issues, in terms of asset/resource protection, of American Indian and Alaska Native Trust beneficiaries. Moreover, in February of 2015, the President asked Congress for \$2.791 million for Fiscal Year (FY) 2016 to fund this effort. Absent a budget, it is unclear when the funding will be available. However, the Department agrees that this is an urgent need in the BIA, particularly where reservations and trust lands lay along a river or where the river created the border. Such landmarks tend to move creating uncertainty as to ownership. During FY 2015, the BIA and BLM held quarterly meetings to discuss the cadastral survey needs, along with specific requests and the development of a mechanism to collect survey requests from the field. The BLM continues to provide boundary solutions by utilizing innovations in survey technology. Planning meetings between the BIA and the BLM will continue in FY 2016. A methodology to collect survey needs has been established and further refinement of the data collection will be completed by the end of FY 2016.

**Recommendation 3: To improve the efficiency and transparency of its review process, BIA should develop a documented process to track its review and response times.**

The GAO report recommended the BIA should develop a process to track BIA review and response times. As the recommendation applies to oil and gas leasing, the BIA will make a concerted effort to implement a tracking and monitoring effort in compliance with regulatory requirements to demonstrate timely reviews and approvals within the system of record, TAAMS. This will assist the BIA's field offices with maintaining a single current and accurate system. The goal is to have tracking mechanisms in TAAMS by the end of FY 2017. Additionally, IEED uses a formal Internal Control Review process for ensuring timely review of Indian Minerals Development Act of 1982 (IMDA) agreements for oil, gas, and other minerals. Under

these procedures, IEED must identify all major risks that would prevent the review of agreements from meeting a deadline, and then to establish procedures (controls) to eliminate identified risks. The IEED's time line for reviewing agreements and providing technical comments (including economic analysis of negotiated agreement terms) is 30 days.

**Recommendation 4: To improve the efficiency and transparency of its review process, BIA should enhance data collection efforts to ensure it has data needed to track its review and response times.**

The GAO report recommended that the BIA enhance data collection for its tracking of BIA review and response times. We are working hard and investing heavily to improve tracking. In addition to the TAAMS enhancements, NIOGEMS currently tracks permits, rights of way, and environmental studies associated with energy development. The next version of NIOGEMS, scheduled for implementation in the next few months, will provide the user with the ability to develop ad hoc tracking.

**Recommendation 5: Provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear.**

The Department agrees with the report's recommendation that it provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to the Department as unclear. IEED and our Office of the Solicitor believe that this clarity can be best achieved by amending the IMDA to insert tribal self-determination language similar to that found in the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012. The HEARTH Act permits tribes to lease surface trust lands for renewable energy purposes absent approval by the Department, by implementing their own leasing regulations. The Department respectfully asks Congress to make this possible in the conventional energy arena by amending the law to match the HEARTH Act provisions. We would be happy to work with your staff on such an amendment.

The GAO report highlights the need to track the benefits of its Tribal Energy Development Capacity (TEDC) grant program and to determine whether these grants have enabled tribes to develop the administrative and technical capacity to enter into Tribal Energy Resource Agreements (TERAs). To address the deficiencies identified in the GAO report, the Department modified this grant program to complement the HEARTH Act. In recognition of the growing need for tribal regulatory infrastructure since passage of the HEARTH Act, the Department reformed the program to encourage tribes to establish the legal infrastructure to regulate energy-related activities, including the adoption of commercial codes, establishment of electrical utility authorities, and enactment of energy-related regulations. For example, of the ten TEDC grants that the Department disbursed at the close of FY 2015, half were awarded to equip Tribes to establish tribal utility authorities, a substantial step in assuming sovereign control of electrical resources.

**Recommendation 6: To ensure the TEDC grant program is effective in moving tribes closer to developing the capacity needed to pursue TERAs, IEED should take steps to develop a documented process for evaluating the effectiveness of TEDC grants.**

The Department will establish an evaluation process involving program staff and other stakeholders to gauge the extent to which TEDC grants have increased tribal capacity to enter into a TERA. We will seek feedback from tribal leaders, project managers, consultants and others on features of the program that are problematic. We will work with them to find ways to cure the deficiencies that they have identified. We will also reevaluate TEDC's efficacy at the close of each fiscal year. Staff will monitor the progress of each grant and furnish technical assistance to each grantee, identifying and addressing any problems while grant projects are still in process. Moreover, the Department will administer an anonymous, follow-up online survey with tribal stakeholders on the effectiveness of each grant, which will include questions related to progress in developing capacity, challenges or concerns, and suggestions for improvement. The information gathered from this survey will assist staff to guide further improvements in the TEDC grants.

**Recommendation 7: To ensure the TEDC grant program is effective in moving tribes closer to developing the capacity needed to pursue TERAs, IEED should take steps to identify features of the TEDC grant program that could limit the effectiveness of the program to help tribes eliminate capacity gaps.**

In response to the GAO report's Recommendation 7, the IEED staff will establish two methods to help identify features of the TEDC program that could limit the effectiveness of the program in addressing capacity gaps. The first method will be to

seek TEDC feedback by reaching out directly to stakeholders such as tribal council members, tribal leadership, consultants and others. The IEED will compile and evaluate responses to establish effective solutions to the deficiencies recognized through the TEDC stakeholder outreach. The second method would be an internal reevaluation of effectiveness of the TEDC program at the end of each closing fiscal year. The IEED staff will be responsible for project monitoring and for providing technical assistance to the TEDC grant recipients. Staff and recipients will possess firsthand knowledge of the deficiencies limiting the grants' effectiveness after the first year of project monitoring. The IEED staff will then evaluate these findings to create solutions and make adjustments to the program.

Sixty (60) days after the 2015 TEDC solicitation closure or at the end of FY 2015, IEED staff plans to begin initial outreach for evaluating the effectiveness of TEDC grants, and for identifying the features of the TEDC grant program that could limit the effectiveness of the program to help tribes eliminate capacity gaps. At the end of FY 2016, IEED staff will follow up with a second outreach and re-evaluate the effectiveness of TEDC grants.

#### **Moving Forward: Indian Energy Service Center**

As noted above, the Department will be implementing the Indian Energy Service Center, if funded, in FY 2016. As identified in the 2015 GAO report, the increased demands of oil and gas development have challenged the existing staff and management structure in providing timely efficient services. To address this demand, an interagency team from the BIA, IEED, ONRR, BLM, and OST have collaborated on solutions. The role of the Indian Energy Service Center would be to maintain a responsive, administrative and technical capacity, that when needed, can bolster local or regional staff faced with surging workload thus avoiding or eliminating backlogs.

The proposal reflects the spirit of the White House Council on Native American Affairs, which seeks to break down barriers between federal agency "silos" and also builds on recent innovations such as the IEED's detailing of critical personnel to Fort Berthold, the rapid contracting of services by the Federal Indian Minerals Office at Navajo, and the BLM's "Tiger Team" formed to address backlog Applications for Permit to Drill at Fort Berthold. By adopting some of these short-term innovations, improving protocols, and building up a technical specialist corps that can collaborate across agency lines, we can efficiently institutionalize these types of rapid response efforts to ensure sustainable, scalable and timely, delivery of service, both to Indian country and the nation.

The Indian Energy Service Center would improve performance of federal trust responsibilities in energy development. As proposed, it would provide technical and administrative functions that require minimal field presence. By fulfilling a support role for field offices through regional/state level offices, the field personnel would be able to focus on the local issues and challenges that accompany rapid expansion, making the Department and its many components more responsive to urgent needs in energy development.

The Indian Energy Service Center would support numerous units, including the BIA regional offices; the BLM field and state offices; the OST fiduciary trust officers and regional trust administrators; and ONRR. The Indian Energy Service center would expedite the leasing, permitting, developing, and reporting for oil and gas development on Indian trust lands. Fundamental to this effort is responsiveness to Indian mineral owners (tribal or individual) and coordination between Federal agencies. In support of this mission, the Indian Energy Service Center would serve as a processing center for certain nationwide trust functions where this service is more efficiently provided by an off-site work team in support of agencies and field, regional, or state offices. The Indian Energy Service Center would also dispatch expertise to the impacted agency or field office to evaluate the situation and make a determination how best to address the workload, particularly when the pending workload directly affects income being generated for beneficiaries.

#### **Conclusion**

Thank you for providing this opportunity to showcase the myriad efforts being made at the Department to improve energy development on Indian lands. The Department will continue to work with Tribes to promote energy development and will continue to work closely with this Committee as well as our federal and state partners to address energy development issues and solutions.

Thank you also for focusing attention on this important topic. I am available to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Mr. Roberts. Now we turn to Mr. Frank Rusco.

**STATEMENT OF FRANK RUSCO, DIRECTOR, NATURAL  
RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT  
ACCOUNTABILITY OFFICE**

Mr. RUSCO. Thank you. Chairman Barrasso, Vice Chairman Tester and members of the Committee, I am happy to be here today to discuss the results of our report on Indian energy development.

As you know, there is great potential for the development of energy resources on tribal and Indian lands, including hydroelectricity, oil and gas, and wind and solar. When we look at a map of energy development, you will see development happening all around and up to tribal and Indian lands. But with only a few exceptions, such energy development stops right at the borders.

In our recent report to this Committee, we found numerous challenges facing tribes and individual Indians that own energy resources and want to develop them. Key among these challenges are that the Bureau of Indian Affairs has failed to perform its duties in an efficient and thorough way to review and approve energy development, to identify Indian land owners and to hire and retain key skilled staff who have the expertise to evaluate energy-related documents.

The consequence of BIA's mismanagement is that numerous energy development projects languish for months or even years without proper review, without appropriate communication between the agency and the applicants and without even explanation for such delays. To be fair, in doing our work, we found many dedicated BIA staff and managers who were trying their best to adapt to the changing energy landscape. However, they have not received the support they need from BIA headquarters or the Department of the Interior to build the capacity needed to perform these required tasks.

Meanwhile, the Country has seen an explosion of energy development over the last five to ten years on private, State and Federal lands. For example, State renewable energy portfolio standards for electric utilities have sparked a boom in wind and solar development. Many tribal lands have great potential for developing wind and solar projects, but the lack of a functional approval and permitting process at BIA has contributed to what amounts to a staggering loss of opportunity for tribes and Indian land owners.

Once State renewable energy portfolio standards are met, the opportunity will be gone. So the clock is ticking for BIA to fix its management problems.

Similarly, oil and gas resources exist on many tribal and Indian lands, but the recent resurgence of such development in the United States has largely passed these lands by. When an oil and gas company can deal with private, State or Federal land and resource owners, they are able to make development plans in which the steps needed for approval are known and the time frames are reasonable or at least predictable. Sadly, this is not the case when dealing with BIA. In fact, BIA does not track its review and response times, so the agency itself cannot predict how long these processes take.

In our recent report, we found that a number of challenges have hindered the ability and willingness of tribes to seek Tribal Energy Resource Agreements, or TERAs, which Congress created to allow



tribes to take charge of more of the elements of energy development on their lands. These challenges include uncertainty about TERA regulations, unreimbursed costs of assuming activities that have been historically conducted by Federal agencies, and the complex application process.

For example, TERA has not defined inherently Federal functions, a provision in the TERA regulations. As a result tribes interested in seeking TERA approval do not have clear guidance on which functions they would take over from Federal agencies and which would remain inherently Federal.

Congress has also directed in TERA to help tribes develop the capacity needed to pursue TERAs. They found that TERAs' approach to tribal capacity-building was not well developed and lacked documented processes for evaluating the effectiveness of such capacity building.

We are currently doing additional work for this Committee, looking at BIA's human capital challenges and evaluating what BIA is doing to resolve these issues.

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

[The prepared statement of Mr. Rusco follows:]

PREPARED STATEMENT OF FRANK RUSCO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Chairman Barrasso, Vice-Chairman Tester, and Members of the Committee:

I am pleased to be here today to discuss our recent report on the development of Indian energy resources.<sup>1</sup> As you know, Indian energy resources hold significant potential for development and, for some Indian tribes and their members, energy development already provides economic benefits, including funding for education, infrastructure, and other public services. According to Department of the Interior (Interior) data, in fiscal year 2014, development of Indian energy resources provided over \$1 billion in revenue to tribes and individual Indian resource owners. However, even with considerable energy resources, according to a 2014 Interior document, Indian energy resources are underdeveloped relative to surrounding non-Indian resources.

Development of Indian energy resources is a complex process that may involve a range of stakeholders, including federal, tribal, and state agencies. Interior's Bureau of Indian Affairs (BIA), through its various regional, agency, and other offices, has primary authority for managing Indian energy development and, in many cases, holds final decisionmaking authority. Federal management and oversight of Indian energy development is to be conducted consistent with the federal government's fiduciary trust responsibility to federally recognized Indian tribes and individual Indians.<sup>2</sup> However, in recent decades, Indian tribes and individual Indians have asserted that Interior has failed to fulfill its trust responsibility, mainly with regard to the management and accounting of tribal and individual trust funds and trust assets. For example, Interior recently settled numerous "breach of trust" lawsuits,

<sup>1</sup> GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502 (Washington, D.C.: June 8, 2015).

<sup>2</sup> The federal trust responsibility is a fiduciary obligation on the part of the United States to federally recognized Indian tribes and tribal members. The Supreme Court has recognized a general trust relationship with Indian tribes since 1831. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). The trust responsibility originates from the unique, historical relationship between the United States and Indian tribes and consists of the "highest moral and legal obligations" that the federal government must meet to ensure the protection of tribal and individual Indian lands, assets and resources, but is legally enforceable only to the extent it is specifically defined by federal laws. See *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942), and *United States v. Jicarilla Apache Nation*, 564 U.S. \_\_\_, 131 S. Ct. 2313 (2011). Letter

including *Cobell v. Salazar*, one of the largest class action suits filed against the United States.<sup>3</sup>

Federal policy has supported greater tribal autonomy and control by promoting and supporting opportunities for increased tribal self-determination and self-governance, including promoting tribal oversight and management of energy resource development on tribal lands. For example, in 2005, Congress passed the Indian Tribal Energy Development and Self-Determination Act (ITEDSA), part of the Energy Policy Act of 2005, to provide an option for federally recognized tribes to exercise greater control of decisionmaking over their own energy resources.<sup>4</sup> The ITEDSA provides for interested tribes to pursue a Tribal Energy Resource Agreement (TERA)—an agreement between a tribe and the Secretary of the Interior that allows the tribe, at its discretion, to enter into leases, business agreements, and right-of-way (ROW) agreements for energy resource development on tribal lands without review and approval by the Secretary. However, no tribe has entered into a TERA with Interior, and shortcomings in BIA’s management that we identified in our June 2015 report highlight the need for tribes to build the capacity to perform the duties that would enable them to obtain greater tribal control and decisionmaking authority over the development of their resources.<sup>5</sup>

In this context, my testimony today discusses the findings from our June 2015 report on Indian energy development. Accordingly, this testimony addresses the factors that have (1) hindered Indian energy resource development and (2) deterred tribes from seeking TERAs. In addition, I will highlight several key actions that we recommended in our report that Interior can take to help overcome challenges associated with the administration and management of Indian energy resources.

To conduct the work for our June 2015 report, we reviewed and synthesized literature including more than 40 reports, conference proceedings, hearings statements, and other publications from federal and tribal governments; industry; academics; and nonprofit organizations. We also obtained available data on key dates associated with the review and approval of energy-related documents for planned or completed utility-scale renewable projects from several BIA regional and local officials, tribal officials, and industry representatives. Further, we interviewed a non-generalizable sample of stakeholders representing 33 Indian tribes, energy development companies, and numerous federal agencies and organizations, including officials from BIA, Office of Indian Energy and Economic Development, Department of Energy, National Renewable Energy Laboratory, and the Bureau of Land Management (BLM).<sup>6</sup> We did not evaluate tribal activities or actions to govern the development of their resources or assess any potential barriers to energy development such actions or activities may pose. Our June 2015 report includes a detailed explanation of the scope and methodology used to conduct our work.

We conducted the work on which this testimony is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Shortcomings in BIA’s Management and a Variety of Other Factors Have Hindered Indian Energy Development**

Factors, such as shortcomings in BIA’s management and additional factors generally outside of BIA’s management responsibilities—such as a complex regulatory framework, tribes’ limited capital and infrastructure, and varied tribal capacity—have hindered Indian energy development. Specifically, according to some of the literature we reviewed and several stakeholders we interviewed, BIA’s management has three key shortcomings.

First, BIA does not have the data it needs to verify ownership of some oil and gas resources, easily identify resources available for lease, or easily identify where

<sup>3</sup>*Cobell v. Salazar* was a class action lawsuit initially filed in 1996 by Elouise Cobell, a member of the Blackfeet Tribe, and others against the federal government concerning Interior’s management of individual Indian trust fund accounts. Those accounts contain funds from leases of Indian land, some of which involve energy development. The settlement in *Cobell* required congressional authorization, which was provided in the Claims Resolution Act of 2010, Pub. L. No. 111–291, § 101, 124 Stat. 3064, 3066 (2010).

<sup>4</sup>Federally recognized tribes have a government-to-government relationship with the United States and are eligible to receive certain protections, services, and benefits by virtue of their unique status as Indian tribes.

<sup>5</sup>GAO–15–502.

<sup>6</sup>Within BIA, we interviewed officials from all 12 BIA regional offices and 9 BIA agency offices.

leases are in effect, inconsistent with Interior's Secretarial Order 3215, which calls for the agency to maintain a system of records that identifies the location and value of Indian resources and allows for resource owners to obtain information regarding their assets in a timely manner. The ability to account for Indian resources would assist BIA in fulfilling its federal trust responsibility, and determining ownership is a necessary step for BIA to approve leases and other energy-related documents. However, in some cases, BIA cannot verify ownership because federal cadastral surveys—the means by which land is defined, divided, traced, and recorded—cannot be found or are outdated. It is additionally a concern that BIA does not know the magnitude of its cadastral survey needs or what resources would be needed to address them.

We recommended in our June 2015 report that the Secretary of the Interior direct the Director of the BIA to take steps to work with BLM to identify cadastral survey needs.<sup>7</sup> In its written comments on our report, Interior did not concur with our recommendation. However, in an August 2015 letter to GAO after the report was issued, Interior stated that it agrees this is an urgent need and reported it has taken steps to enter into an agreement with BLM to identify survey-related products and services needed to identify and address realty and boundary issues. In addition, the agency stated in its letter that it will finalize a data collection methodology to assess cadastral survey needs by October 2016.

In addition, BIA does not have an inventory of Indian resources in a format that is readily available, such as a geographic information system (GIS). Interior guidance identifies that efficient management of oil and gas resources relies, in part, on GIS mapping technology because it allows managers to easily identify resources available for lease and where leases are in effect. According to a BIA official, without a GIS component, identifying transactions such as leases and ROW agreements for Indian land and resources requires a search of paper records stored in multiple locations, which can take significant time and staff resources. For example, in response to a request from a tribal member with ownership interests in a parcel of land, BIA responded that locating the information on existing leases and ROW agreements would require that the tribal member pay \$1,422 to cover approximately 48 hours of staff research time and associated costs. In addition, officials from a few Indian tribes told us that they cannot pursue development opportunities because BIA cannot provide the tribe with data on the location of their oil and gas resources—as called for in Interior's Secretarial Order 3215. Further, in 2012, a report from the Board of Governors of the Federal Reserve System found that an inventory of Indian resources could provide a road map for expanding development opportunities.<sup>8</sup> Without data to verify ownership and use of resources in a timely manner, the agency cannot ensure that Indian resources are properly accounted for or that Indian tribes and their members are able to take full advantage of development opportunities.

To improve BIA's efforts to verify ownership in a timely manner and identify resources available for development, we recommended in our June 2015 report that Interior direct BIA to take steps to complete GIS mapping capabilities.<sup>9</sup> In its written comments in response to our report, Interior stated that the agency is developing and implementing applications that will supplement the data it has and provide GIS mapping capabilities, although it noted that one of these applications, the National Indian Oil and Gas Evaluation Management System (NIOGEMS), is not available nationally. Interior stated in its August 2015 letter to GAO that a national dataset composed of all Indian land tracts and boundaries with visualization functionality is expected to be completed within 4 years, depending on budget and resource availability.

Second, BIA's review and approval is required throughout the development process, including the approval of leases, ROW agreements, and appraisals, but BIA does not have a documented process or the data needed to track its review and response times.<sup>10</sup> In 2014, an interagency steering committee that included Interior

<sup>7</sup> GAO-15-502.

<sup>8</sup> Board of Governors of the Federal Reserve System, *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships, A Summary of Challenges, Recommendations, and Promising Efforts* (April 2012). This report was the result of a series of workshops that included nine federal agencies, four Federal Reserve Bank partners, and representatives from 63 Indian tribes. The effort was focused on economic development in Indian Country.

<sup>9</sup> According to Interior's 2014–2015 performance plan, it was to incorporate a GIS mapping component into its Trust Asset and Accounting Management System in fiscal year 2014.

<sup>10</sup> In 2014, an interagency Steering Committee developed in response to Executive Order 13604 identified best practices to modernize federal decision-making processes. The committee found that federal agencies reviewing permits and other applications should collect consistent

identified best practices to modernize federal decisionmaking processes through improved efficiency and transparency.<sup>11</sup> The committee determined that federal agencies reviewing permits and other applications should collect consistent data, including the date the application was received, the date the application was considered complete by the agency, the issuance date, and the start and end dates for any “pauses” in the review process. The committee concluded that these dates could provide agencies with greater transparency into the process, assist agency efforts to identify process trends and drivers that influence the review process, and inform agency discussions on ways to improve the process.

However, BIA does not collect the data the interagency steering committee identified as needed to ensure transparency and, therefore, it cannot provide reasonable assurance that its process is efficient. A few stakeholders we interviewed and some literature we reviewed stated that BIA’s review and approval process can be lengthy. For example, stakeholders provided examples of lease and ROW applications that were under review for multiple years. Specifically, in 2014, the Acting Chairman for the Southern Ute Indian Tribe testified before this committee that BIA’s review of some of its energy-related documents took as long as 8 years. In the meantime, the tribe estimates it lost more than \$95 million in revenues it could have earned from tribal permitting fees, oil and gas severance taxes, and royalties. According to a few stakeholders and some literature we reviewed, the lengthy review process can increase development costs and project times and, in some cases, result in missed development opportunities and lost revenue. Without a documented process or the data needed to track its review and response times, BIA cannot ensure transparency into the process and that documents are moving forward in a timely manner, or determine the effectiveness of efforts to improve the process.

To address this shortcoming, we recommended in our June 2015 report that Interior direct BIA to develop a documented process to track its review and response times and enhance data collection efforts to ensure that the agency has the data needed to track its review and response times. In its written comments, Interior did not fully concur with this recommendation. Specifically, Interior stated that it will use NIOGEMS to assist in tracking review and response times. However, this application does not track all realty transactions or processes and has not been deployed nationally. Therefore, while NIOGEMS may provide some assistance to the agency, it alone cannot ensure that BIA’s process to review energy-related documents is transparent or that documents are moving forward in a timely manner. In its August 2015 letter to GAO, Interior stated it will try to implement a tracking and monitoring effort by the end of fiscal year 2017 for oil and gas leases on Indian lands. The agency did not indicate if it intends to improve the transparency of its review and approval process for other energy-related documents, such as ROW agreements and surface leases—some of which were under review for multiple years.

Third, some BIA regional and agency offices do not have staff with the skills needed to effectively evaluate energy-related documents or adequate staff resources, according to a few stakeholders we interviewed and some of the literature we reviewed. For instance, Interior officials told us that the number of BIA personnel trained in oil and gas development is not sufficient to meet the demands of increased development. In another example, a BIA official from an agency office told us that leases and other permits cannot be reviewed in a timely manner because the office does not have enough staff to conduct the reviews. We are conducting ongoing work for this committee that will include information on key skills and staff resources at BIA involved with the development of energy resources on Indian lands.

According to stakeholders we interviewed and literature we reviewed, additional factors, generally outside of BIA’s management responsibilities, have also hindered Indian energy development, including

- a complex regulatory framework consisting of multiple jurisdictions that can involve significantly more steps than the development of private and state resources, increase development costs, and add to the timeline for development;

data, including the date the application was received, the date the application was considered complete by the agency, the issuance date, and the start and end dates for any “pauses” in the review process.

<sup>11</sup> This government-wide initiative was developed in response to Executive Order 13604 and was led by an interagency Steering Committee, which is composed of Deputy Secretaries or their equivalent from 12 federal agencies, including the Department of the Interior. In 2014, the Steering Committee released an implementation plan for the Presidential Memorandum on Modernizing Infrastructure Permitting. Executive Order 13604 calls for agencies to improve federal permitting and review processes.

- fractionated, or highly divided, land and mineral ownership interests;
- tribes' limited access to initial capital to start projects and limited opportunities to take advantage of federal tax credits;
- dual taxation of resources by states and tribes that does not occur on private, state, or federally owned resources;
- perceived or real concerns about the political stability and capacity of some tribal governments; and
- limited access to infrastructure, such as transmission lines needed to carry power generated from renewable sources to market and transportation linkages to transport oil and gas resources to processing facilities.

#### **A Variety of Factors Have Deterred Tribes from Entering into TERAs**

A variety of factors have deterred tribes from pursuing TERAs. Uncertainty associated with Interior's TERA regulations is one factor. For example, TERA regulations authorize tribes to assume responsibility for energy development activities that are not "inherently federal functions," but Interior officials told us that the agency has not determined what activities would be considered inherently federal because doing so could have far-reaching implications throughout the federal government. According to officials from one tribe we interviewed, the tribe has repeatedly asked Interior for additional guidance on the activities that would be considered inherently federal functions under the regulations. According to the tribal officials, without additional guidance on inherently federal functions, tribes considering a TERA do not know what activities the tribe would be assuming or what efforts may be necessary to build the capacity needed to assume those activities.

We recommended in our June 2015 report that Interior provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified as unclear.<sup>12</sup> Additional guidance could include examples of activities that are not inherently federal in the energy development context, which could assist tribes in identifying capacity building efforts that may be needed. Interior agreed with the recommendation and stated it is considering further guidance but did not provide additional details regarding issuance of the guidance.

In addition, the costs associated with assuming activities currently conducted by federal agencies and a complex application process were identified by literature we reviewed and stakeholders we interviewed as other factors that have deterred any tribe from entering into a TERA with Interior. Specifically, through a TERA, a tribe assuming control for energy development activities that are currently conducted by federal agencies does not receive federal funding for taking over the activities from the federal government. Several tribal officials we interviewed told us that the tribe does not have the resources to assume additional responsibility and liability from the federal government without some associated support from the federal government.

In conclusion, our review identified a number of areas in which BIA could improve its management of Indian energy resources and enhance opportunities for greater tribal control and decisionmaking authority over the development of their energy resources. Interior stated it intends to take some steps to implement our recommendations, but we believe Interior needs to take additional actions to address data limitations and track its review process. We look forward to continuing to work with this committee in overseeing BIA and other federal programs to ensure that they are operating in the most effective and efficient manner.

Chairman Barrasso, Ranking Member Tester, and Members of the Committee, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

The CHAIRMAN. Thank you so much for your insightful and helpful testimony. It is a staggering loss of opportunity, to take your words.

Next we will hear from the Honorable James "Mike" Olguin, who is a Tribal Council Member from the Southern Ute Indian Tribe. Welcome back to the Committee.

<sup>12</sup>GAO-15-502.

**STATEMENT OF HON. JAMES "MIKE" OLGUIN, TRIBAL  
COUNCIL MEMBER, SOUTHERN UTE INDIAN TRIBE**

Mr. OLGUIN. It is a pleasure. Good afternoon, Chairman Barrasso, Vice Chairman Tester and Committee members.

Thank you for the opportunity to provide a statement on behalf of the Southern Ute Indian Tribe regarding BIA supervision of Indian energy development. And thank you for commissioning this important report.

My name is Mike Olguin. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe.

The Tribe was very happy to cooperate with GAO staff and a few of the report's key points here bear repeating. According to the report, BIA's mismanagement of oil and gas resources led to an industry preference to acquire oil and gas leases on non-Indian lands over Indian lands.

The Tribe is not surprised by this conclusion, since development on the reservation involves three Federal agencies and compliance with a multitude of Federal statutes that do not apply on adjacent fee land. The BLM's new hydraulic fracturing rule would dramatically compound this problem if it ultimately goes into effect.

In addition, permitting costs are much higher on tribal lands than on fee lands. While the GAO report noted that the BLM's drilling permit fee is \$6,500, as of today that fee is actually \$9,500. A permit from the State of Colorado to drill in adjacent fee land is free. This disparity creates a problem that is made worse on reservations like our Tribe's, where tribal land and non-Indian fee land are arranged like a checkerboard and oil and gas operators can develop non-Indian fee land for less time and money, all while depleting Indian minerals.

There is no improvement in sight. Entering into a Tribal Energy Resource Agreement, or TERA, could help address delays caused by Federal oversight. Despite the Tribe's repeated request for clarification on what constitutes a Federal inherent function, the Tribe learned that the Interior officials told GAO that the agency has no plans to provide additional clarification.

If BIA can't help itself, it should readily accept assistance from tribes when offered. The GAO report makes perfectly clear that the BIA does not have the resources to meet the Tribe's needs. The Tribe has the resources and has made countless offers to assist the BIA, but the BIA has repeatedly resisted these offers for reasons that are not particularly compelling.

For example, the Tribe tried to assist with its Trust Asset Accounting Management System, TAMS, only to be told that it was not permissible for the tribe to assist unless it has a P.L. 638 contract in place. The Tribe tried to assist with organizing the records at the Southern Ute Agency but the Bureau said tribal employees did not have the expertise necessary to assist, and that the employees needed to have background checks. Those checks took months to complete and required a 160-mile round trip drive to be fingerprinted and have a photograph taken for facial recognition, and an hour-long interview with an OPM contract investigator.

Time and time again, the Bureau held up its trust responsibility to the Tribe as a reason it could not allow the Tribe to assist.

Shouldn't the trust responsibility analysis start with common sense? Who is the Bureau afraid to sue if the Bureau didn't require these background checks? The Bureau's circular reasoning, we can't allow the Tribe to assist in cleaning up tribal records, or they might not sue us for not requiring them to have the required background checks, was illogical, patronizing and contrary to the Tribe's best interests, as articulated by the Tribe.

Trust responsibilities of the BIA to the Tribe must be modified so that the agency can provide support for the Tribe's decisions. Many months after the Office of Trust Records' assessment report, after the arrival of a new, helpful agency superintendent, the Bureau has entered into a P.L. 638 contract with the Tribe to scan and organize the agency's files before they are sent to the archives. The scanning project utilizes less than \$100,000 from the Department of Interior and more than \$1 million of tribal money and the dedication of tribal staff.

The Southern Ute Agency's belated cooperation on this project is a radical change from past practice. The Bureau's past attempts to protect the Tribe from itself are patronizing, at best, and a breach of trust, at worst. What is more is that they don't make sense.

In this instance, upholding a trust responsibly did not require the Bureau to find millions of dollars and staff to meet the Tribe's needs. All it required was facilitating the Tribe's efforts by removing the meaningless requirements like facial recognition scans, so that the Tribe could take care of the problem itself.

The Tribe is well-equipped to define and articulate its best interests. Yet the ethic of the Bureau is to second guess and overrule it. It does not make sense, particularly given the Bureau itself cannot meet the Tribe's needs. The Bureau must be more flexible.

Lastly, Southern Ute recognizes the Bureau cannot be all things to all tribes, and each tribe is different. But that trust responsibility means different things to different tribes. Each agency must try to understand the needs of the tribes that it serves, and the Bureau should not try to rely on a one size fits all approach. For example, the inflexibility of TAMS has been cited numerous times as an excuse for delays. On the other hand, because the BIA lacks the technology required to manage the Tribe's resources adequately, the Tribe's department of energy has scanned its entire set of files and developed its own data base in-house, complete with a GIS module that TAMS lacks. It is the juxtaposition, like these, the disparity between the Tribe's technological acumen as compared to the Bureau's technical paralysis, that make the inherent Federal function requirement all the more patronizing and meaningless.

With that, the shortcomings of the BIA are not fresh revelations. As you know, last week the House did pass the Native Energy Act, which would tackle many of these problems identified in the GAO report. The Tribe supports that bill and supports Chairman Barrasso's Indian Tribal Energy Development and Self-Determination Act Amendments.

With that, we are ready to answer any questions. Thank you.

[The prepared statement of Mr. Olguin follows:]

PREPARED STATEMENT OF HON. JAMES "MIKE" OLGUIN, TRIBAL COUNCIL MEMBER,  
SOUTHERN UTE INDIAN TRIBE

Good afternoon Chairman Barrasso, Vice Chairman Tester, and Committee members. Thank you for the opportunity to provide a statement on behalf of the Southern Ute Indian Tribe regarding BIA's supervision of Indian Energy Development, and thank you for commissioning this important GAO report.

My name is Mike Olguin. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe. The Tribe occupies the Southern Ute Indian Reservation (Reservation) in southwest Colorado. The Reservation comprises approximately 700,000 total acres and its boundaries include approximately 311,000 surface and mineral acres of land held in trust by the federal government for the benefit of the Tribe. As a result of the complex history of the Reservation, the Tribe also owns severed oil and gas minerals and coal estates on additional portions of the Reservation that are held in trust by the United States.

The Tribe had spent a great deal of time with staff from the Government Accountability Office who prepared this report. Tribal officials and staff met with GAO auditors and provided information regarding the Tribe's experience with the Bureau of Indian Affairs. The Tribe was pleased with the final product and would like to take this opportunity to focus on some of the key points and share with you stories of the Southern Ute Indian Tribe's experience.

**Indian Energy—Conventional and Renewable—has Enormous Potential for Indian Tribes and their Members in Terms of Jobs and Household Incomes**

The Southern Ute Indian Tribe is a great example of the positive impacts of Indian energy development. Less than fifty years ago the Tribal Council had to end the practice of distributing per capita payments to tribal members because the Tribe could not afford them. Today the Tribe provides health insurance for its tribal members, promises all members a college education, and has a campus dotted with state-of-the-art buildings. This success was not an accident. Without a prolonged effort to take control of its natural resources in the face of numerous obstacles, including BIA mismanagement, the Southern Ute Indian Tribe would not be the economic powerhouse that it is today. In 1974 the Tribal Council placed a moratorium on oil and gas development on the Reservation until the Tribe could gain better understanding and control over the process. That moratorium remained in place for 10 years while the Tribe compiled information and evaluated the quality and extent of its mineral resources. As part of that process, in 1980, the Tribe created its Department of Energy. Because the Tribe's leaders believed that the Tribe could do a better job of monitoring its own resources than federal agencies did, shortly after passage of the Federal Oil and Gas Royalty Management Act of 1982, the Tribe entered into a cooperative agreement with the Minerals Management Service permitting the Tribe to conduct its own royalty accounting and auditing. These acts of energy development self-determination are key to the Tribe's economic success.

The Tribe is a leader in Indian Country with a demonstrated and sterling record of business and administrative acumen. The Tribe is the only tribe in the nation with a AAA+ credit rating, which was earned through years of successful and prudent business transactions. Though the Tribe has a diversified economic development strategy, energy development remains the key component of the Tribe's strategy. Approximately thirty percent of the Tribe's income comes from energy development on the Reservation. Accordingly, barriers to energy development—including BIA's poor management—have a direct bearing on the Tribe's economic success. That in turn has a direct bearing on the health and welfare of the Tribe's 1,500 members.

**The Federal Role in Indian Energy Development has Enormous Impact—Largely Negative—on Revenue for the Southern Ute Indian Tribe from Reservation Energy Development**

The Tribe has achieved its stature at times with the assistance of, but often in spite of, the BIA's role in Indian energy development. According to the GAO Report, in 2012, the Department of the Interior's Inspector General found that weaknesses in BIA's management of oil and gas resources contributed to a general preference by industry to acquire oil and gas leases on non-Indian lands over Indian lands. This conclusion comes as no surprise to the Tribe, who is all too aware of this reality. The Tribe's wholly owned oil and gas company has had to weigh the uncertainties associated with BIA administrative delays and the quality of BIA and BLM management decisions when considering whether to invest in energy development on Tribe's own lands or off the Reservation. The Tribe is hopeful that the GAO's



conclusion in this regard brings additional attention to this problem. The GAO noted that “According to Interior officials, while the potential for oil and gas development can be identical regardless of the type of land ownership—such as state, private, or Indian—the added complexity of the federal process stops many developers from pursuing Indian oil and gas resources for development.” In addition to a cumbersome process than involves not one but three federal agencies (BIA, BLM and ONRR), development of minerals on Indian lands also requires compliance with NEPA and the National Historic Preservation Act, which can add significant delay. Based on an interview with a private investment firm, GAO learned that an oil or gas well that develops Indian resources generally costs almost 65 percent more for regulatory compliance than a similar well developing private resources. The BLM’s new hydraulic fracturing rule, currently stayed by the U.S. District Court in Wyoming, would dramatically compound this problem if it ultimately goes into effect.

These regulatory compliance costs are magnified when oil is trading around \$50 a barrel, as it is now. The State of Colorado, which issues drilling permits on fee lands, typically issues a permit in approximately 45 days. If the permit is not issued within 75 days, the operator has a right to a hearing. In comparison, on tribal lands, BLM issues the permits to drill, which typically take four to six months. There are no regulatory commitments to a processing timeframe; operators must just wait. In addition, permitting costs are much higher on tribal lands than on fee lands. While the GAO Report noted that the BLM’s drilling permit fee is \$6500.00, as of today that fee is actually \$9500.00, and none of that money goes to the Tribe. In comparison, a state drilling permit in Colorado is free. These disparities create a problem that is exacerbated on reservations like the Southern Ute Indian Reservation, where tribal land and non-Indian fee land are arranged like a checkerboard, and oil or gas operators can develop on non-Indian fee land for less time and money, all-the-while depleting Indian minerals.

Despite the Tribe’s decades-long success in managing its own affairs and conducting highly complex business transactions, both on and off of the Reservation, federal law and regulations still require the BIA to review and approve even the most basic realty transaction occurring on the lands held in trust for the Tribe on the Reservation. The Tribe must generally wait upon approval from the Agency, which will invariably delay a proposed tribal project. These delays are exacerbated by the fact that the Agency approval often constitutes a federal action, which triggers environmental and other review requirements, even for simple and straightforward realty transactions. In essence, the Tribe’s own lands are treated as public lands, and, if federal approval is involved, no action—not even some initiated by the Tribe itself—can occur until the federal government has analyzed the potential impacts.

In order to eliminate these delays and in recognition of the Tribe’s ability to protect its own interests and assets without assistance from the BIA, the statutory and regulatory requirements for BIA approval of tribal transactions must be modified so that BIA review and approval of realty-related tribal projects is not required. Entering into a Tribal Energy Resource Agreement (TERA) would—at least in theory—address this problem, but despite the Tribe’s repeated requests for clarification of the TERA process, and in particular, for clarification on what constitutes an “inherent federal function” for which the Tribe would not be allowed to assume authority under the Department’s regulations, the Department of the Interior has refused to provide guidance. The Tribe now learns in the GAO Report that “Interior officials told GAO that the agency has no plans to provide additional clarification.” The Tribe notes that this is a problem Interior created for itself, as the term “inherent federal functions” is only contained within Interior’s regulations, and is found nowhere in the Indian Tribal Energy Development and Self-Determination Act, the statute through which Congress created TERAs.

**Tribes like Southern Ute that Actually Practice Self-Determination Still Need the BIA to be Effective, Efficient, and Responsive to the Tribe’s Needs When it Comes to Federal Functions**

The BIA, particularly at the local Southern Ute Agency office, has been underfunded and understaffed for decades. As a result, the review and approval process often causes substantial delays that damage the Tribe and its interests. At one point in time several years ago, the Tribe estimated that delays associated with the review and approval of pipeline projects had cost the Tribe over \$90M in lost revenue. To make up for the BIA’s shortcomings and ensure that tribal business can continue, the Tribe has committed tribal staff and resources to ensuring that the work needed to be done by the BIA to approve transactions can be completed in a timely manner.

Unfortunately, none of the GAO Report's Recommendations for Executive Action address the problem of underqualified and untrained staff. The Department of the Interior's comments stated that the development of an Indian Energy Service Center will solve this problem, but this solution still will not solve the problem at a local level. In addition, before an Indian Energy Service Center is implemented, there should be a review of existing organizations (e.g., various offices and services provided by the OST) that were created to assist in the wake of the *Cobell* lawsuit.

The high cost of living in the Durango area is often cited as the reason that the Bureau cannot attract candidates to staff the Southern Ute Agency, yet the Bureau does not advertise locally and in forums where local people look for jobs in the area. If flight risk and high cost of living make it difficult to attract staff who will stay here, why would the Bureau not look to candidates who already live in and are committed to this Region, and then provide training?

**If BIA Cannot Help Itself, it Should Readily Accept Assistance from Tribes when Offered**

*"What is it that we need to do, to help you help us?"* is a common refrain in meetings between the Southern Ute Tribal Council and Bureau officials. The Southern Ute Indian Tribe has implored the BIA to accept the Tribe's countless offers to assist. BIA has repeatedly resisted those offers for reasons that are not particularly compelling. The GAO's report makes perfectly clear that the BIA does not have the data, resources, technological capabilities, or staffing to meet the needs of tribes. The Bureau also has no apparent incentive to meet tribal needs.<sup>1</sup> The Tribe has data, resources, staffing, technological capabilities, and the incentive to improve the situation. To help with the backlog in processing transactions, the Tribe has attempted to assist with Trust Asset Accounting Management System (TAAMS) encoding, only to be told that it was not permissible for the Tribe to assist unless it has a 638 contract.<sup>2</sup> This fact was only communicated after the Bureau led the Tribe on for several years, requiring technology expenditures and requiring and conducting extensive background checks for tribal employees who would be assisting.

When the Agency's records were discovered to be in utter disarray, and after an OTRA audit resulted in findings of records in jeopardy, the Tribe tried to assist the Bureau with cleanup and organization. However, the Tribe was told that tribal employees assisting with the Tribe's records needed to have extensive background checks, and that the tribal employees did not have the knowledge and expertise necessary to assist. The Tribe had several of its employees go through the background check process, which involved a long application, a 160 mile round trip drive to be finger-printed and have a photograph taken for facial recognition, and an hour-long interview with an OPM contract investigator. This process took many months. The Tribe even hired local museum archivists to conduct a training on archival techniques for Agency and tribal staff so that the Bureau would allow tribal staff to handle the tribal records that had been desecrated by the Bureau for decades. Time and time again the Bureau held up its trust responsibility to the Tribe as the reason it could not allow the Tribe to assist. This circular reasoning (if we let the Tribe, without proper background checks and training, assist us in organizing and inventorying the irreplaceable historic records that we have haphazardly thrown in open cardboard boxes on the floor below shelves of industrial size bottles of toilet bowl cleaner, they might sue us for not upholding our trust responsibility to protect their records from tribal staff who do not have the requisite background checks and training) was illogical, maddening, patronizing, and contrary to the Tribe's best interests, as articulated by the Tribe.

**The Trust Responsibilities of the BIA to the Tribe must be Modified so that the Agency Can Provide Support for and Enforcement of the Tribe's Decisions Rather than Delay the Implementation of those Decisions**

Many months after the OTRA report, after the arrival of a new, helpful Agency Superintendent, the Bureau has entered into a PL 93-638 contract which allows the Tribe to, largely with the Tribe's own funding, scan and organize the Agency's files before they are sent to the American Indian Records Repository. The records will be prepared and scanned using 300 dpi scanners. The electronic files will be sent off site, where they will be organized in accordance with the Bureau's filing protocol, the 16 BIAM, which has been only loosely followed at the Southern Ute Agency in

<sup>1</sup>This appears to be a systemic issue. The Tribe's few positive experiences with the BIA in the past decade are limited to positive interactions with motivated, committed, engaged individual Agency employees, such as the Tribe's new Agency Superintendent, Priscilla Bancroft.

<sup>2</sup>The Tribe has repeatedly told the Bureau that it will not enter into a 638 contract for realty functions unless and until the Bureau organizes its records. The lack of a 638 contract is nevertheless heralded as the reason the Tribe cannot assist with TAAMS encoding.

past decades. The electronic files will then be indexed into the Tribe's proprietary Geographic Information System (GIS). This scanning project, which utilizes less than \$100,000 from the Department of the Interior and more than \$1M of tribal money and the dedication of tribal staff, is well worth the money to the Tribe. The Southern Ute Agency's belated cooperation on this project brings a sigh of relief and a radical change from past practice. The Bureau's past attempts to protect the Tribe from itself are patronizing at best, and a breach of trust, at worst. The Tribe is well-equipped to define and articulate its best interests, yet the ethic of the Bureau is to second-guess and overrule it. This does not make sense, particularly given that the Bureau itself cannot meet the Tribe's needs. The Bureau must be more flexible.

**The BIA Cannot Be All Things to All Tribes, but in Consultation with Tribes, it Should Identify Those Things It Will Do and then Endeavor to do them Extremely Well**

Southern Ute recognizes that the Bureau cannot be all things to all tribes, and that each tribe is different. Too, the trust responsibility means different things to different tribes. This underscores the need for each Agency to endeavor to truly understand the needs of the tribes that it serves, and to work toward responding to those needs. This will mean that the Bureau will not be able to rely on a one-size-fits-all approach. The Bureau is not particularly well equipped for flexibility, unfortunately. For example, the Southern Ute Indian Tribe, as well as operators on the Reservation, prefer to handle an operator's rights-of-way all at once. This utterly rational approach allows the Tribe to more easily monitor the end date and renegotiate renewals when an operator's hundreds of rights-of-way are handled together. However, when the Southern Ute Indian Tribe presented one of these "global rights-of-way" packages to the Southern Ute Agency for approval, it took the Agency approximately four years to approve them. The Tribe later learned that the biggest hurdle to prompt approval was that there was no effective way to enter the rights-of-way into TAAMS. The unwieldiness of TAAMS has been cited numerous times as an excuse for delays in energy transaction processing and as an excuse for why the Bureau cannot assist the Tribe. If this system is so fundamental to the Bureau's ability to function, why did the Bureau select and contract for a system that is so poorly designed and so inadequate?

The GAO Report identified problems with TAAMS. As the Report noted, "BIA does not have geographic information system (GIS) mapping data identifying resource ownership and use of resources, such as existing leases. Interior guidance identifies that efficient management of oil and gas resource relies, in part, on GIS mapping technology because it allows managers to easily identify resources available for lease and where leases are in effect. However, BIA's database for recording and maintaining historical and current data on ownership and leasing of Indian land and mineral resources (TAAMS), does not include a GIS mapping component." The Report noted that "according to a BIA official, without a GIS component, the process to identify transactions such as leases and ROW agreements for Indian land and resources can take significant time and staff resources to search paper records stored in multiple locations."

To improve access to critical mineral resource information, the Tribe's Department of Energy has scanned its entire set of files and developed an associated GIS system that allows each document to be linked to a location on a map. Together the store of digital documents and the GIS make up the Department of Energy's Land Information Management System and represents a major improvement to tribal operations. Basically, because the BIA lacks the technology required to manage the Tribe's energy resources adequately, the Tribe developed its own database in-house, complete with the GIS module that TAAMS lacks. It is juxtapositions like these—the disparity between the Tribe's technological acumen as compared to the Bureau's technological paralysis—that make the "inherent federal function" requirement all the more patronizing and meaningless.

The shortcomings of the BIA are not fresh revelations and, as you know, last week the House passed the "Native Energy Act" (H.R. 538), which would tackle many of the problems identified in the GAO report. The Tribe supports that bill as it supports Chairman Barrasso's "Indian Tribal Energy Development and Self-Determination Act Amendments" (S. 209). With a short calendar remaining in 2015, we hope the Senate takes up S. 209 in the days ahead.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions the Committee may have.

**Attachment**

## SUPPLEMENTAL STATEMENT OF JAMES M. "MIKE" OLGUIN

Chairman Barrasso, Vice Chairman Tester, and Committee members, on behalf of the Southern Ute Indian Tribe, I would again like to thank you for allowing us to participate in this Oversight Hearing. The Committee's review of the GAO Report on BIA's management of energy development on Indian lands signaled bi-partisan recognition that the current system of managing energy development in Indian country is simply unacceptable. During the hearing on October 21st, members of the Committee asked questions and received testimony on several matters that are deserving of additional comment. Specifically, the items we wish to address are: (1) shortcomings in the BIA's land records system; (2) the dilemma of withholding "inherent federal functions" from tribal administration; and (3) the role of the BIA in advocating tribal best interests to sister agencies. We respectfully request that you consider our Tribe's supplemental comments on these subjects.

### 1. The Records System for Indian Land Title Is Grossly Inadequate

The GAO Report found that the BIA "does not have the data it needs to verify ownership of some oil and gas resources, easily identify resources available for lease, or easily identify where leases are in effect." GAO Report at 18. Quite separate from the slow conversion of the BIA's automated land records system, the Trust Asset and Accounting Management System (TAAMS), to facilitate GIS mapping, the underlying deficiency in verifiable land and mineral ownership records is a foundational concern with enormous ramifications. Based on the experience of Southern Ute, we understand that the BIA has never successfully completed the importation of historic, hard-copy title records into the TAAMS system. Further, because successful encoding of historic or current transactional documents into TAAMS is an administrative condition to such documents actually being recorded in the BIA's Land Title and Records Offices (LTROs) (the official regional locations for maintaining land title records), whether a critical document actually exists in the official LTRO records depends—not on its timely delivery for recording—but rather on whether the BIA personnel have had the time and training to convert the written document into TAAMS data. At Southern Ute, backlogs in TAAMS encoding have correspondingly diminished the reliability of LTRO as the definitive source for ascertaining Indian land title. We sincerely hope that our concern regarding this matter derives from circumstances that are localized and anomalous, but we respectfully urge the Committee to delve deeper into this issue. It is the fundamental, bedrock trust function of the BIA to maintain accurate records of Indian land ownership.

### 2. The Secretary's Unwillingness to Permit Tribes to Assume "Inherently Federal Functions" Stymies Congress' Intent Under Either TERAs or HEARTH Act Approaches

Commencing several years before passage of the Energy Policy Act of 2005, the Southern Ute Indian Tribe was one of several tribes advocating the creation of a statutory vehicle by which an electing tribe, with demonstrated capacity, could obtain Secretarial approval to bypass the Secretarial approval requirements for energy leases, rights-of-way and other business agreements. The reasons for seeking this optional statutory mechanism reflected the reality that the capacity and sophistication of some tribes and the complexity of their transactions (such as monetization of Section 29 non-conventional fuel tax credits) had simply outstripped the expertise of BIA. As debate began, however, multiple issues were identified by various tribes and non-tribal groups, including: applicability of NEPA, development of tribal environmental review procedures, public comment opportunity, waivers of trust responsibility, retrocession of TERAs, and tribal capacity determinations. The resulting TERA statute embodied in the Indian Tribal Energy Development and Self Determination Act (25 U.S.C. § 3504) is a complicated and daunting vehicle for achieving what was intended to be a simple objective.

While the TERA statute addresses many matters, Congress recognized that the Secretary would need to supplement those provisions with implementing regulations and directed that the Secretary promulgate the regulations within one year of passage of the statute. 25 U.S.C. § 3504 (e)(8). Recognizing that such deadlines are sometimes missed (it took 11 years for the Secretary to promulgate regulations supplementing the Indian Mineral Development Act of 1982, only ten and a half years overdue), the Southern Ute Indian Tribe offered the services of its staff and attorneys to take a preliminary stab at creating a conceptual draft. The BIA not only accepted the Tribe's offer, but also assigned officials from the Office of Indian Energy and Economic Development and the Solicitors' Office to participate in the preliminary process.

The immediate question confronted by the drafting participants was whether the permissible scope of a TERA might include the regulatory and administrative functions typically performed by the BIA or BLM in implementing a Secretarially approved energy lease, right-of-way or business agreement. For example, if a tribally approved oil and gas lease under a TERA still required BLM approval of an Application for Permit to Drill, could the Secretary authorize a TERA tribe to review and approve the APD? With support from the highest levels of the BIA, the participants were encouraged to maximize the potential scope of the TERA, consistent with the statutory language and Congress' intent.

Upon completion of the initial drafting, the participants delivered the conceptual document to the BIA, which gave the BIA a head start in preparing draft regulations later circulated for public comment in conformity with the Administrative Procedures Act. To the consternation of tribal participants, the draft published regulations and the final TERA regulations carved an undefined exception from the potential scope of a TERA by withholding "inherently Federal functions" from the ancillary administrative activities that could be undertaken by a TERA tribe in overseeing activities on a non-federally approved lease, right-of-way or business agreement. 25 C.F.R. § 224.53(e)(2). Despite repeated efforts to obtain an explanation from the BIA about what "inherently Federal functions" means in the context of the potential scope of a TERA, the Tribe has been stonewalled. The GAO was also unsuccessful in obtaining clarification on this point because "the agency has not determined what activities would be considered inherently federal . . . and doing so could have far-reaching implications throughout the federal government." GAO Report at 32. Indeed, when questioned at the Oversight Hearing about the BIA's unwillingness to clarify this non-statutory exception to the scope of a TERA, the Secretary's representative, Principal Deputy Assistant Secretary, Indian Affairs Lawrence S. Roberts, provided little assurance that an interested tribe will ever have advanced knowledge about the potential scope of a TERA.

Significantly, as Deputy Assistant Secretary Roberts reminded the Committee, Assistant Secretary Washburn has previously advocated extension of the HEARTH Act (25 U.S.C. § 415(h)) to energy related leases, rights-of-way, and business agreements, as a preferable alternative to clarifying the TERA statute or regulation. The HEARTH Act is clearly a simpler mechanism for removing Secretarial approval requirements than the TERA statute. However, in attempting to address post-approval administrative powers, the TERA regulations are much more ambitious than the HEARTH Act for a reason; the administrative functions and approvals related to energy project operations interplay directly with the performance of energy lease obligations and those administrative activities are also points of delay in energy resource development in Indian country. If the HEARTH Act is extended to energy development, we believe that Indian country and Congress will demand a clearer understanding of what "inherently Federal functions" are and why they may not be assumed by capable tribes.

### **3. As Evidenced in the BLM's Rulemaking for Hydraulic Fracturing, It Is not Apparent That BIA Has Been an Effective Advocate for Tribal Best Interests in Sister Agency Rulemaking**

Because of the importance of oil and gas development to our Tribe, we participated in every stage of consultation offered by the BLM regarding its proposed hydraulic fracturing regulation beginning in January of 2012. Frankly, BLM was not forthright about the advanced status of its rulemaking activities when it began those discussions with tribes, and it never seriously entertained repeated tribal recommendations that its rule separately address Indian lands from public lands or that tribes be afforded an opportunity to opt-out of its rule. As recently found by United States District Court Judge Skavdahl, "The BLM had already drafted a proposed rule by the time the agency initiated consultation with Indian tribes in January of 2012." Order on Motions For Preliminary Injunction at 39, Doc. 119, Sept. 30, 2015, *Wyoming v. United States Department of the Interior*, Case No. 2:15-CV-043-SWS (D. Wyoming). Additionally, in granting a preliminary injunction suspending the rule, Judge Skavdahl determined that "the BLM summarily dismissed legitimate tribal concerns, simply citing its consistency in applying uniform regulations governing mineral resource development of Indian and federal lands and disavowing any authority to delegate regulatory responsibilities to tribes." *Id.*

Although not discussed in the Wyoming case, the Southern Ute Indian Tribe and other energy producing tribes had also made repeated requests to the BIA to intervene with BLM on behalf of tribes. At a hastily assembled meeting with BIA officials who were attending the annual NCAI meeting in Nevada in June of 2013, a room full of tribal representatives brought the pending BLM rule to the attention of BIA officials, who seemed unfamiliar with the fact that the rule was pending.

Tribal concerns at that time were evidenced by the adoption of NCAI Resolution No. REN-13-077, which called for separation between regulation of Indian lands and public lands and greater deference to tribal sovereignty. At various subsequent occasions in 2013 and 2014, tribal representatives traveled to Denver and Washington, D.C. to communicate their concerns, not just to BLM, but to urge BIA to speak on their behalf in this matter. To the very end, BLM refused to consider treating Indian lands and public lands differently or allowing electing tribes to opt out of the rule. To be sure, the final BLM rule did set up a waiver mechanism permitting the applicable State BLM Director to permit a tribe or state to substitute its own rules for BLM's, but only upon a finding that such a rule meets the federal objectives of the BLM rule. The BLM Director's determination is entirely discretionary and not subject to administrative challenge under the currently enjoined BLM rule.

It is possible that the referenced waiver provision is due in part to BIA involvement; however, we were never advised of that involvement. We were disappointed by the lack of visible support of the BIA for our position. We also believe that, because of its unique expertise and responsibilities, it should be active in assisting tribes when the actions of sister agencies implicate legitimate tribal interests.

#### **Conclusion**

We respectfully thank you for the opportunity to address these matters and look forward to working with you in the future with regard to Indian energy issues.

The CHAIRMAN. Thank you very much, Mr. Olguin.  
Mr. Stafne?

#### **STATEMENT OF HON. GRANT STAFNE, COUNCILMAN, FORT PECK ASSINIBOINE AND SIOUX TRIBES**

Mr. STAFNE. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee.

My name is Grant Stafne. I serve as a member of the Tribal Executive Board of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation.

On behalf of Chairman A.T. Stafne, I thank the Committee for holding this important hearing. It highlights the GAO findings concerning Indian energy development, namely, that poor management by BIA has hindered energy development on Indian lands.

The Fort Peck Reservation lies within the western part of the Williston Basin, which include the oil-producing formation commonly known as the Bakken and Three Forks Formation. Estimates are that Bakken and Three Forks collectively hold 24 billion barrels of potentially recoverable crude oil, 20 billion barrels in oil and 40 billion barrels in natural gas. I am here today to provide specific recommendations that I hope the Committee will help implement, because as for the Fort Peck Reservation, the GAO findings are all true.

At Fort Peck, we have experienced long delays by the Fort Peck agency in processing mineral leases, appraisals and requests for drilling permits, raising Federal permit and rights-of-way fees and other energy development costs well above off-reservation fee lands, sometimes setting rates three times the going rate in our area. And poor allocation of agency personnel who can expedite permits, rights-of-way and other Federal requirements.

We have considerable experience in oil and gas development, dating to the 1950s. It is simply unacceptable to my tribe that agency shortcomings have resulted in missed development opportunities for tribes, lost revenues and jeopardization of otherwise viable energy projects. The United States must do a better job of honoring its trust obligations to all tribal nations in the field of natural re-

source development. The Departments of Interior and Energy should work together more closely.

We make the following six recommendations. One, improve the BIA's administration of energy development. This starts with having qualified and trained personnel in realty appraisals and permitting being detailed to the relevant BIA agency and regional offices. Energy developers will not pursue otherwise viable tribal energy leases if they fear they will be subject to delays and arbitrary fees and costs that they do not encounter off-reservation.

Two, reduce oil and gas fees. BLM currently charges \$6,500 for a permit application to drill on Indian and tribal trust lands. The State of Montana charges \$75 to process the same kind of permit on State fee land. Had Congress known this, we doubt it would have set so high a fee as to discourage energy development on tribal trust lands.

Three, ensure that the lease bid deposits are placed in interest-bearing accounts. This was done historically and should be re-instituted.

Four, eliminate dual taxation. As the GAO report found, dual taxation hinders oil and gas development on Indian lands as a result of the wrongly-decided Supreme Court decision in *Cotton Petroleum* that allows States to tax certain activities by non-Indian companies on Indian and tribal trust lands. This discourages economic activities on tribal lands. *Cotton* was wrongly decided. We ask Congress once again to pass legislation returning full taxing authority to tribal governments.

Five, eliminate barriers to wind energy and other renewable energy projects. Our reservation provides a great opportunity for wind development, but ever-changing national energy policies and the lack of inexpensive and accessible transmission line capacity hinders wind energy development at Fort Peck.

Six, develop environmentally and culturally sustainable energy projects. We fully support job creation initiative and economic development opportunities when such activities are balanced with longstanding ranching and farming activities and a sacred commitment to preserve our tribal homelands.

In conclusion, we do not suggest the elimination of Federal oversight over tribal energy projects. We ask, however, that the Federal Government do its job more efficiently and with greater consultation with tribal governments.

[Phrase in Native tongue.]

[The prepared statement of Mr. Stafne follows:]

PREPARED STATEMENT OF HON. GRANT STAFNE, COUNCILMAN, FORT PECK  
ASSINIBOINE AND SIOUX TRIBES

## I. Introduction

My name is Grant Stafne, and I am a member of the Tribal Executive Board of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation. Tribal Chairman AT Stafne and my fellow Tribal Executive Board members send their best wishes and thanks to Chairman Barrasso, Vice Chairman Tester, and the Committee for holding this important oversight hearing on the GAO's report on the effects of BIA's management on development on Indian Lands, *GAO-15-502, Indian Energy Development: Poor Management by BIA has Hindered Energy Development on Indian Lands* ("Report").

The Fort Peck Reservation consists of over two thousand square miles of land in northeastern Montana. The Assiniboiné and Sioux Tribes and individual Indians

own about one million acres of land. Over 6,700 Tribal members and non-member Indians live on the Reservation, along with over 3,200 non-Indians. We have been developing oil and gas reserves on our Reservation since the early 1950s.

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

The Fort Peck Reservation lies within the western part of the Williston Basin, which includes many oil producing formations, including what is commonly known as the Bakken formation and the Three Forks formation. Since the 1950s, a major part of the Tribes' economy has been based on oil and gas development. In the 1950s, the Tribes began to lease substantial amounts of Tribal mineral lands to non-Indian companies for oil and gas development. In the oil boom of the 1970s and early 1980s, we asserted much greater control over this process, insisting on increased royalty rates for new Tribal leases, and entering into service contracts where the Tribes hired a private company to explore and develop Tribal oil and gas for our own benefit. We also imposed a Tribal severance tax on energy development. During the early 1980s, Tribal revenues from oil and gas lease rents and royalties came to over \$8 million in some years. Over the last two decades, oil and gas development on the Fort Peck Reservation has tapered off significantly.

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

Even though the recent drop in the price of oil presents an additional obstacle to development of our oil and gas resources, the Fort Peck Tribes sees this technological advance as an opportunity for our Tribal government—working in close collaboration with our Federal trustee—to use the bounty of our natural resources to create jobs and spur sustainable economic development to erase the persistently high rates of unemployment and poverty on our Reservation. Despite our best efforts over the past decades to develop our natural resources in an economically and environmentally sustainable manner, the difficulty of tapping these reserves, along with the challenges of dealing with multiple jurisdictions, have made it difficult for our Tribal government to make a significant dent in the unemployment and poverty that still plague our Reservation. We can and must do better, but this will only happen if our Federal trustee works with us to avoid the mistakes of the past. Unfortunately many of the factors identified in the recent GAO report on Indian Energy Development have had direct impacts on the pace of development of the oil and gas resources on our Reservation.

For example, the Report identifies the nature of "checkerboard" and fractionated land interests as a serious problem. *See, e.g.*, Report at 28. Like most reservations in Montana, our Reservation was opened to homesteaders a century ago, with trust and fee lands interspersed in a "checkerboard" ownership pattern. Consequently, the development of lands and resources within our Reservation is subject to oversight from many federal, state and tribal agencies and laws. If done properly and with respect for tribal sovereignty, federal government oversight and regulation should not unduly impede energy development or infringe on the proper exercise of Tribal governmental authority on our Reservation. Unfortunately, our experience has taught us that federal involvement is not always helpful, particularly in the field of energy development.

Federal and state agencies often do not coordinate well with one another or with tribal agencies. And as the Report identifies, this leads to long delays in the approval of required paperwork and in the implementation of tribally-beneficial energy development policies. While there are many excellent, highly-motivated officials in the Department of the Interior (DOI) and the Department of Energy (DOE) working



to provide useful technical assistance to tribes, too often this technical expertise does not make it down to the BIA Regional Offices and Agencies on the reservations. BIA Regional and Agency staff often do not have adequate technical expertise in the complex field of energy development, and they do not always appreciate that “time is of the essence” when it comes to energy development. Our experience lines up with the Report’s findings on the need for more—and better trained and resourced—staff to work on Indian energy issues.

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

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

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

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

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

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

### III. Recommendations for Improving Reservation-Based Energy Development

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

#### A. Improve BIA's Administration of Energy Development

The GAO Report identified the BIA's review and response times and the cost of permitting as hindering energy development. Report at 21, 27. We agree. However, in addition to the length of time it takes for the BIA Agency to act on leases, permits and other paperwork, a great area of concern is the deficiencies within the BIA's Realty Division. Specifically, there is not a certified realty appraiser at the Fort Peck Agency. Consequently, the BIA's assessed values for rights-of-way and well-pad sites are sometimes 300 percent what they should be. For example, the Fort Peck Energy Company (FPEC), which the Tribes' former energy development arm, paid \$15,000 each for two well-pad sites. This price may be consistent with the amounts now paid in North Dakota, where major development activities are already ongoing, but it is inconsistent with normal appraising practices in a place where oil has not yet been located in paying quantities. FPEC paid this fee under protest because it did not have the luxury of time to dispute the BIA's actions. Available drilling rigs are in high demand and difficult to get so FPEC had to secure the well-pad sites even though it strongly disagreed with the BIA Agency assessment. This is but one example of our Federal trustee charging a tribally-owned corporation an improper assessment due to a lack of oil development expertise and appraisal experience.

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

Private business interests have often complained to our Tribal Executive Board that they do not like to deal with BIA Agency staff that too often seems uninterested in working with private companies in a fair, timely, and efficient manner. More must be done to enhance the technical capacity and expertise of Fort Peck Agency staff in the areas of energy development, land use, and ROW appraisals.

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

#### B. Reduce Oil and Gas Fees

Although this hearing is concentrated on BIA, it is important to note that another disincentive to drilling on Indian allottee and tribal trust lands is the \$6,500 that the BLM charges for a permit application to drill on federal land, including Indian and tribal trust lands. In FY 2010, Congress increased this fee from \$4,000 to \$6,500. In theory, this fee is intended to cover the BLM's cost of processing the drilling permit application. However, the fee is highly disproportionate to the \$75 that the State of Montana charges to process the same kind of permit on State fee land, which is analogous to the differential fee problem identified in the report. See Report at 27. We see no good reason for the BLM fee to be so high on Indian and tribal trust lands and doubt Congress even considered the potential negative impact on

oil and gas development in Indian Country when it made this change in the law. Economic development in Indian country should not be used to off-set the federal deficit.

*C. Ensure that Lease Bid Deposits are Placed in Interest-bearing Trust Accounts*

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

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

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

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

*D. Eliminate Dual Taxation*

As the Report identifies, the problem of dual taxation is a serious hindrance to oil and gas development on Indian lands. Report at 29–30. The Fort Peck Tribes were one of the first Tribes in the country to institute a severance tax on oil and gas development on our Reservation. However, the 1989 U.S. Supreme Court decision in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S.163 (1989), allows States to tax certain activities by non-Indian companies on Indian and tribal trust lands. When *Cotton* applies to allow States to impose taxes in addition to tribal taxes, economic activity on tribal lands is discouraged. Tribal and State taxes are owed for energy development activities in Indian Country where only State taxes must be paid for energy development elsewhere. This double taxation creates a serious disincentive to energy and mineral development on Tribal lands and is inconsistent with well-established federal policies designed to promote Tribal economic development and self-sufficiency.

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

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

*E. Eliminate Barriers to Wind Energy and Other Renewable Energy Projects*

The Fort Peck Tribes believe further development of wind energy is an important part of America's energy independence. Montana is one of the five windiest states in the union and the Fort Peck Reservation in northeast Montana presents one of the greatest opportunities for wind energy development in the entire State. With the support of the DOE and other federal agencies, the Fort Peck Tribes spent many years researching and quantifying our wind energy resources, and we know that the potential energy that can be derived from wind power is considerable. With proper

support from the Federal government and better connections to transmission lines on the national energy grid, we could attract reputable business interests to partner with us to develop commercially viable and sustainable wind energy projects on the Fort Peck Reservation.

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

*F. Develop Environmentally and Culturally Sustainable Energy Projects*

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

As a Tribal government, we endeavor to support only those initiatives that are done in a manner that is backed by sound science and that minimizes potential adverse impacts to our Tribal lands and resources. Moreover, while we have suggested improved technical capacity and responsiveness within the federal government, as well as a reduction in certain fees that we believe should be decided by market conditions, we do not suggest the elimination of federal oversight over any projects that have an impact on Indian trust resources and sovereign tribal governments. We ask that the Committee continue to provide oversight regarding Federal agencies' administration of programs that impact energy development on Indian reservations to help ensure that Tribes and our Federal trustees can work together to further Tribal priorities and both improve and protect our communities.

We thank the Committee for allowing us to submit testimony on this critical issue and look forward to working with Congress and the Administration to make real progress toward energy independence in Indian Country.

The CHAIRMAN. Thank you so much for your testimony.  
Now if I could call on Mr. Cuch. Thank you.

**STATEMENT OF CAMERON J. CUCH, VICE PRESIDENT OF  
GOVERNMENT AFFAIRS, CRESCENT POINT ENERGY U.S.  
CORPORATION**

Mr. CUCH. Good afternoon, Chairman Barrasso, Vice Chairman Tester, and members of the Committee on Indian Affairs.

My name is Cameron Cuch, and I am Vice President of Government Affairs at Crescent Point Energy, U.S. Corporation. I am also a member of the Uinta Indian Tribe at Uinta and Ouray Indian Reservation, Utah. Thank you for the opportunity to testify on our

company's experiences developing new tribal oil and gas resources in the Uinta Basin of eastern Utah.

We have made a significant investment in Ute tribal oil and gas properties. However, the regulatory uncertainty with the inability to predict project permitting times and a shifting landscape of regulatory requirements is frustrating Crescent Point's ability to cost effectively develop tribal oil and gas resources. From our perspective, the incentive for oil and gas operators to make long-term investments on tribal lands would be greatly improved if operators were able to work directly with individual tribes in the permitting and development of these projects, rather than having to work through the BIA as an intermediary.

Crescent Point is one of Canada's largest oil producers. As of 2012, it has been one of the largest producers in Utah. In 2012, Crescent Point saw a tremendous opportunity to partner with the Ute Tribe by acquiring Ute Energy Upstream Holdings, an oil and gas company majority owned by the Ute Tribe and a private equity partner in Houston, Texas. Our corporate development strategy is focused on long-term growth and cost-effective full field development. One of the primary components of achieving cost effective development is regulatory certainty and the ability to predicted permitting times and requirements.

Crescent Point paid \$861 million to acquire Ute Energy. One of the primary targets of Crescent Point's acquisition was the right to develop in and around the Randlett area, an area that was covered by an exploration development agreement between Ute Energy and the Ute Tribe. To date, Crescent Point has made a total investment of \$1.6 billion in the Uinta Basin. We currently operate 349 wells in the Basin, 64 of which are tribal. We have long-term plans to develop roughly 1,000 additional Ute tribal wells.

The delays and uncertainties we have experienced in obtaining drilling permits and other authorizations is jeopardizing our future development plans. During 2015, it has taken an average of 405 days for Crescent Point to receive a drilling permit from BLM and BIA for tribal wells. In contrast, it has taken the State of Utah only 73 days on average to issue Crescent Point drilling permits for private and State-managed lands.

The permitting delays have resulted in lost revenue to the Tribe and jeopardized economic viability of certain projects. Given the precipitous drop in crude oil prices between 2014 and 2015, many of the wells we would have drilled in 2014, had we been able to obtain permits, are uneconomic in today's price environment and we have elected to defer drilling these locations.

We estimate that the lost revenue to the tribe for these wells is approximately \$2.3 million in royalty and \$800,000 in severance tax per well even in today's low oil prices. We have also run into Federal resistance to the Tribe's plans to develop oil and gas resources located along the Duchesne River and its tributaries, which bisect the Randlett EDA area. Under pressure from EPA and Fish and Wildlife Service and over the Tribe's objection, BIA has indicated that it will not allow development within the flood plain, which makes up roughly 30 percent of the Randlett EDA area.

Under a full development scenario, we estimate that the Ute Tribe will lose \$571 million in royalties and \$148 million in sever-

ance taxes if the BIA ultimately disallows flood plain development. In sum, we believe that many of the permitting delays and additional burdens to development are a result of poor coordination among BIA and the other Federal agencies. We also believe that the BIA is overly deferential to these other agencies to the detriment of tribal interests.

For operators, there would be a substantial benefit to being able to work directly with tribes without numerous Federal intermediaries. We suggest that tribes be authorized to lead energy project permitting with BIA playing a technical support function, but without having to go through the onerous process of entering into a TERA. We have observed that this sort of arrangement is already happening informally and a formal adoption of this practice would allow for tribes to ensure environmentally responsible oil and gas development in a manner consistent with tribal objectives.

From an operator's perspective, consolidation of decision-making authority within individually affected tribes will increase efficiencies and regulatory certainty, increasing our incentives to invest in tribal projects.

In closing, I would like to thank Chairman Barrasso and Vice Chairman Tester and the members of the Committee for the opportunity to present these issues on behalf of Crescent Point Energy. I am happy to respond to any questions or provide further information. Thank you.

[The prepared statement of Mr. Cuch follows:]

PREPARED STATEMENT OF CAMERON J. CUCH, VICE PRESIDENT OF GOVERNMENT AFFAIRS, CRESCENT POINT ENERGY U.S. CORPORATION

Good afternoon Chairman Barrasso, Vice-Chairman Tester and Members of the Committee on Indian Affairs. My name is Cameron Cuch and I am Vice President of Governmental Affairs at Crescent Point Energy U.S. Corporation ("Crescent Point").

#### **I. Executive Summary**

Crescent Point has made a significant investment in exploring for and developing oil and gas resources owned by the Ute Tribe of the Uintah and Ouray Reservation in Eastern Utah. However, the regulatory uncertainty associated with an inability to predict project permitting times and a shifting landscape of regulatory requirements is frustrating Crescent Point's ability to cost-effectively develop Tribal oil and gas resources. From our perspective, the incentives for oil and gas operators to make long term investments in the development of Tribal oil and gas resources would be significantly improved if operators were able to work directly with individual Tribes in the permitting and development of these projects, rather than having to work through BIA as a federal intermediary.

We believe that Tribes are in the best position to manage and make decisions about development of their resources and that BIA should be a strong advocate for Tribal self-governance. However, we have often seen BIA defer to other federal agencies' views on resource development issues that, at times, have been contrary to Tribal goals, management plans and regulations. We believe that Tribes should be empowered to take over management of certain aspects of energy development that will allow the Tribe to achieve its own internally-determined goals and objectives while still providing for robust environmental review and protections.

#### **II. Development Opportunities—Corporate Approach**

Crescent Point is one of Canada's largest light to medium oil producers. We are publicly traded (New York and Toronto Stock Exchanges) and are headquartered in Calgary, Alberta with a U.S. headquarters in Denver, Colorado. We entered the U.S. in 2011 with a significant acquisition in North Dakota and followed in 2012 with a large acquisition in the Uinta Basin of Eastern Utah, which included contractual interests in a number of properties on the Uintah and Ouray Reservation. Our primary operations are currently located in Saskatchewan, Alberta, North Dakota and

Utah. Our average production in 2015 has been 165,500 barrels per day, with approximately 20,000 coming from the United States, 15,000 of which are produced in the Uinta Basin.

Crescent Point has a three-part business strategy that we have implemented for the purpose of ensuring consistent returns to our shareholders: (1) acquisition of high-quality, large resource-in-place pools with the potential for upside in production, reserves, technology and value; (2) management of risk by maintaining a conservative balance sheet with significant underutilized lines of credit and a 3.5 year hedging program; and (3) development of our large, low risk drilling inventory to maintain production, reserves and dividends. A primary component of Crescent Point operations is our commitment to environmental responsibility and conducting our business in a manner that minimizes our impact on the air, land and water surrounding our operations.

We generally fund our acquisitions internally and strive to maximize shareholder return with long-term growth, dividend income and cost-effective field development. One of the primary components of achieving cost-effective development is regulatory certainty and the ability to predict permitting times and requirements.

*a) Considerations for Corporate Investment—Partnership with the Ute Tribe*

In 2012, Crescent Point acquired Ute Energy Upstream Holdings, LLC (“Ute Energy”), majority-owned by the Ute Tribe of the Uintah and Ouray Reservation (“Ute Tribe”) and a private equity partner based in Houston, Texas. Ute Energy was formed in 2005 in order to provide a vehicle to efficiently develop Tribal oil and gas resources to generate revenue for the Tribe. *Exhibit 1* shows an overview of the Uintah and Ouray Reservation. In 2010, Ute Energy and the Tribe entered into the Randlett Exploration and Development Agreement (EDA), which gave Ute Energy the right to explore for and develop Tribal oil and gas resources within a geographically defined area around the small town of Randlett, Utah. The Tribe executed the EDA under the authority granted by the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108, which specifically authorizes Tribes to enter into agreements with private industry to develop their natural resources for the purpose of achieving economic independence. As required by the Indian Mineral Development Act, the EDA was approved by BIA. The EDA area can be seen on *Exhibit 2*. *Exhibit 3* shows Indian Country and the external boundaries of the Uintah and Ouray Reservation.

When Crescent Point acquired Ute Energy, one of the primary assets of interest was the Randlett area and the exploration and production opportunities created under the EDA. We believed that the BIA-approved EDA would enable us to explore and develop the Randlett area in a phased and predictable manner under which we would operate existing wells while at the same time exploring the area in anticipation of full-field development. Crescent Point has had a number of positive experiences working with First Nations in Canada, and believed the opportunity to partner with the Ute Tribe would be a substantial benefit to Crescent Point. Because of these considerations, Crescent Point paid a total of \$861 million to acquire Ute Energy. Crescent Point also operates one township in the Rocky Point Exploration and Development Agreement area, which lies directly west of the Randlett EDA area.

To date, Crescent Point has made a total investment of \$1.658 billion in the Uinta Basin, including a \$689 million investment in development capital. We currently operate 349 wells in the Uinta Basin, 64 of which are Tribal wells, and the remainder of which are located on private and federal lands. We have also paid over \$5 million to Tribal companies for support services, including water hauling, road and well pad construction and roustabout services. In addition, we employ a number of Tribal members and roughly 30 percent of our Uinta Basin field staff are American Indians, Alaska Natives and Hawaiian Islanders.

We currently have applications pending for 203 drilling permits in the Uinta Basin, 95 of which are Tribal. Additionally, BIA is finalizing a Programmatic Environmental Assessment that will enable the drilling of up to 300 additional Tribal wells and we recently initiated an Environmental Impact Statement for all of our Uinta Basin assets, which will analyze the impacts of developing 725 Tribal wells.

Crescent Point has made a significant investment to develop oil from Ute Tribal lands and is committed to being a responsible and cost-effective partner with the Tribe. However, the delay and uncertainties that we have experienced in obtaining permitting approvals and authorizations from the BIA has had a substantial negative impact on our ability to develop Tribal oil and gas resources and, thereby, generate income for the Tribe.

### III. Permit Challenges, Economic Impacts and Project Viability

As Crescent Point began to undertake exploration and development within the Randlett EDA area, we encountered a number of challenges to obtaining permits, largely related a lack of inter- and intra- agency coordination, duplicative review processes, and long review periods. This is particularly true in the context of drilling permits, which requires that BIA manage and coordinate consultations between several federal agencies.

#### *a) The Permitting Process*

Under federal statutes and regulations, and unless a Tribal Energy Resource Development Agreement (TERA) has been entered into pursuant to the Energy Policy Act of 2005, in order to permit a well on Tribal lands, an operator must receive a federal drilling permit. To initiate the process, the operator must request drilling permit approval from BIA. Because this constitutes “federal action,” BIA must comply with NEPA, even in cases where BIA has already approved of the development in general by, among other things, authorizing an EDA. BIA will then require that an appropriate NEPA analysis be performed, usually an Environmental Assessment, the costs of which are paid by the operator. During the NEPA process, a number of other federal agencies may become involved in review of the document. For operations on the Uintah and Ouray Reservation, the United States Fish and Wildlife Service will consult on the document under Endangered Species Act Section 7 authority and the Environmental Protection Agency will often consult on air and water quality issues.

Once the Environmental Assessment is completed, a process that, in the best of situations, takes roughly 8 months, BIA will issue a decision record. Once BIA issues the decision record, permitting is handed over to BLM because federal regulations require that BLM perform all downhole analyses and is the agency that ultimately issues the drilling permit. BLM must then provide a NEPA concurrence and process the permit application. Thus, in order to receive a drilling permit, at least two federal agencies, and often four or more, will have had the opportunity to weigh in on the proposal.

Because of the numerous agencies involved, the wait times associated with obtaining permits is often substantial and in almost all instances impossible to predict. Further, because of the multiple opportunities for inter-agency comments, BIA often receives comments from these other agencies proposing numerous project modifications and mitigation measures that were not contained in the initial proposed action. All of this adds substantial time and cost to the permitting process.

#### *b) Permit Approval Timing*

During 2015, it has taken an average of 405 days for Crescent Point to receive a drilling permit from BLM and BIA for Tribal wells. This is down slightly from 2014, when it took an average of 427 days. In contrast, the State of Utah averaged 73 days to issue Crescent Point a drilling permit to drill on private or State-managed lands during the same time period. In 2014, it took an average of 121 days for the State of Utah to issue a drilling permit. *See Exhibit 4.*

#### *c) BIA Concurrence to BLM Issuance*

Even after BIA has approved the NEPA documentation required to authorize a drilling permit, BLM concurrence times take an average of 135 days, and have taken as long as 203 days. *Exhibit 5* shows the additive delays associated BLM concurrence times.

By comparison, Crescent Point estimates that it takes a total of 4–6 months to receive all authorizations necessary, including performing environmental analyses, to develop oil and gas projects with First Nations. Similarly, we estimate that it takes, on average, one day for the provincial government to approve drilling permits that have been authorized by First Nations. These projects require concurrence and approval from just one Canadian governmental agency.

#### *d) NEPA-Timing Delays Lead to Either Delayed or Lost Revenue to the Tribe*

The considerable amount of time it takes BIA and BLM to complete NEPA analyses and issue permits has resulted in, at best, delay of projects and income to the Tribe and, at worst, project scale-back and cancellation. Given the precipitous drop in crude prices between 2014–2015, many of the wells that we would have drilled in 2014 had we been able to obtain permits are uneconomic in today’s price environment.

For example, we submitted an application for a permit to drill the Ute Tribal 9–30–3–2E well on May 22, 2013. BIA issued a decision record on the NEPA Environmental Assessment on February 21, 2014. Building in a generous amount of time for approval, Crescent Point estimated that we would receive the permit in April



of 2014 and would drill and complete the well during May and June, with first production coming on line in July. However, we did not receive an approved permit until September 12, 2014, which would have put us on track to receive first production from the well in January 2015. Unfortunately, between June and October of 2014, oil prices plunged, taking our rate of return on the well from 37 percent with a payout in just 2.2 years to 13.7 percent with a payout in 5.9 years. With the precipitous drop in oil prices, Crescent Point elected to postpone drilling the 9–30–3–2E, something that we would have done had we received the permit as anticipated in April 2014. *See Exhibit 6.*

Crescent Point also experienced considerable delay and extra costs associated with obtaining permits to conduct a seismic data acquisition in the Randlett EDA area. In June of 2013, Crescent Point submitted an application to conduct the seismic operation, completion of which would be of substantial benefit to the Tribe because it would allow Crescent Point to drill more profitable wells and because Crescent Point agreed to share the data directly with the Tribe. Department of Interior policies provide for a NEPA categorical exclusion for seismic operations,<sup>1</sup> under which NEPA review is not required unless “extraordinary circumstances” are identified by the lead agency.

Although BIA initially indicated that the project would be permitted under a categorical exclusion, after four months of inaction and under significant pressure from the U.S. Fish and Wildlife Service and the Bureau of Reclamation (who had surface management authority over a very small portion of the project area), BIA informed Crescent Point that it would be required to complete an Environmental Assessment based on the potential impacts the data acquisition could have on plant and animal species. One of the primary issues the Fish and Wildlife Service was concerned with was potential impacts to the Uinta Basin Hookless Cactus, a small cactus listed under the Endangered Species Act, but with prolific populations in the Uinta Basin. Although the Ute Tribe has adopted a regulation concerning the cactus, which requires setbacks from cactus populations and the payment of funds directly to a Tribal cactus mitigation fund administered by the Tribe, the Fish and Wildlife Service pushed for adoption of the federal guidelines concerning cactus setbacks and insisted that payments be made to the nationally-administered conservation fund.<sup>2</sup> Ultimately, after significant push-back from Crescent Point, it was agreed that mitigation funds would be split between the Tribe and the federal conservation fund.

Crescent Point had initially planned to conduct the seismic acquisition during the fall and winter of 2013–2014; however, the Environmental Assessment was not completed until the summer of 2014 and we did not receive permits until the end of September 2014. Although the Environmental Assessment ultimately concluded that the data acquisition would not have a significant impact on the human environment and Crescent Point won an award for its environmental stewardship on the project from the State of Utah, a permitting process that should have taken several months under a categorical exclusion took over 15 months to complete, delaying our seismic acquisition by one year. Had we been able to conduct the seismic acquisition as planned, we would have had usable data during the 2014 drilling season, which would have enabled us to drill more accurate and profitable wells with a smaller surface impact.

#### *e) Regulatory Uncertainty Jeopardizes the Viability of Projects*

The Randlett EDA area is bisected by the Duchesne River and several tributaries. Although BIA approved the EDA, which provides for development of all areas within the EDA boundaries, BIA has become increasingly less willing to allow surface disturbance within the 100-year floodplain. As demonstrated on *Exhibit 2*, roughly 30 percent of the Randlett EDA area is within the 100-year floodplain and 7,404.7 acres of floodplain within the EDA area are located on Ute Tribal and allotted lands.

We note that it is common to develop oil and gas resources within 100-year floodplains and there are no federal regulations addressing floodplain development. In cases where floodplain development occurs, Crescent Point has implemented a robust system of protocols to protect against damages in the case of a flood event. Nonetheless, during the development of the Randlett Programmatic Environmental Assessment, which analyzes the impacts of drilling up to 300 Tribal wells, in response to comments BIA received from the Environmental Protection Agency and the Fish and Wildlife Service, BIA developed a so-called “Resource Protection Alternative” under which no wells could be developed within the floodplain. This is in

<sup>1</sup> 516 DM 10 § 10.5(G);

<sup>2</sup> The Ute Tribe can obtain access to the national funds, but must apply to the federal government in order to receive them.

spite of the fact that the Ute Tribe has adopted a regulation governing oil and gas development within floodplains that expressly authorizes such development and has publicly supported development of all locations in the Randlett EDA area. Under the Resource Protection Alternative, 29 wells were removed from analysis because of their proximity to the floodplain. The removal of these 29 wells will result in a loss of \$66.5 million in royalties to the Tribe and \$23 million in Tribal severance tax. We anticipate that the Resource Protection Alternative will be the selected alternative when the decision record is issued later this year.

If Crescent Point continues to full field development of the Randlett area and BIA does not approve development of resources within the floodplain, we estimate that the Tribe will lose \$571.14 million in royalties and \$148.38 million in lost severance taxes.

*f. Shifting Federal Regulation and Executive Action*

In addition to the regulatory uncertainty created by unpredictable project permitting timelines, the relentless pace of executive branch rulemaking affecting Tribal lands has substantially impacted our ability to develop economic Tribal wells. These changes have included new Secretarial Onshore Orders 3, 4, and 5, new Secretarial Orders regarding Tribal consultation at FWS, the BLM's hydraulic fracturing rule, and the Environmental Protection Agency's rule defining waters within Clean Water Act jurisdiction.

**V. Nature of the Mineral Estate**

As shown on *Exhibit 7*, much of the land within the Randlett area, as with the rest of the Uintah and Ouray Reservation, is made up of a checkerboard of parcel ownership, with parcels owned by the Tribe, private owners, the federal government, the State of Utah and individual Tribal allottees. In addition, there is a substantial amount of split estate, particularly areas with Tribal surface overlying federal minerals.

Presently, there is very little development of Ute Tribal oil and gas resources. There is, however, currently substantial development of federal oil and gas resources underlying Tribal surface. In these cases, the Tribe bears the burdens associated with oil and gas development, but does not share in the benefits. In contrast, the development proposed by Crescent Point will directly benefit the Tribe by developing Tribal minerals from Tribal surface. We believe that the BIA does not appropriately consider the financial benefits that development of oil and gas resources will provide for the Ute Tribe when reviewing permit applications and NEPA documents, and instead focusses only on potential negative environmental consequences. BIA should distinguish between projects involving development of Tribal minerals, from which the Tribe will benefit greatly, and projects on Tribal surface that develop federal minerals, from which the Tribe will experience the negative consequences associated with oil and gas development without any of the benefits.

Because of the large amount of time and lack of certainty associated with obtaining permits to drill Ute Tribal wells, in certain instances Crescent Point has been forced to drill wells on private lands within the Randlett area rather than on nearby Tribal parcels. In a large number of cases, this is simply a function of our inability to obtain permits to drill Tribal wells within a reasonable timeframe and our need to develop wells for the benefit of our shareholders and keep a drilling rig in operation. If there were assurances in place that we could obtain drilling permits within specified timeframes, our incentive to drill wells on Tribal rather than private parcels would increase substantially.

Finally, and while this is not the primary factor for Crescent Point, we note that it is substantially less expensive to obtain permits to drill wells on private minerals than Tribal minerals. We estimate that the average hard costs of permitting a well on Tribal surface to Tribal minerals are approximately \$41,000. In contrast, the average hard costs of permitting a well on private surface to private minerals are \$20,500. The primary differentials are the federal permit fee and the costs of performing the NEPA analysis. The breakdown of these costs is shown on *Exhibit 8*.

**VI. Agency Failures and Proposed Solutions**

Many of the permitting delays Crescent Point has experienced relate to strained BIA budgets and agency inability to appropriately staff projects and commit the resources necessary to ensure that economic development projects can be approved within reasonable timeframes. We believe that much of the delay associated with permitting is a result of poor coordination among the BIA and the other federal agencies with which it must consult on project approvals. We are further concerned that because of limited budgets, BIA is unable to appropriately staff offices with enough personnel knowledgeable about energy development. Because of this, we be-

lieve that overworked BIA personnel are often overly deferential to other, more powerful and better funded agencies, sometimes to the detriment of Tribal interests.

On several permitting projects we have observed that, in spite of decades of federal agency guidance outlining agencies' obligations to consult with Tribes, there is a fundamental failure on the part of other federal agencies to engage in meaningful consultation with Tribes. BIA should be the agency tasked with ensuring that consultation is occurring and that Tribal sovereignty is being respected. And, we note that several agencies within the Department of the Interior have recently faced significant criticism for their failure to take their consultation obligations seriously and, indeed, a federal court recently enjoined BLM's hydraulic fracturing rule in part because of a failure to substantively engage in Tribal consultation. Nonetheless, we have observed BIA receive and concede to pressure from other federal agencies on several occasions, the result of which has been increased permitting times and costly project modifications that have neither been requested nor approved of by the Tribe. We believe this is related to understaffing at BIA agency offices and a lack of direction from BIA leadership empowering BIA personnel to stand up to these other federal agencies and decline proposed project modification when they do not correlate to Tribally-set policies and regulations.

*a) Tribal Lands treated as Public Lands*

We have observed a failure on the part of many of the federal agencies with which BIA must interact on permitting approvals to understand the distinction between Tribal lands and federal public lands. We have routinely observed these agencies attempt to inappropriately impose federal land use restrictions and policies on Tribal lands. For example, although U.S. Fish and Wildlife Service regulations and policies are clear that Tribal lands are not federal public lands and that Tribes should not be forced to bear a disproportionate burden for species conservation, the Fish and Wildlife Service regularly proposes permit restrictions for Tribal projects that are identical to the restrictions proposed for projects on federal lands. Rather than refuse to adopt these proposals, BIA often agrees and includes them as additional permitting requirements or conditions of approval.

This occurred recently on an Environmental Assessment prepared by BIA for 11 wells in the Randlett area. Following consultation with the Fish and Wildlife Service, BIA attached a number of conditions of approval to the permits requiring onerous setbacks and mitigation requirements applicable to operations in the vicinity of Uinta Basin Hookless Cactus populations and in areas that could serve as potential Yellow-billed cuckoo habitat. These additional requirements, which are neither mandated by federal law or regulation, were facially inconsistent with Tribal regulations and substantially increased the costs of the project. In addition, BIA has recently sought public comment on several Environmental Assessments analyzing development of purely Tribal resources. Federal regulations do not require public comment on Environmental Assessments, and BIA generally has a policy not to solicit input from the public at large on Tribal projects. This policy makes sense from a Tribal sovereignty perspective, as members of the public who are not Tribal members should have not say over Tribal development projects. However, in response to comments BIA received from the Environmental Protection Agency, BIA has decided to seek public comment on the last 3 Environmental Assessments it has prepared.

*b) Proposed Solutions*

We believe that Tribes are in a much better position to perform environmental analyses, require project modifications and craft best management practices and resource conservation plans than the BIA and that, in many cases, Tribes are already performing many of these functions informally.

While the GAO report pointed out that some BIA offices do not have staff with the skills needed to effectively manage Indian mineral development, many Tribes have staffs that possess these qualifications. The Ute Tribe has numerous highly trained employees who can perform many of these tasks in a manner that is consistent with Tribal management policies and goals. For example, the Tribe's Fish and Wildlife Department has 5 biologists on staff, compared to BIA's Uintah and Ouray Agency, which employs none. We believe that the Tribe's Fish and Wildlife Department can perform many of the plant and wildlife consultations the U.S. Fish and Wildlife Service currently performs in a more efficient manner. Similarly, the Ute Tribe's Energy and Minerals Department had a budget of \$2.3 million in 2014 and has 25 employees working on energy development reviews, royalty issues, land work and regulatory compliance. Further, as pointed out by the GAO report, BIA lacks GIS systems and other data identifying ownership of resources and resource uses and authorizations. However, the Ute Tribe has this information as well as a GIS database system for the vast majority of Reservation lands.

We believe that the resources the Ute Tribe already possesses should be put to greater use by allowing the Tribe increased authority over energy-related decision-making. In particular, we think that a mechanism should be developed that would allow for the following:

- Automatic deference to Tribal resource management and conservation plans. At present, Tribal resource management and conservation plans are considered, if at all, only during the NEPA process and we have found that BIA is often unaware of the existence of Tribal resource management and conservation plans that directly address matters under review.
- Replace Endangered Species Act Section 7 consultation, which requires BIA to consult with the Fish and Wildlife Service any time a proposed action might affect a listed or candidate species or its habitat, with Tribal consultation and issuance of a Tribal resource permit.
- Tribal facilitation of right-of-way preparation. Presently, all right-of-way applications must go through BIA, which does not have the personnel or data necessary to efficiently process such applications. In contrast, the Ute Tribe has adequate personnel and data systems in place to process these applications within a much shorter timeframe.

## VII. TERAS

### *a) Operators Working Directly with Tribes Can Provide Greater Regulatory Certainty*

As an operator, Crescent Point questions whether TERAs, as provided for under the Energy Policy Act of 2005, can realistically improve the efficiencies associated with development of Tribal oil and gas resources. From our perspective, we believe that TERAs are overly complex and that time has shown that they are not a useful tool to improve BIA efficiencies related to energy development. Nonetheless, for operators, there is a substantial benefit to being able to work directly with Tribes without numerous federal agency intermediaries. We would very much like to see a mechanism in place that would allow for direct Tribal approval and decision-making authority on Tribal oil and gas projects. We believe that the regulatory certainty this would provide would create a substantial incentive to invest in oil and gas development on Tribal lands.

We suggest that the Committee consider development of a program under which individual Tribes can assume responsibility for certain aspects of energy development without needing to enter into a TERA. As previously suggested, we think that, for example, the Ute Tribe is in a very good position to assume responsibility for management of plant and wildlife considerations associated with energy development. Under this approach, individual Tribes could decide which aspects of energy development they would like to assume, without having to take on the onerous task of entering into a TERA. We also suggest that the Committee also consider a mechanism under which Tribes could enter into TERAs for specific geographic locations, such as locations where they own both the surface and the mineral estate. This would allow Tribes to concentrate resources on areas in which they receive the benefit of oil and gas development and not on areas where their interest is limited to the surface.

We also believe that determinations about whether a Tribe has the capacity to regulate all or certain aspects of energy development should be made at the individual BIA agency office, rather than at the Region or the Office of Indian Energy and Economic Development. BIA agency offices regularly work with Tribes and know whether individual Tribes are ready to take over management of energy development.

### *b) Coordination Between Tribes and Operators Can More Effectively and Efficiently Develop Appropriate Mitigation Measures to Address Tribal Resource Concerns*

In addition to the efficiencies and regulatory certainty that would accompany a direct working relationship between operators and Tribes, we also believe that there would be a substantial benefit to consolidating project decisionmaking authority within the individually affected Tribe. Not only would this significantly decrease the overlap and inefficiencies associated with the need to obtain BIA approval for permits, but we believe that Tribes are often in a better position than the federal government to make decisions about management of their resources. From an operator's perspective, this will increase the incentive to invest in Tribal projects by allowing us to work collaboratively with our Tribal partners to tailor project components to meet Tribal objectives and to react quickly to changing circumstances without a federal intermediary.

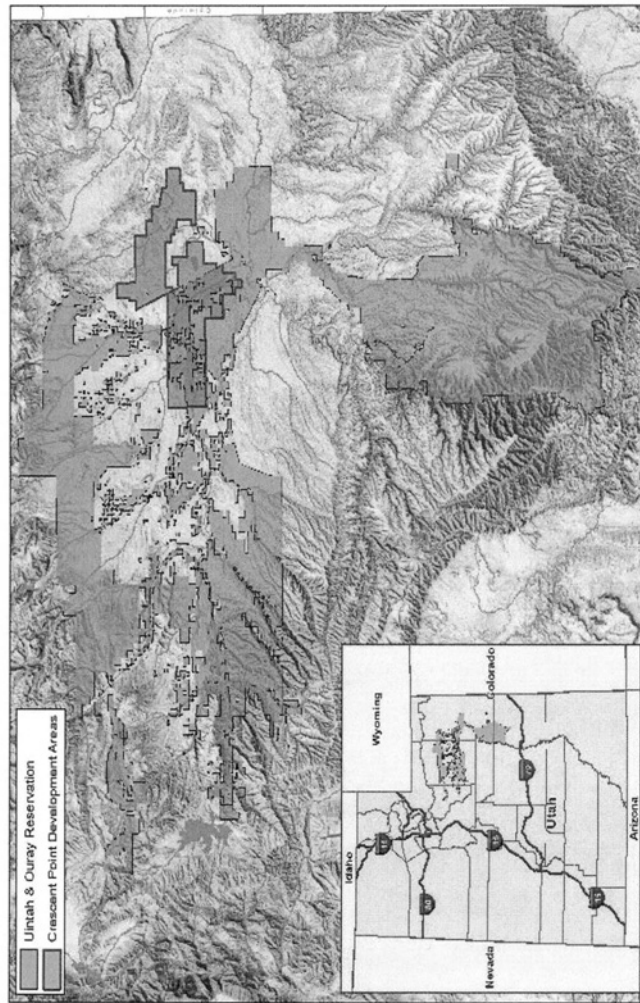
In closing, I would like to thank Chairman Barrasso and Vice Chairman Tester and the Members of the Committee for the opportunity to present these issues on

behalf of Crescent Point. I firmly believe that there are numerous opportunities for Tribes and private industry to work together to develop Tribal energy resources in an environmentally responsible manner and according to Tribally-set objectives and policies. All operators and Tribes need from the federal government to accomplish this goal is less federal oversight of Tribal decisionmaking and more opportunities for direct management by Tribes.

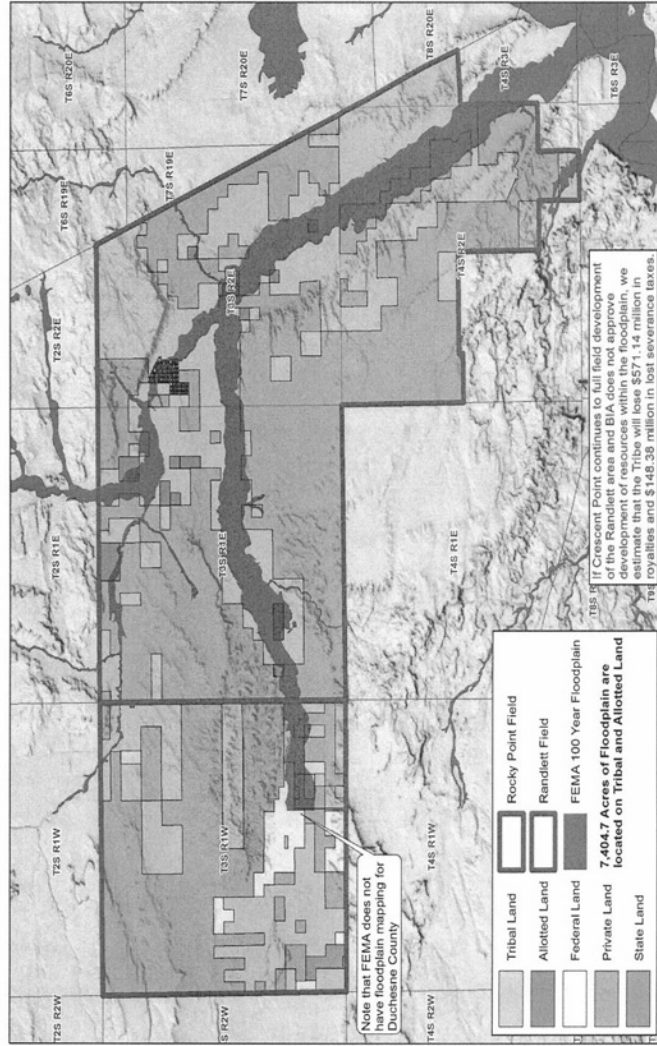
#### Attachments



### UTAH PROJECT ORIENTATION MAP

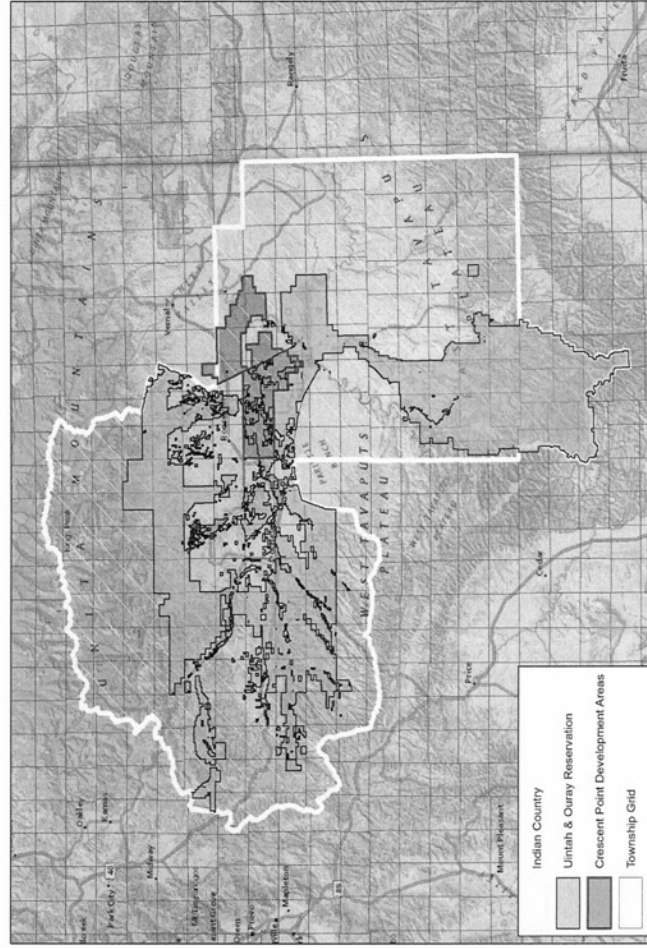


# RANDLETT PROGRAMMATIC EA 100 YEAR FLOODPLAIN MAP

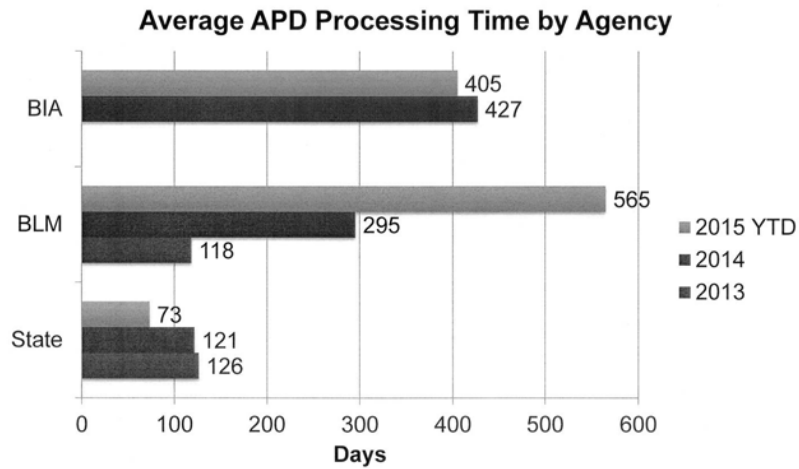


If Crescent Point continues to full field development of the Randlett area and BIA does not approve development of resources within the floodplain, we estimate that the Tribe will lose \$571.14 million in royalties and \$148.38 million in lost severance taxes.

# INDIAN COUNTRY JURISDICTION



## PERMIT APPROVAL TIMING – YEAR OVER YEAR



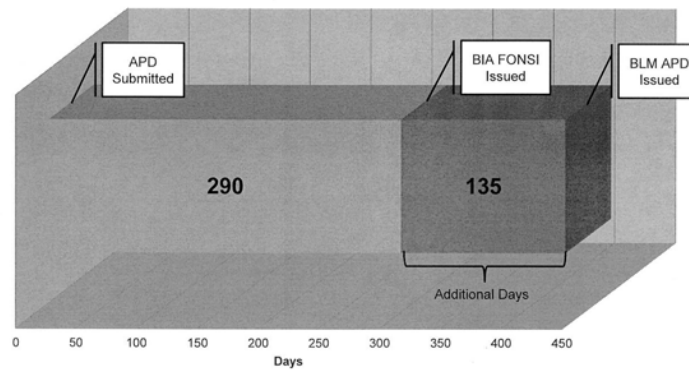
CRESCENT POINT ENERGY | U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

EXHIBIT 4

## Delays to Tribal Permit Approvals



## Additive Delays Due to Duplicative BLM Review



Cumulative review based on 2014-2015 APD approvals

EXHIBIT 5



# APD = MISSED DEVELOPMENT & LOST REVENUE



**Case Study: Ute Tribal 9-30-3-2E**  
Tribal/Tribal permit submitted 5/22/2013

Internal estimate was an April 2014 approval

Central Randlett 100 mbbl type well  
\$1.9MM drill, complete, equip  
May drill, June frac, July on prod  
  
BTNPV10 – \$1,129,600  
Rate of Return – 37%  
Payout – 2.2 years

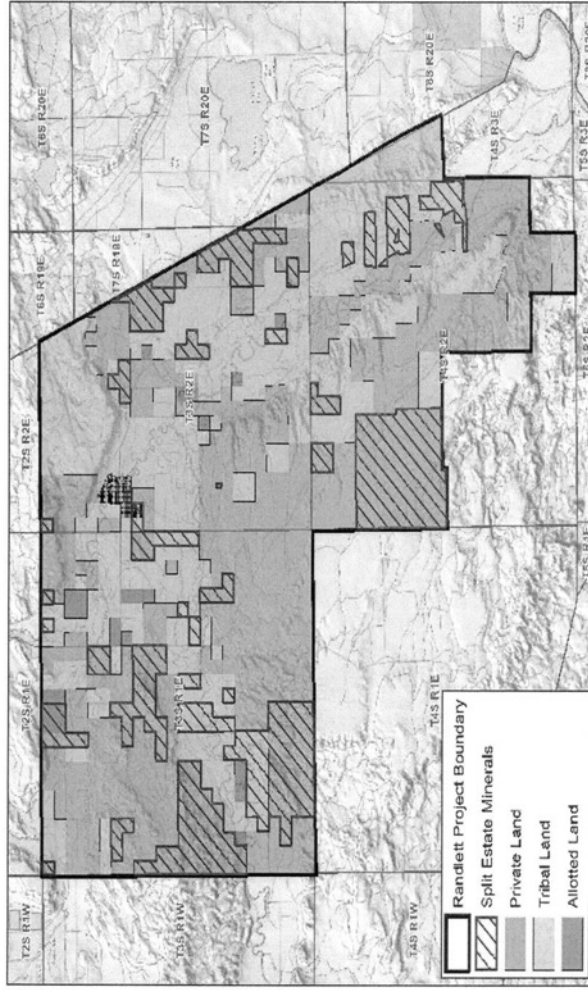
	Q3 2014	Q1 2015
Price Deck	Price Deck	Price Deck
2014	\$97.50	-
2015	\$97.50	\$62.50
2016	\$97.50	\$75.00
2017	\$97.50	\$80.00
2018	\$97.50	\$85.00
2019	\$98.54	\$90.00
2020	\$100.51	\$95.00
2021	\$102.52	\$98.54
2022	\$104.57	\$100.51
2023	\$106.66	\$102.52
2024	\$108.80	\$104.57

Actual approval was September 12, 2014

Central Randlett 100 mbbl type well  
\$1.9MM drill, complete, equip  
Nov drill, Dec frac, Jan on prod  
  
BTNPV10 – \$291,700  
Rate of Return – 13.7%  
Payout – 5.9 years

CPG postponed drilling this location due to the decrease in well economics.

# NATURE OF ESTATE - COMPLEX JURISDICTION



## DISPROPORTIONATE CONSEQUENCE TO THE TRIBE



## • Cost Estimate Per Single Tribal Surface/Tribal Mineral Well

Task	Summary	Cost Estimate
CIVIL / RESOURCE COST	Staking, Plat, Cultural & Paleo	\$13,500
FEDERAL PERMIT FEE	APD	\$9,500
NEPA COST	Environmental Assessment	\$3,000
WOTUS	Wetland Determination & WOTUS Permitting	\$15,000
	Total	\$41,000

## • Cost Estimate Per Single Fee Surface/Fee Mineral Well

Task	Summary	Cost Estimate
CIVIL / RESOURCE COST	Staking, Plat	\$5,500
WOTUS	Wetland Determination & WOTUS Permitting	\$15,000
	Total	\$20,500

CRESCENT POINT ENERGY | U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

EXHIBIT 8

## Encouraging Investment in Tribal Oil and Gas Projects



- We believe that the following will provide significant incentives for oil and gas operators to invest in development of tribal oil and gas resources:
  - Develop mechanism where Operators can work directly with the affected Tribe without Federal intermediary
  - Allow Tribe to take over all or certain components of energy development, depending upon the Tribe's preference
  - Develop a less complicated mechanism for allowing Tribal management of energy development than a TERA
  - Empower BIA personnel to advocate for Tribal self governance and to stand up to other federal agencies

CRESCENT POINT ENERGY | U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

EXHIBIT 9

The CHAIRMAN. Thank you so much to each of you for your testimony. We will start with some questions. I believe Senator Hoeven is first.

Senator HOEVEN. Thank you, Mr. Chairman. Thanks to both you and the Ranking Member for holding this important hearing today.

Mr. Roberts, how are you responding to the GAO findings on the backlog on right-of-way approvals in Indian Country?

Mr. ROBERTS. Some of the things that we are doing on right-of-way approvals is we put out a proposed rule on rights-of-way to streamline that process. That rule is well on its way to being finalized. The comment period is closed.

We are hoping that that rule, which has had a lot of tribal engagement and a lot of public comment, that that rule will streamline the process. A couple of years ago now, 2012, we updated our leasing regulations. Those leasing regulations are very deferential to tribal decision-making in terms of those agreements and those sorts of things.

Our proposed rule for the right-of-way regulations sort of took the same path, I will say. Like I said, we are hoping to finalize those right-of-way regulations in the near future. We think that will be a big improvement.

Senator HOEVEN. When do you anticipate finalizing it, and do you anticipate it having significant impact in reducing the backlogs?

Mr. ROBERTS. We hope to finalize it as soon as we can.

Senator HOEVEN. Which would be when?

Mr. ROBERTS. I don't know, Senator.

Senator HOEVEN. A year? Two years?

Mr. ROBERTS. Before this Administration ends, hopefully.

Senator HOEVEN. So less than a year?

Mr. ROBERTS. Less than a year. Well, more than a year, but yes.

Senator HOEVEN. Okay. So within the next year, and you think it will have a significant impact?

Mr. ROBERTS. I do. I think it will be very helpful.

Senator HOEVEN. The Chairman of this Committee has authored and submitted the Indian Tribal Energy Development and Self-Determination Act to streamline the application process for right-of-way approvals. I am pleased to co-sponsor it, as are other members of this Committee, in a bipartisan fashion. Are you supportive of that legislation? Are you willing to help get it passed and enacted into law?

Mr. ROBERTS. Kevin Washburn, the Assistant Secretary, testified on, I think, identical legislation last Congress. He identified a number of areas where the Administration is supportive and some areas where we had concerns. We suggested, for example, that the legislation, rather than having a capacity determination, that we try to streamline that legislation to be similar to what is done in the HEARTH Act.

Senator HOEVEN. I am not sure what that means. My concern is that this process is not moving forward. I listened to both the Chairman and the Ranking Member talk about how former members of this Committee expressed concern about the very same problem that we are expressing concern about today.

So how are we going to get beyond talking about this problem and maybe doing something a year from now to actually getting something accomplished today?

Mr. ROBERTS. Senator, we do hope to finalize those regulations as soon as we can on rights-of-way in terms of the Chairman's bill. We have testified on that in the last Congress. We are supportive of a number of provisions in that bill. If it is enacted into law, we will certainly implement it.

Senator HOEVEN. Are you willing to work with the States to avoid some of the duplication, for example, in the hydraulic fracturing rule that Interior has brought forward, and give the tribes more discretion in the right-of-way process?

Mr. ROBERTS. In terms of hydraulic fracking, as I am sure everyone is aware, that is subject to litigation at this point in time. I will note that the final rule on hydraulic fracking provided an opportunity for BLM to issue modifications to the rule if a tribe or a State would come to BLM to talk about those modifications. So I know that the rule is in litigation right now. It is not being implemented. That is about all I can say on that.

Senator HOEVEN. But you would support that flexibility for States and tribes?

Mr. ROBERTS. The flexibility was in the final rule.

Senator HOEVEN. Right. And you would support acting on that and empowering tribes to use that flexibility and giving them more discretion?

Mr. ROBERTS. Sure.

Senator HOEVEN. Mr. Rusco, what is your recommendation to move this along? How do we get this going faster?

Mr. RUSCO. Well, we don't want to comment on ongoing legislation.

Senator HOEVEN. Well, I don't mean just the legislation. I mean action, reducing the backlog and getting activity expedited.

Mr. RUSCO. I think that some things that have worked, we have encountered similar problems with BLM and their management of oil and gas on Federal lands, not as extreme as what we found here. But some of the things that worked were pulling qualified staff with the right skills from other locations and bringing them to places where there were hotspots. They did that in North Dakota, they brought people in to reduce a backlog. It was very effective in doing so.

We are going to have to do something like that, because there are many offices that just plain don't have the right staff to do the job.

Senator HOEVEN. Thank you.

The CHAIRMAN. Senator Tester?

Senator TESTER. Thanks, Mr. Chairman. First things first, Mike, great haircut. I am just telling you.

[Laughter.]

Senator TESTER. The Department has been, we have been doing energy development for 100 years or longer in tribal. It is true that this Administration has tripled the number of leases in Indian Country. But we are still not where we need to be.

I had mentioned in my opening statement that the TERA agreements, no tribe has taken advantage of them. Mr. Olguin said that they had asked for clarification and the BIA and Larry, tell me, they didn't want to give any? The statement by Mike -

Mr. ROBERTS. Senator, I understand his statement that, the statement that he made was whether the Department would provide guidance on what is an inherent Federal function. The GAO raised that issue and I think we are committed to providing guidance on what is not an inherent Federal function, to provide more clarity.

So for example, when we are contracting with tribes under 638 contracts, for example, if there is a Federal approval that is needed at the end, a number of tribes are successfully implementing the

Federal program up to the point of approval. So we will provide guidance on what is not an inherent Federal function.

Senator TESTER. So what is the problem? I mean, I am not talking about the TERAs. I do want to get out there, because I think the tribes are asking for something, you just can't say no. So that is good. But what is the real problem here? Is it that the BLM has their fingers in the cookie jar on this stuff and that the BIA has to do their thing and the permitting costs more money than it does on fee land? This can be fixed. You have to tell us how to fix it. So tell us how to fix it.

Mr. ROBERTS. There are a lot of challenges that GAO raised, both within our lane and outside of our lane, quite frankly. I think every member of this panel touched upon the fact that we are dealing with a complicated land ownership situation, fractionation, allotment. The allotment policy passed in the 1880s. It leads to a lot of our difficulties here today.

If we can make some headway, and we are making headway on a lot of different fronts, in restoring tribal homelands, consolidating lands, those sorts of things will help in the big picture. In the small picture, in terms of oil and gas development and energy development, we need to and we are more closely collaborating within the Federal family.

But I think one answer, Senator, very clearly is what Kevin Washburn testified to in the last Congress, which was a HEARTH Act approach for oil and gas development. The HEARTH Act is working in Indian Country. Like I said, we have over 20 tribes that have taken advantage of the HEARTH Act.

So when a tribe that has taken advantage of the HEARTH Act for let's say, surface leasing of lands for wind or solar development, those approvals no longer need to come back to the Department of Interior. The tribes can approve those projects.

So some of the things that the GAO report highlighted—

Senator TESTER. Will be done with the HEARTH Act, if we get that model passed or you get that model through rule.

So okay, Mr. Rusco spoke of pulling qualified staff within the BLM and the high growth areas. Do you have that capability?

Mr. ROBERTS. No, we have a very hard time.

Senator TESTER. Why do you not have that?

Mr. ROBERTS. Because we can't compete with the private sector.

Senator TESTER. You mean you can't hire people because your wage is not high enough?

Mr. ROBERTS. That is right.

Senator TESTER. Okay. So is that an Office of Personnel Management problem or is that a budgetary problem?

Mr. ROBERTS. It may be a budgetary problem, it may be a statutory problem. That is not to say that we don't have great staff.

Senator TESTER. I am not saying that. What I am asking is that if you don't have enough great staff.

Mr. ROBERTS. Right.

Senator TESTER. And that is what I heard you say.

Mr. ROBERTS. Yes.

Senator TESTER. When you put your budget forth to us, did it include enough dollars for hiring the folks you needed?

Mr. ROBERTS. It included increases for realty services, it included increases for an oil and gas -

Senator TESTER. What impact did sequestration have on that budget?

Mr. ROBERTS. Significant. It was across the board. Operating under a continuing resolution, we are stuck now until December 11th. We have a very limited budget. We have memorandums of agreement and are ready to go on the oil and gas service center once we get a budget.

Senator TESTER. I have to do this, if you will just give me this flexibility, because Grant is here, and there was just one question I wanted to ask. You had six recommendations. I appreciate that, by the way. I like solutions. Thank you for that, Grant.

Can you tell me how much earnings Fort Peck has lost because the deposits are not held in interest-bearing accounts?

Mr. STAFNE. Substantial. As a former Federal employee, we used to have special deposit accounts. Oil and gas companies would come onto our reservation and bid on hundreds, thousands of tracts. When they bid on those tracts, they were required to bring a portion of the money and we would put that in special deposit accounts until the leases were approved. That sometimes took six, seven, eight months.

By the time they were distributed or disbursed to the rightful land owners, it was pretty good revenue for the land owners. Senator, I cannot give you a figure, but just from what I said, you can imagine what that impact would be.

Senator TESTER. Excuse me, Mr. Chairman, who did that? Why isn't this still being done this way?

Mr. ROBERTS. I can get you an answer to that. I don't know the answer to it.

Senator TESTER. Okay, thank you.

The CHAIRMAN. Thank you, Senator Tester. Senator Daines?

Senator DAINES. Thanks, Mr. Chairman. I want to explore the challenges regarding responsible energy development in Indian Country and talk about possible solutions. I know, Councilman Stafne, you have some ideas there as well. Senator Barrasso, I think, has a good bill to strengthen the tribes' abilities to control their own destinies and have more authority in developing their own energy.

I remind members of this Committee the House recently passed H.R. 538, the Native American Energy Act, with a very strong bipartisan vote of 254 to 173, which includes some good provisions to streamline permitting processes and make some worthwhile improvements in the BIA such as appraisals and ensuring the seven regional offices are going off the same playbook, some standardization.

The GAO report mentions one challenge to Indian energy development, and that is a lack of access to energy tax credits in Indian Country. Senator Tester and I have introduced a bill to make permanent the Indian Coal Production Tax Credit to incentivize on Indian reservations for energy development where it is already too costly and where it is needed most.

Questions I have, I will start with Mr. Cuch and Mr. Olguin. You both mentioned frustration with meaningful consultation with the

BIA and other Federal agencies regarding energy projects. In particular, you mentioned the hydraulic fracturing rule. We know in Montana, and especially in Councilman Stafne's neck of the woods, how important that technology, hydraulic fracturing, has been in unlocking prosperity for rural communities.

My question is, could you expand on the challenges associated with the hydraulic fracturing rule? Let me start with Mr. Cuch.

Mr. CUCH. The new proposed rule we find to be duplicative of what States already provide. It means added time and cost to our operations to be able to follow those new regs, wherever they may end up being. So that would be my comment related to that.

Senator DAINES. Mr. Olguin?

Mr. OLGUIN. For us, the challenge is as far as consultation. It did occur from the very beginning, when we didn't feel we had fruitful consultation on what the BLM rule was going to be comprised of, let alone what it was going to become. We ended up at the point where we drafted our own regulation, passed it through tribal resolution and we are at the point now where we have filed suit against BLM for their regulation being imposed on tribal lands. So we are in litigation now.

There is a stay from the judge and with that, we are working on settlement.

Senator DAINES. So why don't you think you receive meaningful consultation? My experience has been, meaningful consultation by the bureaucracy tends to be, well, we received a letter, we had a meeting, we had a cup of coffee, we came to a conference room. But it seems like you are not being listened to in terms of the substance of your proposals and argument.

Mr. OLGUIN. That is true. When we look at the initial, it was a PowerPoint presentation of here is what hydraulic fracturing is. Well, we know what hydraulic fracturing is, we have been doing it for 50 years. So it wasn't necessarily that we needed an education component. We need to understand, what is the rule, what was the rule intended to do, and let's have this meaningful conversation face to face, discuss the issues, argue back and forth, if that is what it takes, but come to an understanding that we are talking the same thing.

Senator DAINES. So do you believe that these agencies understand what meaningful consultation really is?

Mr. OLGUIN. Yes, I think they do today.

Senator DAINES. Why aren't you being heard?

Mr. OLGUIN. Well, today we are because of the lawsuit.

Senator DAINES. But that seems to be a failure in their process that we should be trying to avoid the course and have the meaningful consultation up front.

Mr. OLGUIN. I am not sure. I have my own speculation but I really don't know.

Senator DAINES. Mr. Roberts, did the BIA work with BLM on the implications of the hydraulic fracturing rule in Indian Country?

Mr. ROBERTS. The implications?

Senator DAINES. Right. There is a disconnect here, there are implications, there are consequences.

Mr. ROBERTS. It is BLM's rule, I know that it is in litigation. There is not a whole lot, unfortunately, I can say about that. As



the Honorable Mr. Olguin said, we are in settlement discussions with the tribe on their lawsuit.

Senator DAINES. The BIA, do you work with these other agencies like the BLM to ensure that the tribal trust responsibility is upheld appropriately? I don't think it has been upheld appropriately.

Mr. ROBERTS. Sure. We do work with the other Federal agencies. That is one of the things that we are trying to incorporate in the service center. So the service center, if we get funding from Congress to move forward with that, it will be BLM, it will be ONR, it will be BIA. We will all be co-located, so that we are all working together.

Senator DAINES. That is an activity. I am looking for results. It looks like what has happened here has been a failure in that process, where the tribe is saying they don't believe they really experienced meaningful consultation.

Mr. ROBERTS. There is really not a lot at this point, again, because it is in litigation, Senator, I can't really comment on the adequacy of consultation in that process.

Senator DAINES. Thank you.

The CHAIRMAN. Thank you, Senator Daines. Senator Heitkamp?

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman.

Mr. Roberts, would you agree with the statement that the lands that are managed by the Bureau of Indian Affairs and by BLM for the tribes and for individual members of the tribes are not public lands?

Mr. ROBERTS. They are different than our normal public lands.

Senator HEITKAMP. Yes or no. They are not public lands.

Mr. ROBERTS. We hold them in trust for the tribes.

Senator HEITKAMP. That is right. And I think that is the crux of the problem here. These are not public lands.

But yet they get treated all the time as if they are, as if they are minerals that are owned by the people of the United States, as opposed to minerals that are owned by sovereign nations and by the people of sovereign nations. Until we really start appreciating that there is a differentiation here, I think we will always be at this table arguing this point over and over and over again.

You can say, well, this was set up, because there is this trust obligation. But the facts that were revealed in the Cobell litigation tell us that fiduciary obligation and that trust obligation hasn't been well managed, it continues to not be well managed by the Department of Interior.

Mr. ROBERTS. Senator, I can assure you that we take our trust responsibilities very seriously. It was this Administration that settled the Cobell litigation. It is this Administration that has settled over 80 trust settlements with tribes.

Senator HEITKAMP. I understand that. I am trying to make a point which is historic. It is not just about this Administration. We constantly try and deal with the facts that are in front of us instead of looking at this in an historic context, which is that these are minerals that belong to a different sovereign nation. Just as you shouldn't require an EIS for the State to drill on, lease its own

minerals, I don't know why we are in this situation, delaying permits and delaying leases and delaying the things that need to be done, when you have elected tribal governments that have that responsibility.

I think that is an historic anomaly. But that is why we are here. We are here because of the structure that we have set up here in Congress that manages minerals that are owned by people other than the people of the United States. Obviously, citizens of the United States, but not in the context of traditional BLM minerals.

I want to get to the employment issue that Senator Tester raised. I have done a lot of work on this with OPM. We have been able to get various accommodations from OPM through the Department of Defense. We are working now with USDA. Department of Interior has been really slow to work with us to try and make sure that OPM is doing what they can to deal with high cost of living and low participation rates in the Federal workforce. We can't get this work done until we staff to get this work done.

So I want a commitment from you, Mr. Roberts, that you will take back to Department of Interior my frustration that we continue to work on this but we haven't gotten very far in terms of making sure that we get salary adjustments that will add to the workforce.

Mr. ROBERTS. Absolutely, Senator.

Senator HEITKAMP. Just a final point, I don't have a lot of time left. Mandan, Hidatsa and Arikara Nation has counted 100 steps and up to seven agencies who provide a permit for drilling on tribal land. Let me repeat that. A hundred steps and up to seven agencies. I am glad that you are talking about centralizing this. It is what some of the tribes have done. I think the tribe's proposal, the Mandan, Hidatsa and Arikara proposal is to provide a director to oversee permitting requirements for all the agencies involved.

Would creating this office under your plan resolve staffing issues, and having one point of accountability for the tribes to actually, instead of trying to deal with Fish and Wildlife, trying to deal with BLM, trying to deal with a myriad of Federal agencies, shouldn't there just be one person accountable in all of this?

Mr. ROBERTS. That is the design of the service center. You are right, Senator, we heard that from tribes and we have consulted with tribes. It was their idea for the service center. So we are trying to implement that.

Senator HEITKAMP. This is incredibly frustrating, because the time when we could have been producing oil at \$100 a barrel, that opportunity, as we look at oil prices now at \$45. If you are looking at, from the standpoint of a production company or a drilling company, and you have all the headaches of trying to work through 100 different steps and seven agencies, you are not going to drill in Indian Country.

I would like at some point somebody to really examine this issue of going back and just thinking about this differently. It is not public land. It is land that is owned by sovereign nations. It is land that is owned by members of sovereign nations. A lot of the system was set up to be paternal and kind of dictate. There is nothing that would recommend in the past, and I am not saying it is this Administration, but when you go past, that would recommend that we

have really fulfilled our fiduciary obligation or our trust obligation to either individual members of the tribe or the tribe themselves.

So there is no doubt there is a legitimacy to the frustration that we see today and we continue to see. So this needs to be resolved maybe in a broader context.

The CHAIRMAN. Thank you, Senator Heitkamp. Senator Lankford?

**STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Thank you all for your testimony. And on what Senator Heitkamp was just saying, I couldn't agree more. We have to be able to streamline this process. There should be ongoing conversation, rather than hearing it again and again and again and saying, there is a problem. There has to be some conversation to say, how do we actually resolve this, so it is not an ongoing conversation.

Let me ask a follow-up as well, to what Senator Daines was talking about also. Mr. Roberts, before the BLM released their frack rule, did the BLM consult with BIA and say, we are about to do this rule, what would be the consequences in Indian Country if this rule is released? Did that conversation occur?

Mr. ROBERTS. My understanding is that BIA participated in some of the consultations, if not all of them. I don't have the details for you, Senator, today. But I think there was coordination between BIA and BLM.

Senator LANKFORD. Was there a conversation between BIA and back to BLM during that consultation to say, here is what the financial consequences will be to tribes if this rule is imposed?

Mr. ROBERTS. I don't know.

Senator LANKFORD. Was there an estimate of the financial consequences on tribes and the effect on jobs if that rule is imposed? Was there any study that was done or any conversation or BIA advising BLM, if you do this, this is the consequences on tribes?

Mr. ROBERTS. I don't know, Senator.

Senator LANKFORD. How can we find out? Obviously there is this trust responsibility to make sure that we are managing that. When that rule is being discussed behind closed doors, we trust BIA to actually speak out on behalf and say, if BLM does this and imposes this on tribes, here is the effect of it. That is important to know how that is being fulfilled.

Mr. ROBERTS. I would be happy to follow up with you, Senator.

Senator LANKFORD. Please do. We would love to have some notes on that, just the back and forth on that. For instance, when EPA and Corps of Engineers are discussing the Waters of the U.S. Rule, there was swapping back and forth between the attorneys. We have those documents, how they swapped back and forth and were having those internal conversations. We would like to know how BIA was advising that back to BLM.

Let me ask this as well, dealing with Osage and the Osage Nation area and Osage County in Oklahoma. It is a unique energy issue, because of the mineral rights in that area. I would be confident that you are aware of some of the issues there. BIA earlier this year released new regulations for conducting operations in

Osage County. During that time period of releasing those new regulations, royalties had dropped in half during that time period. It has been a very significant change on that.

Can you give me an update on the status of the suit and newly released regulations that may be pending for Osage?

Mr. ROBERTS. I just know that it is still in litigation. There has been a stay. Mike Black, the Director of BIA, has been thoroughly involved with this. He has been working with Kevin and I on this. I know we are in close coordination with your staff as well, Senator.

Senator LANKFORD. Do you know if BIA will put out new regulations for the Osage mineral stay, if that is in the conversation?

Mr. ROBERTS. I don't know.

Senator LANKFORD. Can you help me understand something that has happened recently in the Osage area? My understanding is BIA has decided that all permit applications, activity reports, historical information about production activity, individual wells, has now been taken into BIA and is considered to be private information that is inaccessible. If someone wants to get a history of a well, now rather than that being available, they have to get a FOIA request to get background information on a well.

Do you know if that is true?

Mr. ROBERTS. I think it is true. I think the staff at Osage are, obviously they have to comply with Federal law. My understanding is that there were some instances where perhaps information as not, was being provided without a FOIA request. But we do need our staff to provide the information in accordance with law. That is what I understand our staff is doing now, Senator.

Senator LANKFORD. So let me help with the hurdle here again. Not only is it more expensive to then do production in Indian Country, not only does the permitting take five times longer, but now if you are interested in buying that well, you can't just go get the information. One county over, you could actually go online and get that information if it is anywhere else in the State, and be able to find it, if you want to get it and deal with production. Now you also have to jump through a FOIA request hurdle on this as well.

Mr. ROBERTS. My understanding is that we are working with staff to make as much of the publicly-available information available to the public without a FOIA request.

Senator LANKFORD. I am just trying to figure out why suddenly you have to go through a FOIA request hurdle. Why was that even a consideration for publicly-available information, what has been historically publicly-available, now a new hurdle has been added to a million other hurdles that are there?

Mr. ROBERTS. My understanding, Senator, is that some of the information that was being released may have contained Privacy Act information. So we obviously don't want that to occur. We are looking at that information now. We will try to put out as much publicly-available information as possible. I know Director Black and his staff have been at Osage both last week and this week.

Senator LANKFORD. Has any of that information been lost? Do you know if all that information has been retained? Is there any missing information on any of the wells?

Mr. ROBERTS. I am not aware of any missing information, Senator.

Senator LANKFORD. Obviously there are multiple issues as we deal with Osage. It is a unique issue but it is characteristic of what is happening in a lot of the energy development along this. The greater number of hurdles that are placed there, the incentive is go somewhere else. That directly affects what is happening in Osage County. That directly affects the tribe. That directly affects everything in Indian Country across my State and other States as well.

The more hurdles, the more expensive this is, the longer the process, the more people say, I will go next door. Which has a direct effect, in this case, just on headright owners there, where it has been cut in half just this year. So there are significant effects that are happening. We are trying to figure out, how do we help the tribe and how do we provide some sort of level stability, and where are we going to be able to get efficiency in the process and who is an advocate for the tribes to be able to say to other agencies, if you do that, here is how it hurts. Let's find a way to be able to except out the tribes so this doesn't make a hard process even harder.

I yield back.

The CHAIRMAN. Thank you, Senator Lankford. Senator Franken?

Senator FRANKEN. Let's make a hard process easier. It should be easier to do energy projects on Indian land than anywhere else. Because we have a trust responsibility.

Mr. Roberts, do you disagree with anything in the GAO report?

Mr. ROBERTS. Senator, as I testified, we are implementing almost all the recommendations. The one thing that I would say, an area of disagreement with the GAO report is more a small picture than big picture. The GAO report basically says we should have GIS mapping capability that is provided to tribes. And that it should be in a certain system of records.

What we have responded to GAO is that we have that system. It is called the NIOGEMS system. It is freely available to tribes. In fact, we are utilizing it at a number of reservations today. I am more than happy to have our staff, who are familiar with that, work with your staff to show you. Because it is state of the art.

You can go on, for example, Fort Berthold—

Senator FRANKEN. Okay, I got that. But I am struck with the staggering loss of opportunity, as well as the Chairman was. And you sense the frustration here. We here on Indian Affairs, we are the ones who hear this testimony. We are the ones who hear the testimony about youth suicide. We are the ones who hear about the inability to get housing. We are the ones who hear that we can't get law enforcement because we don't have housing, that families have to double up because there isn't housing.

We are so frustrated. Then it is hard to argue for funding which you need when you are having reports like Mr. Rusco's that say the BIA is not operating efficiently. That is another catch-22. Why should we fund the Bureau of Indian Affairs? The Bureau of Indian Affairs isn't doing its job if it is dysfunctional.

We all want to see this happen yesterday. I want your pledge that you will get this done in terms of making this process more

efficient, so that we can help you. Secretary Moniz was testifying about the budget a while ago in the Energy Committee. By the time it got to me, I think I had all the time I needed so I just said, is there anything you want to say? He said, yes, we put \$11 million loan guarantee for Indian energy. This is something that Congress authorized a loan guarantee program in the Department of Energy, dedicated to tribal energy development, in 2005. It has never been funded.

The President included \$11 million for the program in his budget request this year. My staff has talked to the Chairman's staff about this. He expressed concern that it was just renewables that would be in this. Again, I said "a coal mine," as painful as that is for me to say, a coal mine, oil, gas. I would love my colleagues to urge the appropriators to appropriate that. They have already resolved, without it, they finished their package. But I want an amendment to get this \$11 million, which can leverage \$90 million, \$100 million in projects in Indian Country.

But I want to be able to say, going forward, that we will be able to do these projects. I think a loan guarantee will help get these projects done. Do you agree on that?

Mr. ROBERTS. Yes, sure. Absolutely.

Senator FRANKEN. Okay. Mr. Rusco, can I ask you what the barriers would be to, say, doing a solar project in Arizona for a tribe? Just give us a typical, let's say a tribe wants to start a solar project. There is plenty of sun. I am sorry to go over my time here.

I have been in Arizona in the summer. It is just sun. Let's say a tribe wanted to do that. What barriers would you see? Can you paint a picture for us?

Mr. RUSCO. I think Senator Heitkamp said it much better than I could. You have to deal with multiple agencies, and you will have to do that on their time and go through their processes. There is nobody to turn to to guide you through that process.

There is a good example in the Federal Government of a permitting process that actually works where there is a one-stop shop, and it is not a small group in one State, it is the Federal Energy Regulatory Commission for permitting pipelines. You go across multiple Federal and private jurisdictions, you have to go to all the resource agencies and you have to get all kinds of permits and studies and all that sort of thing.

But FERC coordinates with all the agencies and makes sure that they are understanding the process and they are guiding the applicant through the process from step one all the way to the end. That kind of a model can work. I am not making a recommendation. I don't know how to fix it.

Senator FRANKEN. Would you write that piece of legislation for me and have it on my desk tomorrow? Or on the Chairman's?

[Laughter.]

Mr. RUSCO. Absolutely.

The CHAIRMAN. Al Franken for pipelines.

Senator FRANKEN. Well, I am for pipelines. We have pipelines, and they need to be approved, so that we don't have what happened in Enbridge, in Michigan. You need pipelines, especially because we have a lot of Bakken oil coming through Minnesota by rail and taking space that could deliver farm produce or product.

Don't get me wrong, I am for pipelines. I just want to see it easier to do this. It should be easier in Indian Country than anywhere else. That should be our goal. Thank you.

The CHAIRMAN. Thank you so much, Senator Franken.

Mr. Roberts, I want to go back to something you said. Why is the DOI opposed to Southern Utes doing their own fracking rule? Doesn't the DOI support sovereignty of the tribes?

Mr. ROBERTS. This matter is in litigation, Chairman. I will say that the fracking rule provided a process, a variance process, a process where the tribes could work through BLM or States, for that matter, and utilize tribal regulations for fracking.

The CHAIRMAN. Mr. Rusco, your report on Indian energy development identified poor management by the BIA as an impediment to Indian energy development. A number of us picked up on your staggering loss of opportunity comment. Your written testimony noted one tribe estimated that approximately \$95 million in potential revenues from royalties, permitting fees, severance taxes was lost due to agency delays.

Can you elaborate a little bit on the extent of the effects on tribes and tribal members as a result of this agency's management shortcomings?

Mr. RUSCO. Unfortunately, the record-keeping and the information systems can't give you a comprehensive picture. But I can give you some examples. We talked to a tribe trying to develop a wind project, wind energy project. And for years they had gone through trying to get approval through BIA for the basic permits. They had a purchase power agreement, they had a utility willing to pay them for the power.

It took so long to do that that after several years, in the middle of this process, the tribe went ahead and went through the process of getting, of implementing the HEARTH Act in order to bypass that. That was faster than actually getting through the other process.

But they didn't actually still get the project built. Because by the time all the delays took place, the purchase power agreement expired. So now they are looking for a new buyer. I don't think you can estimate the value that these kinds of delays cost, because if you miss the train, it is not coming back through sometimes. You have a case where you are buying power from a bunch of places, and when they are bought up, you are not on the list any more.

Oil and gas is not that different. If an area is being developed and they are building infrastructure and if all that gets done and the service companies move out and the pipelines that are going to be there are there, and now you want to develop a new area, you have to ramp it all up again. This is what the delays cost.

The CHAIRMAN. And \$100 oil versus \$50 oil in terms of the potential.

Mr. RUSCO. Exactly.

The CHAIRMAN. Secretary Roberts, the GAO report highlighted that the BIA faces limitations in staff expertise needed to administer energy development functions. We have heard testimony indicating that the number of agency personnel trained in oil and gas development work isn't sufficient to meet the demands of the increased energy development on Indian lands.

What is the BIA doing now to ensure proper staff expertise is available to assist the tribes and their energy partners in developing resources?

Mr. ROBERTS. We are utilizing every incentive that is available to us for hiring. As I said, we are competing with private companies and corporations. We are also losing great folk from the Bureau to tribal leadership positions and other positions.

So we are working actively to fill those. But it is a matter of competing with industry.

The CHAIRMAN. I think members of the Committee find it troubling from the GAO report that the Bureau of Indian Affairs doesn't have the data needed to verify ownership of oil and gas resources, that data isn't readily available to identify resources available for lease or identify where the leases are in effect. The report noted that in some cases, agency personnel would have to search paper records stored in multiple locations to find the data. The Department's response letter to the GAO from August of this past year noted that a national data set of all Indian land tracts with visualization functionality is expected to be completed, they say, within four years.

What is the BIA going to do in the interim when tribes and tribal members need the data to develop their energy resources?

Mr. ROBERTS. We are working as hard as possible, Senator. It is a matter of limited resources. I know that on a number of reservations where there are significant oil and gas resources, we do have those, we do have that technology, and tribes are using the NIOGEMS system to track not only - we can go to a parcel of land, we can say, okay, here is when the application came in, here is when it was issued, here is when the APD was issued, here is where they are in the NEPA process. We can do some of those things. We can't do it nationwide, that is right.

But with our resources that we have, we are trying to move as quickly as possible.

The CHAIRMAN. Mr. Olguin, your written testimony highlighted several frustrating instances that your tribe experienced in trying to develop its resources. The tribe found that the BIA records were in disarray, staff were untrained, staff were underqualified. Likewise the existing system for tracking rights-of-way was unwieldy. The tribal energy resource agreement would authorize the tribe to develop its energy resources, which may include tracking the rights-of-way and leases.

Could you just explain how would your tribe benefit if you had a tribal energy resource agreement in place?

Mr. OLGUIN. What it would do, it definitely would give us the ability to approve a lot of things on our own, particularly these leases and rights-of-way and put control in the tribe's hands. Along that line, I believe that with a lot of those factors that come into play with the deficiencies, it gives the tribes the capability and capacity to really manage its own affairs on its own terms. We still have to realize, we are still going to be stuck with what is inherent Federal functions. That is still going to be a key component, even if the TERA issue came forth.



We haven't applied, we are thinking about applying. We are thinking about pushing that envelope to either get an approval or a denial to test the system to see if it is going to work.

The CHAIRMAN. Mr. Cuch, you have a map of Utah next to you. Your written testimony noted that it takes approximately 405 days for your company to receive a drilling permit from the Bureau of Land Management and the BIA for tribal wells, correct?

Mr. CUCH. Correct.

The CHAIRMAN. Meanwhile, it takes 73 days, or it takes over a year to get it from BLM and the BIA, only 73 days, a little over two months, to receive a permit from the State of Utah for a well in non-tribal areas. So there is an 11-month difference there in the permitting time. It is almost a year difference.

What additional risks or costs are incurred by the tribe and your company because of delays associated with the development of tribal wells?

Mr. CUCH. Certainly time is an issue. One of the things we have witnessed is that the BIA, they handle the rights-of-way and the NEPA. So the NEPA process is really what takes probably the longest amount of time. There are a lot of consultations that take place with outside Federal agencies that often add to additional mitigation requirements and things like that, that they require. That has been a challenge.

We found that the BIA often sort of defers to these outside agencies, rather than saying, this is the proposed action, the tribe is good with it, we would like to move forward. We think that the BIA could be a stronger advocate for tribes.

Another thing I will share with you is that, and I can't speak for the Ute Tribe, I am a tribal member, I am here on behalf of industry, but what we have witnessed is that the tribe has a much bigger budget than BIA. They have the staff on hand, at their Energy and Minerals Department. They have a very sophisticated government. They have a fish and wildlife department of their own. They have several biologists on staff. They have a natural resources department. We think they are fully capable of handling those environmental projects, which would do away with that Federal action piece.

So already, the tribe has taken over the right-of-way piece. If you look at Exhibit 4, you will see that we have actually had some decreases in time. It is not here, it is in your packet. That is largely because the tribe has taken over the right-of-way function and the BIA at the agency are supportive of working with the tribe to handle that aspect.

Then of course, the other additional delay is kind of to my right, where you see an additional amount of time, 176 to 203 days, from when the BLM receives the right-of-way and NEPA concurrences for them to do their part for the down-hole analysis. We need to see better coordination, we think, between the agencies, to ensure that tribal projects are getting prioritized and are getting support from the various agencies who share the trust responsibility that BIA has.

The CHAIRMAN. Your companies make significant investments, \$1.5 billion in the Uinta Basin, including 64 Ute tribal wells, your company has applications pending I think for about 95 more wells

for the Ute Tribe, and an environmental process underway for over 1,000 more tribal wells in the Basin. The testimony stated that under Federal law unless a tribe has a tribal energy resource agreement pursuant to Title V of the Energy Policy Act of 2005, an operator will have to obtain a Federal drilling permit. But because of the delay and the uncertainties in obtaining permitting approvals, authorization from the BIA, that there is a substantial negative impact on your ability to develop tribal oil and gas resources and generate income for the tribe.

So how would the tribe and your company benefit if the tribe had this tribal energy resource agreement that we are talking about today?

Mr. CUCH. Well, certainly it is up to the tribe to decide if that is the route it wants to go. But I think they are fully capable of taking over and being in a position to enter into a TERA where they would take a greater role in the permitting process. In our testimony, we have shared several examples of how the current process has led to delays and has impacted revenues to the tribe. I think it is important to understand that tribes are governments without a tax base, so they largely require this revenue to support core government services to the members.

Again, one of the biggest challenges we are seeing is that there are a lot of outside Federal intermediaries that as well as administrative rulemakings, that are sort of adding to the difficulty to develop tribal resources. I think as Senator Heitkamp mentioned, tribal lands are not public lands. I think the Bureau could do a lot to try and work to educate those other agencies so they understand that and also be willing to take a stronger stance with those agencies to move tribal projects forward.

The CHAIRMAN. I want to thank each and every one of you for being here. Obviously this is an area where there is a lot of interest. You had 13 different United States Senators here today to hear what you had to say. Some had to come and go, some may actually want to have questions in writing that they will submit to you.

The hearing record will remain open for two weeks for additional testimony and some follow-up. I want to thank each of you for being here today as witnesses. The hearing is adjourned.

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

# A P P E N D I X

PREPARED STATEMENT OF HON. MARK FOX, CHAIRMAN, MANDAN HIDATSA AND  
ARIKARA NATION, FORT BERTHOLD RESERVATION

## I. Introduction

Chairman Barrasso, Vice-Chairman Tester and Members of the Committee, thank you for the opportunity to testify on the Government Accountability Office's (GAO) report entitled "Indian Energy Development: Poor Management Has Hindered Energy Development on Indian Lands." My name is Mark Fox. I am the Chairman of the Mandan Hidatsa and Arikara Nation (MHA Nation) of the Fort Berthold Reservation.

The MHA Nation appreciates the Chairman's oversight and investigation into the barriers we face every day as we work to develop our energy resources, mitigate the impacts of energy development, protect our homelands and provide for our members. The GAO report requested by the Chairman is an important piece in the Committee's 8 years of investigations into the barriers to Indian energy development. With the GAO report and volumes of testimony from tribes, tribal organizations and our industry partners, it is time to take action to resolve these issues. The MHA Nation agrees with and supports the comments of many of the Senators who attended the hearing that Congress and the Bureau of Indian Affairs (BIA) should take action on these issues immediately.

Passage of Chairman Barrasso's bill, S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, would be an important step forward. In addition, now that Congress has passed a budget, the MHA Nation asks for the Committee's support of the Administration's \$4.5 million budget proposal for an Indian Energy Service Center in Denver, Colorado. The proposed Service Center would go a long way to resolving many of the issues identified in the GAO report.

The MHA Nation knows the issues highlighted in the GAO report first hand. The MHA Nation and our Fort Berthold Reservation are in the heart of the Bakken Formation—still one of the most active oil and gas plays in the United States. Our Reservation, located in west-central North Dakota, is the equivalent of about the 7th highest producing oil and gas state in the Country. In less than 7 years, North Dakota, including our Reservation, became the second highest producing state in the Country. Only Texas produces more. Currently, there are 8 drilling rigs, more than 30,000 semi-trucks, and more than 1,300 oil and gas wells producing about 200,000 barrels of oil per day on our Reservation. The MHA Nation struggles daily with BIA, BLM and other Federal agencies for every single permit needed to get oil and gas wells into production and to keep them operating.

## II. GAO Report

The GAO report confirms years of testimony by Indian tribes and our energy partners before this Committee and the House Natural Resources Subcommittee on Indian Insular and Alaska Native Affairs. The MHA Nation and other tribes have long expressed frustration about the Federal government's overly complex energy permitting process, a lack of BIA staff and expertise to approve energy permits, and a lack of financing for energy projects on Indian lands. GAO's June 2015 report confirms our frustrations.

The GAO report found that the following factors have hindered Indian energy development: (1) shortcomings in BIA management of Indian energy development including a lack of comprehensive data, a lack of staff and a lack of energy expertise; (2) an overly complex regulatory framework; (3) fractionated ownership interests; (4) a lack of capital and tax credits; (5) dual taxation of Indian energy resources by state governments; (6) lack of tribal capacity to oversee energy development; and, (7) limited tribal or reservation infrastructure. GOV'T ACCOUNTABILITY OFFICE, INDIAN ENERGY DEVELOPMENT—POOR MANAGEMENT BY BIA HAS HINDERED ENERGY DEVELOPMENT ON INDIAN LANDS 18 (June 2015). The Tribe asks that the Committee consider and approve legislation that would address these issues.

The two most important actions the Committee could take to address the issues identified by GAO would be to prevent state dual taxation of Indian energy resources and enact our proposal for an Indian Energy Regulatory Office. Preventing state dual taxation would ensure that Tribes receive the full benefit of their Indian energy resources, including maximum needed tax revenue to mitigate energy impacts, support tribal self-determination and tribal infrastructure. Enacting our proposal for an Indian Energy Regulatory Office would streamline permitting and increase Indian energy staffing and expertise. Our testimony focuses on these two solutions to the issues raised by the GAO report.

### III. Providing Tribes with the Full Value of Energy Resources

The GAO report found that state dual taxation hindered Indian energy development. GAO concluded that “dual taxation of Indian energy resources by state governments” was one of the reasons why “Indian energy resources are underdeveloped relative to surrounding non-Indian resources.” *Id.* at 29 to 30. State dual taxation takes the revenues that tribes need to exercise self-determination over their energy resources and provide tribal infrastructure to support energy development. Tribes cannot take over significant roles in energy permitting without the tax revenues that every other government relies on to staff government offices and support infrastructure.

Enacting the Indian Mineral Leasing Act of 1938, the Indian Mineral Development Act of 1982 and the Indian Tribal Energy Development and Self-Determination Act of 2005, Congress intended for Indian tribes to receive the full value of their energy resources. Congress intended for development of these tribal trust resources to provide tribes with financial resources, fund tribal government activities, promote economic development and provide on-reservation jobs. Congress did not intend that State governments would directly benefit from the development of tribal trust resources or receive a windfall by taxing development of those resources.

Yet, that is exactly what is happening. States are collecting taxes from the development of Indian trust resources while providing little to no on-reservation benefits. In 1989, the Supreme Court questioned whether Congress intended for tribes to receive the full benefit of their resources. Finding the Congress did not speak clearly on this issue, the Supreme Court allowed state dual taxation of Indian energy resources. Notably, the affected Tribe was not even a party to the case. Congress should resolve this issue by passing legislation that affirms that Indian mineral development laws are intended to ensure that tribes receive the full benefit their resources, and this includes the full benefit of the tax revenue derived from energy production.

Currently, state dual taxation forces tribes into tax agreements with states to share taxes from energy development on reservation lands. Without these tax agreements, state taxation doubles the tax rate for development of Indian energy resources and stifles development. Only by agreeing to give up half or more of their tax revenues can tribes ensure that energy development on reservation lands is competitive with surrounding lands.

At the same time, tribal governments must pay for the heavy burdens that energy development puts on tribal government in all areas, including destruction of roads, increased crime, hazardous spills, and an overall burden on government infrastructure. Because Tribes are not able to maximize available tax revenue to mitigate these impacts, they must in many cases use royalty revenue. This is unjust. Tribes should not have to give up tax revenue because of dual state and local taxation when they are faced with the brunt of the burden that comes with energy development.

The case of the MHA Nation demonstrates the impact of dual state taxation. Job and development killing dual state taxation forced us into an unfair tax agreement with the State of North Dakota whose coffers are so full they have a \$3.6 billion surplus and created investment accounts that exceed a billion dollars whose funds cannot be spent until 2017. In addition:

- From 2008 to the present, the State is approaching \$1 billion in tax revenues from energy production on tribal trust land.
- During this time period, the State took the majority of the tax revenues from energy production on the Reservation—over 51 percent of all of the tax revenues.
- Over the next five years, the State will get about \$1 billion more in taxes from tribal resources.
- The State does not report how these funds benefit the Reservation.

- We do know that in 2011 the State collected about \$82 million in taxes from energy development on the Reservation, but spent less than \$2 million on state roads on the Reservation and zero on tribal and BIA roads.
- In addition, we do not collect a dime in taxes from pipelines that cross the Reservation because pipeline operators pay taxes to the counties, even though we bear the expense of cleaning up spills and regulating activity.

To make matters worse, in the Spring of 2015, the North Dakota State legislature unilaterally voted to reduce tax rates which also lowers the revenues the MHA Nation will receive. We estimate that over the next 20 years we will lose \$700 million under the new lower tax. We are not running budget surpluses like the State. The MHA Nation needs tax revenue to provide the infrastructure needed to support the energy industry.

To provide the tribes with the resources we need to exercise self-determination over our energy resources, the Committee should consider and approve legislation affirming that Indian mineral leasing status are intended to provide tribes with the full benefit of their energy resources. The following amendments should be added to S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, as it is considered on the Senate floor:

Sec. XX. Amendments to Indian Mineral Leasing.

(a) Act of March 3, 1909.-The twelfth undesignated paragraph under the heading "COMMISSIONER" of title I of the Act of March 3, 1909 (25 U.S.C. 396), is amended—

(1) by striking "That all lands" and inserting the following:

"(a) Leases.-All land"; and

(2) by adding at the end the following:

"(b) Leases approved under this Act shall provide Indian tribes and Indian mineral owners with the maximum governmental and economic benefits associated with mineral leasing and development, including all revenue derived therefrom, to encourage tribal self-determination and economic development on Indian lands.

"(c) Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this Act."

(b) The first section of the Act of May 11, 1938 (25 U.S.C. 396a), is amended—

(1) by striking "That hereafter unallotted lands within" and inserting the following:

"(a) Leases.-Effective beginning on May 11, 1938, the unallotted land within"; and

(2) by adding at the end the following:

"(b) Leases approved under this Act shall provide Indian tribes and Indian mineral owners with the maximum governmental and economic benefits associated with mineral leasing and development, including all revenue derived therefrom, to encourage tribal self-determination and economic development on Indian lands.

"(c) Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this Act."

(c) The third section of Indian Mineral Development Act of 1982 (25 U.S.C. 2102), is amended—

(1) by adding at the end the following:

"(c) Agreements approved under this Act shall provide Indian tribes and Indian mineral owners with the maximum governmental and economic benefits associated with mineral leasing and development, including all revenue derived therefrom, to encourage tribal selfdetermination and economic development on Indian lands.

"(d) Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall revise and promulgate rules and regulations to facilitate implementation of this Act.

(d) Section 2604 (h) of the Energy Policy Act of 1992 (25 U.S.C. 3503 (h)) is amended—

(1) by adding at the end the following:

“(c) Agreements approved under this Act shall provide Indian tribes and Indian mineral owners with the maximum governmental and economic benefits associated with mineral leasing and development, including all revenue derived therefrom, to encourage tribal selfdetermination and economic development on Indian lands.

“(d) Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall revise and promulgate rules and regulations to facilitate implementation of this Act.

#### **IV. Indian Energy Regulatory Office**

Almost as important as the problem of dual taxation is a continued lack of Federal staff, expertise and coordination in the processing of Indian energy permits. The MHA Nation supports BIA's efforts to create an Indian Energy Service Center to coordinate and support Indian energy permitting, however, much more is needed. In addition to the BIA's effort, the MHA Nation asks that the Committee support and pass legislation to create an Indian Energy Regulatory Office.

The MHA Nation's proposal for an Indian Energy Regulatory Office was developed in coordination with the Coalition of Large Tribes and supported by the National Congress of American Indians. This proposal and resolutions support it are attached to my testimony. Legislation creating an Indian Energy Regulatory Office would provide BIA the authority it needs to ensure that its Service Center is a success. Our proposal would:

- require all of the agencies involved in Indian energy permitting to co-locate staff in a single office;
- provide a Director with the authority to reach across Federal agencies to get permits approved;
- direct the office to be guided by basic Indian trust principles that have been lost in the current unorganized Federal system for overseeing energy development on Indian lands and prevent application of public land standards to Indian lands; and,
- provide resources within Interior and BIA for the efficient processing of Indian energy permits and approvals.

Our proposal would solve most if not all of the BIA management problems identified by GAO. By centralizing BIA support for Indian energy development, BIA could generate comprehensive data for the ownership and use of resources, develop a centralized tracking system, and provide a home within BIA for Indian energy staff and expertise.

Congress provided similar authority for federal public lands 10 years ago in Section 365 of the Energy Policy Act of 2005. Section 365 established a number of Permit Processing Improvement Offices in regions with high oil and gas permitting activity on federal public lands. These pilot offices were then made permanent by S. 2440 in the 113th Congress. The same support should be provided for Indian lands. Particularly given that the benefits of energy development far exceed the benefits on Federal lands. Energy development on Indian lands provides jobs, economic development, revenues for tribal governments, and, if managed properly, long-term investment reservation infrastructure.

#### **V. Conclusion**

The GAO report concluded that, “The development of Indian energy resources has the potential to provide significant benefits to Indian tribes, tribal members, and the Nation through both tribal economic development opportunities and by contributing to the Nation's energy production.” However, GAO found that a number of factors, including poor management by BIA, limits the ability of Tribes to develop their resources. GAO recommended that, “Federal policy calls for providing enhanced self-determination and economic development opportunities for Indian tribes by promoting tribal oversight and management of energy resource development on tribal lands.”

In addition to GAO's findings and 8 years of testimony from Indian tribes, the Committee should follow the calls for action from the many Committee members who attended the hearing and spoke passionately about the need for changes in the management of Indian energy development. Legislative changes are needed to provide the staff, expertise and resources to for the Federal government to effectively oversee and manage Indian energy resources. Change is also needed to ensure that tribes receive the full benefit from developing their resources and have the tax revenues needed take over portions of the permitting process and exercise self-determination in the development of our resources.

Thank you for the opportunity to provide this testimony.

#### **Attachments**

#### **COALITION OF LARGE TRIBES—RESOLUTION # 1-5-21-14**

#### **Title: A New Interior Office to Promote Indian Energy, Sovereignty, Self-Determination and American Energy Independence**

**WHEREAS**, the Coalition of Large Tribes (COLT) was formally established in April 2011, and is comprised of tribes with a large land base, including the Mandan, Hidatsa and Arikara Nation (MHA Nation), the Oglala Sioux Tribe, the Crow Tribe, the Navajo Nation, the Sisseton Wahpeton Sioux Tribe, the Blackfeet Tribe of Montana, the Rosebud Sioux Tribe, the Ute Indian Tribe, the Shoshone-Bannock Tribes, the Colville Confederated Tribes, Spokane Tribe, and the Cheyenne River Sioux Tribe. COLT is chaired by Chairman Tex Hall of the MHA Nation; and

**WHEREAS**, COLT was organized to provide a unified advocacy base for tribes that govern large trust land bases and that strive to ensure the most beneficial use of those lands for the tribes and individual Indian landowners; and

**WHEREAS**, several COLT members are currently located in the Bureau of Indian Affairs' (BIA) Phoenix, Rocky Mountain, Great Plains, and Albuquerque Regions and are energy producing tribes or are among those tribes with potential for energy production that rely or might rely in the future on conventional or renewable energy resource development to support infrastructure, economic development, jobs, government revenues and income; and

**WHEREAS**, at the COLT DC Impact Meetings held in Washington, D.C. from March 5 to 6, 2014, with a quorum present, COLT adopted Resolution #3-3-6-14 entitled "Request that the Department of the Interior Create a New Office for Energy Producing Tribes;" and

**WHEREAS**, the United States Congress is currently considering and the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) are currently developing a proposal for a new Indian energy office; and

**WHEREAS**, it is in the best interest of COLT to provide the Congress, DOI and BIA with additional information and detail about the proposed office to ensure that the office will effectively serve Indian tribes; and

**WHEREAS**, COLT proposes to amend Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) to create a new Indian Energy Regulatory Office (Office) that would be centrally located in Denver, Colorado and utilize and refocus the existing staff, resources and office space of the Office of Indian Energy and Economic Development's (OIEED) Division of Energy and Mineral Development; and

**WHEREAS**, establishing the Office in Denver, Colorado provides adequate housing and ease of recruiting new employees to a major metropolitan area, and proximity to other federal agencies involved in the energy permitting process; and

**WHEREAS**, the Office would be established within the Secretary's Office, similar to the Indian Water Rights Office, to ensure that the Director of the Office has authority over the various agencies involved; and

**WHEREAS**, the Office would serve as a new BIA Regional Office that energy producing Indian tribes may voluntarily select to replace an Indian tribe's existing BIA Regional Office for review and approval of all energy related projects and would not result in duplicative review and approval of energy projects; and

**WHEREAS**, the Office would not replace current BIA Regional Offices nor the Farmington Federal Indian Minerals Office authorities and responsibilities except for those energy producing Indian tribes that elect to utilize the Office; and

**WHEREAS**, the Office would provide energy resource assessments and feasibility studies, technical assistance and training in energy development proposal review, increase federal permitting capacity and permit streamlining, provide support for permitting conducted by federal Agency and Field Offices, improve coordination within Interior agencies and with other Departments, provide technical assistance and training in the oversight and management of energy and financial resources, and ensure that Indian lands are not managed according to Federal public land management standards; and

**WHEREAS**, Indian tribes seeking greater DOI support in the areas of energy development, oversight, management, proposal review and energy related financial management could elect to be served by this Office or could elect to contract the functions of this Office in a manner consistent with P.L. 93-638; and

**WHEREAS**, existing BIA Regional Offices would continue to provide Indian tribes that have elected to utilize the new Office with support and oversight for all non-energy related issues; and

**WHEREAS**, to coordinate and streamline permitting, the Office would also include staff from other DOI agencies and offices involved in energy permitting on Indian lands, including: the Bureau of Indian Affairs, the Bureau of Land Management, the Office of Valuation Services, the Office of Natural Resources Revenue, the Fish and Wildlife Service, the Office of Special Trustee, the Office of the Solicitor, mining engineering and minerals realty specialists from the Office of Surface Mining, and any other DOI offices involved in energy permitting on Indian lands; and

**WHEREAS**, the establishment of the Office would utilize existing funding and resources from the OIEED's Division of Energy and Mineral Development and from each of the agencies and offices listed above, and allow for supplemental funding from industry partners in addition to new federal appropriations; and

**WHEREAS**, within one year or less, the Office would enter into agreements with other Federal agencies to coordinate and streamline permitting, including: the Environmental Protection Agency, the United States Department of Agriculture, and the Army Corps of Engineers; and

**WHEREAS**, on May 21, 2014, the Senate Committee on Indian Affairs approved with amendments S. 2132, a bill to amend the Indian Tribal Energy Development and Self-Determination Act of 2005 and for other purposes, however, the bill, as amended, would only study energy permitting delays for a year, meanwhile, Congressional action is immediately needed to reform and restructure federal oversight and permitting of Indian energy development.

**NOW, THEREFORE, BE IT RESOLVED**, COLT calls upon Congress to pass legislation and that DOI take administrative action pursuant to a Secretarial Order to establish and implement an Indian Energy Regulatory Office as described in this resolution and the attached legislative proposal; and

**BE IT FURTHER RESOLVED**, COLT calls upon Senator Tester, the Chairman of the Senate Committee on Indian Affairs, and other members of the Committee and the Senate to work with COLT and amend S. 2132 before it comes to the Senate floor to include the attached legislative proposal; and

**BE IT FINALLY RESOLVED**, this resolution shall be the policy of COLT until it is withdrawn or modified by subsequent resolution.

#### **CERTIFICATION**

This resolution was enacted at a duly called meeting of the Coalition of Large Tribes held in Washington, D.C. on May 21, 2014, at which a quorum was present, with 4 members voting in favor, 0 members opposed, 0 members abstaining.

#### **PROPOSED LEGISLATIVE LANGUAGE FOR INDIAN ENERGY REGULATORY OFFICE**

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

(1) by redesignating paragraph (3) as paragraph (4);

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

“(3) INDIAN ENERGY REGULATORY OFFICE.—

“(A) ESTABLISHMENT.—To assist the Secretary in carrying out the Program, the Secretary shall establish an ‘Indian Energy Regulatory Office’ within the Secretary’s Office to be located in Denver, Colorado. The Office shall utilize the existing resources of the Department’s Office of Indian Energy and Economic Development Division of Indian Energy and Mineral Development.

“(B) DIRECTOR.—The Office shall be led by a Director who shall be compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code and who shall report directly to the Deputy Secretary.

“(C) FUNCTIONS.—The Office shall serve as a new Bureau of Indian Affairs (BIA) Regional Office that energy producing Indian tribes may voluntarily select to replace an Indian tribe’s existing BIA Regional Office for the following functions:

(i) notwithstanding any other law, oversee, coordinate, process and approve all Federal leases, easements, right-of-ways, permits, policies, environmental reviews, and any other authorities related to energy development on Indian lands.

(ii) support BIA Agency Office and tribal review and evaluation of energy proposals, permits, mineral leases and rights-of-way, and Indian Mineral Development Agreements for final approval, conducting environmental reviews, and conducting surface monitoring;

(iii) review and prepare Applications for Permits to Drill, Communitization Agreements and well spacing proposals for approval, provide production monitoring, inspection and enforcement, and oversee drainage issues;



(iv) provide energy related technical assistance and financial management training to BIA Agency Offices and tribal;

(v) develop best practices in the area of Indian energy development, including, standardizing energy development processes, procedures, and forms among BIA Regions and Agency Offices;

(vi) minimize delays and obstacles to Indian energy development and,

(vii) provide technical assistance to Indian tribes in the areas of energy related engineering, environmental analysis, management and oversight of energy development, assessment of energy development resources, proposals and financing, development of conventional and renewable energy resources.

**“(D) RELATIONSHIP TO BUREAU OF INDIAN AFFAIRS REGIONAL AND AGENCY OFFICES.—**

(i) The Office shall have the authority to review and approve all energy related matters for those tribes that elect to utilize the Office, without subsequent or duplicative review and approval by other BIA Regional Offices or other Interior agencies. Existing BIA Regional Offices shall continue to oversee, support and provide approvals for all other non-energy related matters for those tribes that elect to utilize the Office.

(ii) BIA Agency offices and Bureau of Land Management (BLM) State and Field offices shall continue to provide regional and local services related to Indian energy development including, local realty functions, on-site evaluations and inspections, direct services as requested by Indian tribes and individual Indian and any other local functions to related to energy development on Indian lands.

(iii) The Office shall provide technical assistance and support to the BIA and BLM in all areas related to energy development on Indian lands.

**“(E) DESIGNATION OF INTERIOR STAFF.—**The Secretary shall designate and transfer to the Office existing staff and resources of the Division of Energy and Mineral Development, the Bureau of Indian Affairs, the Bureau of Land Management, the Office of Valuation Services, the Office of Natural Resources Revenue, the Fish and Wildlife Service, the Office of Special Trustee, the Office of the Solicitor, mining engineering and minerals realty specialists from the Office of Surface Mining, and any other Interior agency or office involved in energy development on Indian lands to provide for the review, processing and approval of:

(i) permits and regulatory matters under the Indian Mineral Leasing Act of 1938 (25 U.S.C. § 396a *et seq.*), the Indian Mineral Development Act of 1982 (25 U.S.C. § 2101 *et seq.*), the Indian Tribal Energy Development and Self-Determination Act, included as Title V of the Energy Policy Act of 2005 (25 U.S.C. § 3501 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201) and its provisions on Tribal Primacy; the Indian Right-Of-Way Act of 1948 (25 U.S.C. § 323 to 328) and its implementing regulations at 25 C.F.R. Part 169, leasing provisions of 25 U.S.C. 415, and surface leasing regulations at 25 C.F.R. Part 162;

(ii) the consultations and preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536) (ESA);

(iii) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) (NEPA); and,

(iv) providing technical assistance and training in various forms of energy development on Indian lands.

**(F) MANAGEMENT OF INDIAN LANDS.—**The Director shall ensure that all environmental reviews and permitting decisions comply with the United States’ unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, and are exercised in a manner that promotes tribal authority over Indian lands consistent with the federal policy of Indian Self-Determination. The Director shall also ensure that Indian lands shall not be considered to be Federal public lands, part of the public domain or managed according to federal public land laws and policies.

**“(G) INDIAN SELF-DETERMINATION.—**Programs and services operated by this Office shall be provided pursuant to contracts and grants awarded under the Indian Self Determination and Education Assistance Act of 1975 (25 U.S.C. § 450f).

(H) **TRANSFER OF FUNDS.**—To establish the Office and advance these efforts, the Secretary shall authorize, for a period of not to exceed two years, the expenditure or transfer of such funds as are necessary from the annual budgets of:

- (i) the Bureau of Indian Affairs;
- (ii) the United States Fish and Wildlife Service;
- (iii) the Bureau Land Management;
- (iv) the Office of Surface Mining;
- (v) the Office of Natural Resources Revenue; and,
- (vi) the Office of Mineral Valuation.

“(I) **BASE BUDGET.**—Following the two year periods described in (G) above, the combined total of the funds transferred pursuant to those provisions shall serve the base budget for the Office.

“(J) **APPROPRIATIONS OFFSET.**—All fees generated from Applications for Permits to Drill, inspection, nonproducing acreage, or any other fees related to energy development on Indian Lands shall, commencing on the date the Office is opened, be transferred to the budget of the Office and may be utilized to advance or fulfill any of its stated duties and purposes.

“(K) **REPORT.**—The Office shall keep detailed records documenting its activities and submit an annual report to Congress detailing, among others:

- (i) the number and type of federal approvals granted;
- (ii) the time it has taken to process each type of application;
- (iii) the need for additional similar offices to be located in other regions; and,
- (iv) proposed changes in existing law to facilitate the development of energy resources on Indian lands, improve oversight of energy development on Indian lands.

“(L) **COORDINATION WITH ADDITIONAL FEDERAL AGENCIES.**—Within one year of establishing the Office, the Secretary shall enter into a memorandum of understanding for the purposes coordinating and streamlining energy related permits with—

- (i) the Administrator of the Environmental Protection Agency;
- (ii) the Assistant Secretary of the Army (Civil Works); and,
- (iii) the Secretary of Agriculture.

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #ANC-14-011

**TITLE: Supporting and Providing Additional Detail for New Bureau of Indian Affairs Regional Office to Serve Energy Producing Tribes**

**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**, several Tribes located in the Phoenix Region, the Rocky Mountain Region, the Great Plains Region and the Southwest Region, as well as the Alaska Native communities, and are energy producing tribes or among those tribes with potential for energy production that rely or might rely in the future on mineral revenue income for infrastructure, economic development, jobs and income from the development of their mineral resources; and

**WHEREAS**, at the 2013 Annual Session of NCAI held at Cox Business Center from October 13 to 18, 2013 in Tulsa, Oklahoma with a quorum present, the General Assembly adopted Resolution #TUL-13-012 entitled “Requesting the Bureau of Indian Affairs Create a New Regional Office for Energy Producing Tribes;” and

**WHEREAS**, the United States Congress is currently considering and the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) are currently developing a proposal for a new Indian energy office; and

**WHEREAS**, it is in the best interest of NCAI to provide the Congress, DOI and BIA with additional information and detail about the proposed office to ensure that the office will effectively serve Indian tribes; and

**WHEREAS**, NCAI proposes to amend Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) to create a new Indian Energy Regulatory Office (Office) that would be centrally located in Denver, Colorado and utilize and refocus the existing resources and office space of the Office of Indian Energy and Economic Development's (OIEED) Division of Indian Energy and Mineral Development; and

**WHEREAS**, establishing the Office in Denver, Colorado provides adequate housing and ease of recruiting new employees to a major metropolitan area, and proximity to other federal agencies involved in the energy permitting process; and

**WHEREAS**, the Office would be established within the Secretary's Office, similar to the Indian Water Rights Office, to ensure that the Director of the Office has authority over the various agencies involved; and

**WHEREAS**, the Office would replace current BIA Regional Office authorities and responsibilities for energy producing Indian tribes, and would not result in duplicative review and approval of energy projects; and

**WHEREAS**, the Office would provide energy resource assessments and feasibility studies, technical assistance and training in energy development proposal review, increase BIA permitting capacity and permit streamlining, support for permitting expertise within BIA Agency Offices, improved coordination with other agencies, technical assistance and training in the oversight and management of energy and financial resources, and ensure that Indian lands are not managed according to Federal public land management standards; and

**WHEREAS**, Indian tribes seeking greater BIA support in the areas of energy development, oversight, management, proposal review and financial assistance could elect to be served by this Office; and

**WHEREAS**, existing BIA Regional Offices would continue to provide Indian tribes utilizing the new Office with support and oversight for all non-energy related issues; and

**WHEREAS**, to coordinate and streamline permitting, the Office would also include staff from other DOI agencies and offices involved in energy permitting on Indian lands, including: the Bureau of Land Management, the Office of Mineral Evaluation, the Office of Natural Resources Revenue, the Fish and Wildlife Service, the Office of Special Trustee, the Office of the Solicitor; and

**WHEREAS**, the establishment of the Office would not increase the deficit because it would utilize existing Federal resources in Denver, Colorado and existing funding from each of the agencies and offices listed above; and

**WHEREAS**, the Office would enter into agreements with other Federal agencies to coordinate and streamline permitting, including: the Environmental Protection Agency, the United States Department of Agriculture, and the Army Corps of Engineers.

**NOW THEREFORE BE IT RESOLVED**, that NCAI requests that Congress pass legislation requiring the Secretary of the Interior to establish and implement an Indian Energy Regulatory Office as described in this resolution and as reflected in the attached legislative proposal; and

**BE IT FURTHER 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 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8–11, 2014 in Anchorage, Alaska, with a quorum present.

---

PREPARED STATEMENT OF SHAUN CHAPOOSE, CHAIRMAN, UTE INDIAN TRIBE OF THE  
UINTAH AND OURAY RESERVATION BUSINESS COMMITTEE

#### **Introduction**

Chairman Barrasso, Vice-Chairman Tester and Members of the Committee, thank you for the opportunity to testify on the Government Accountability Office's (GAO) report entitled "Indian Energy Development: Poor Management Has Hindered Energy Development on Indian Lands." My name is Shaun Chapoose. I am the Chairman of the Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. Our Reservation is located in northeastern Utah.

The Tribe appreciates the Chairman's request for GAO's investigation into issues that hinder Indian energy development. GAO's report provides an important perspective on an issue that the Committee has been studying since 2008. The GAO report cites a number of issues that the Committee and Congress could solve through legislation and increased budgets that reflect the value of Indian energy resources. The Tribe agrees with and supports the comments of many of the Senators who attended the hearing that Congress and the Bureau of Indian Affairs (BIA) should take action on these issues immediately.

In fact, proposals that would address some of the issues cited in GAO's report are already before Congress. Senator Barrasso's bill, S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, would streamline the process for a tribe to obtain a Tribal Energy Resource Agreement (TERA) to achieve greater tribal control over energy resources, would provide needed financing opportunities for Indian energy projects, and would create opportunities for tribal hydroelectric, biomass and weatherization projects. In addition, the President's FY 2016 Budget includes a request for \$4.5 million dollars to establish an Indian Energy Service Center in Denver, Colorado that would streamline and support permitting work in local BIA offices. The Tribe supports these proposals and asks Congress to take action to pass these proposals.

In addition to the proposals currently before Congress, much more is needed to address the fundamental problems revealed in the GAO report. The GAO report found that the following factors have hindered Indian energy development:

- shortcomings in BIA management of Indian energy development including a lack of comprehensive data, a lack of staff and a lack of energy expertise;
- an overly complex regulatory framework;
- fractionated ownership interests;
- a lack of capital and tax credits;
- dual taxation of Indian energy resources by state governments;
- lack of tribal capacity to oversee energy development; and,
- limited tribal or reservation infrastructure.

GOV'T ACCOUNTABILITY OFFICE, INDIAN ENERGY DEVELOPMENT—POOR MANAGEMENT BY BIA HAS HINDERED ENERGY DEVELOPMENT ON INDIAN LANDS 18 (June 2015). The Tribe asks that the Committee follow up on GAO's report and this oversight hearing by considering and reporting to the Senate floor additional legislation to address all of these issues.

The Ute Indian Tribe itself has provided the Committee and members of Congress more than 32 legislative proposals, many with no cost to the government, that would address the full range of issues raised in GAO's report. The GAO report highlights what we have long known, "Indian energy resources are underdeveloped relative to surrounding non-Indian resources." It is also important to note, that the report does not just focus on BIA. GAO also cited to the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), the Environmental Protection Agency (EPA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA) as a part of the "complex regulatory framework" that limits Indian energy development. *Id.* at 15–18.

It has been almost 8 years since former Senator Dorgan called for reform of the bureaucratic permit approval process for Indian energy. He reported that a single oil and gas well must navigate a 49-step process involving at least 4 understaffed federal agencies. Since Senator Dorgan highlighted these issues there have been numerous Congressional hearings, testimony and roundtables. There is an extensive Congressional record and, as seen at this oversight hearing, there is also much agreement about the need for change.

#### **Ute Indian Tribe's Experience with Energy Development**

The Ute Tribe is a major oil and gas producer and knows these issues all too well. Production of oil and gas began on our Reservation in the 1940s and has been ongoing for the past 70 years with significant periods of expansion. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per day. And, we have plans for expansion. The Tribe is in process of opening up an additional 150,000 acres to mineral leases on our Reservation with an \$80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our tribal government and the services we provide. We use these revenues to govern and provide services on the second largest reservation in the United States. Our Reservation covers more than 4.5 million acres and we have about 3,000 mem-

bers living on the Reservation. The Tribe is also a major employer and engine for economic growth in northeastern Utah.

Tribal businesses include a bowling alley, supermarket, gas stations, feedlot, an information technology company, manufacturing plant, and Ute Oil Field Water Services, LLC. Our governmental programs and tribal enterprises employ 450 people, 75 percent of whom are tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources, however, despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. For example, we need 10 times as many permits to be approved. 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.

As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. In order for the Tribe to continue to grow and expand our economy all of the issues raised by the GAO report need to be addressed. We request that the Committee take action beyond the issues addressed in S. 209. We need legislation that will address all of the agencies involved in the energy permitting process on Indian lands and will open up energy programs at the Department of the Energy to Indian tribes.

#### **Addressing BIA's Management of Indian Energy Development**

The most promising solution to many of the issues raised by GAO would be to establish and fund an Indian Energy Regulatory Office that would overcome management issues, develop comprehensive data, and provide a home within the Administration for Indian energy staff and expertise. This Office would address the current lack of focus by providing a single office responsible for Indian energy permitting. The Tribe asks that the Committee approve legislation to create an Indian Energy Regulatory Office that would co-locate staff from all the agencies involved in one office to coordinate and streamline Indian energy permitting, and to provide the staff, expertise and resources needed for energy permitting. This Office could follow the FERC permitting model cited by GAO at the hearing.

The Ute Indian Tribe, the Coalition of Large Tribes (COLT), and the National Congress of American Indians (NCAI) all support establishing this new Indian Energy Regulatory Office within the Department of the Interior. The Office would be located in Denver, Colorado and utilize many existing resources to provide staff and expertise that would support energy permitting at the local level. The Office would provide the focus, expertise and resources needed so that Indian tribes can effectively participate in this important part of the economy and contribute to the Nation's domestic energy supply.

The Ute Indian Tribe and other tribes are also working with the BIA on its proposed Indian Energy Service Center. The Service Center is similar to our proposal, however, the Service Center proposal does not provide a Director who has all the authority necessary to issue permits and approve energy development on Indian lands—everything from permitting oil and gas wells, to environmental review of renewable energy and transmission projects. Instead, the Service Center relies on Memorandums of Agreement between the agencies. While we support the BIA's efforts, legislation is needed to provide the Director of this Office the authority to reach across agencies to get things done.

We also need legislation to ensure that either the Service Center or the Office we propose fulfills basic Indian trust principles that have been lost in the current unorganized Federal system for overseeing energy development on Indian lands. In particular, our legislative proposal directs that Indian lands are not public lands. Both Congress and Interior have been clear on this point in the past, however, over time, Federal agencies have attempted to apply public land management standards to Indian lands.

Current examples of treating Indian lands like public lands include the application of the National Environmental Policy Act (NEPA) to Indian lands, BLM's attempt to regulate hydraulic fracturing on Indian lands, and FWS's implementation of the ESA on tribal lands without considering tribal interests and the Federal government's trust responsibility. Legislation is needed to affirm the trust status of Indian lands, ensure Indian lands are managed according to Federal trust management standards as opposed to public land management standards, and finally provide the resources needed at Interior and BIA for the efficient processing of Indian energy permits and approvals.

The Office we are proposing is long overdue. Congress provided similar authority for federal public lands 10 years ago in Section 365 of the Energy Policy Act of 2005. Section 365 established a number of Permit Processing Improvement Offices in regions with high oil and gas permitting activity on federal public lands. These pilot offices were then made permanent by S. 2440 in the 113th Congress.

The same support should be provided for Indian lands. Particularly given that the benefits of energy development far exceed the benefits on Federal lands. Energy development on Indian lands provides jobs, economic development, revenues for tribal governments, and, if managed properly, long-term investment reservation infrastructure. Attached to my testimony are NCAI and COLT resolutions in support of this Office as well as proposed legislative text. (See attachments printed Mark Fox's prepared statement)

#### **Addressing Other Factors Hindering Indian Energy Development**

A number of other legislative reforms are needed to address the full range of issues raised in the GAO Report. Many of these are already before the Committee. In prior Congresses and in response to requests by former Senator Akaka, Senator Barrasso and, on the House side, Congressman Young, the Tribe developed 32 legislative proposals to improve Indian energy permitting, coordination and financing. These proposals were highlighted in hearings before the Senate Committee on Indian Affairs and the House Subcommittee on Indian, Insular and Alaska Native Affairs. To follow up on the GAO report and to finally make a difference in Indian energy development, the Tribe asks that the Committee consider and pass a variety of other legislative reforms.

Below we highlight legislative reforms that would address gaps in the current system, clarify the authority of tribal governments to oversee energy activities on tribal lands and increase the resources available to tribes to address all aspects of energy development on tribal lands. The Tribe has already submitted legislative text to the Committee for these reforms. These reforms include:

- ensuring that Communitization Agreements do not delay royalty payments;
- including tribes in well spacing decisions on Indian lands;
- ensuring that EPA's new regulation of minor sources in Indian Country will not impede energy development;
- setting aside a portion of existing energy efficiency funding for Indian tribes;
- setting aside a portion of existing weatherization funding for Indian tribes;
- streamlining environmental reviews on Indian lands by providing tribes with "treatment as a sovereign" status under the National Environmental Policy Act (NEPA);
- clarifying that Indian lands are not public lands and therefore are not subject to NEPA;
- preventing BLM's hydraulic fracturing regulations, designed for public lands, from applying to Indian lands; and,
- supporting the capture and beneficial use of Indian energy in remote locations through distributed generation and community transmission on Indian lands.

Through these legislative reforms, the Committee could address more of the issues raised in the GAO report and further unlock the potential of Indian energy development.

**Delayed Royalties Due to Communitization Agreements.** The Secretary of the Interior has delegated the approval of oil and gas Communitization Agreements to BLM. Instead of creating new unneeded regulatory responsibilities, like its hydraulic fracturing rule, BLM should fulfill its current obligations to timely review and approve Communitization Agreements. The Committee should require Communitization Agreements to be submitted at the time an Application for Permit to Drill is filed. This is possible when 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.

Under current law, royalties are due within 30 days of the first month of production. However, without any authority, BLM has allowed royalty payments to be delayed for months and years pending the approval of Communitization Agreements. This violation of the law cannot be allowed to continue. The Tribe asks that the Committee consider and approve legislation to address BLM's delays in payments of oil and gas royalties due to approval of Communitization Agreements.

**Inclusion of Tribes in Well Spacing Decisions.** Instead of treating Indian lands like public lands, BLM should commit staff resources to actually regulating

well spacing on Indian lands and involving Indian tribes in oil and gas well spacing decisions. Currently, BLM defers the ability to determine well spacing on Indian lands to state well spacing forums and practices. Although BLM ultimately approves the oil and gas well spacing that was originally proposed in state forums, BLM should defer to and directly consult with Indian tribes in spacing determinations on Indian lands. BLM's current practice ignores its Federal authority, its trust responsibility to Indian tribes, and takes away any benefits that a tribe could have received by determining its own well spacing on its reservation lands.

The Tribe asks that the Committee consider and approve legislation that would direct BLM to enter into oil and gas well spacing agreements with Indian tribes. These agreements would provide tribes every opportunity to participate in and ultimately determine spacing units on its reservation. The opportunity to participate in well spacing decisions and ultimately determine well spacing on Indian lands would involve tribes in an important aspect of regulating oil and gas development.

**Minor Source Regulation in Indian Country.** Require EPA to delay implementation of its new synthetic minor source rule for two years to ensure appropriate staffing is in place to administer any new permitting requirements.

**Energy Efficiency Reforms.** Despite a longstanding state energy efficiency program, there is no ongoing program to support tribal energy efficiency efforts. Tribal governments have the same energy efficiency needs as state governments. The Tribe asks the Committee to direct the Department of Energy 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.

A tribal energy efficiency program could be modeled after the successful Energy Efficiency Block Grant (EEBG) program. Despite its success, the EEBG program was only funded one time—under the American Reinvestment and Recovery Act of 2009. To ensure an ongoing source of funding for tribal energy efficiency efforts, tribes should be provided a portion of the funding for state energy efficiency efforts. This program could lower tribal governmental energy costs and ultimately lower the Federal funding used by tribes to administer Federal programs at the local level.

**Weatherization Reforms.** The Tribe asks that the Department of Energy's weatherization program be reformed consistent with the Federal Government's trust responsibility and to recognize the weatherization needs of Indian tribes. Under current law, the Department of Energy requires Indian tribes to obtain Federal funding through state governmental and non-profit entities administering weatherization programs. Tribes can only receive direct funding from the Department of Energy if a tribe can prove that it is not receiving funding that is equal to what the state is providing its non-Indian population. Currently, out of 566 federally recognized tribes, only two tribes and one tribal organization receive direct weatherization funding from Department of Energy. As a result, tribes are effectively excluded from the Federal Government's weatherization program.

Weatherization funding does not benefit tribal homes for a number of other reasons. In particular, Indian tribes lack energy auditors to assess the weatherization needs of Indian homes. The Department of Energy's weatherization program must be reformed to provide direct funding to tribal governments, provide training for energy auditors in Indian Country and to reflect the unique weatherization needs of tribal homes. These reforms are needed to get weatherization funding to those who need it most. While the Tribe appreciates the weatherization changes included in Senator Barrasso's bill, S. 209, much more is needed.

**Environmental Review of Energy Project on Indian Lands.** As the GAO report concludes, the environmental review of energy projects on Indian land is more extensive than on comparable private lands. This extensive review acts as a disincentive to development on Indian lands particularly given the understaffed Federal agencies overseeing Indian energy development. Similar to the Clean Water Act, Clean Air Act and others, the Committee could 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 completing environmental reviews would be delegated to tribal governments.

**Clarify that Indian Lands are not Public Lands Subject to NEPA.** The 10th Circuit Court of Appeals, in *Davis v. Morton*, 469 F.2d 593 (1972), equated Indian trust land to public lands and thus treats leases on Indian trust land as a major federal action subject to NEPA. The Court stated that exempting Indian lands from NEPA "would preclude all federal lands from NEPA jurisdiction, something clearly not intended by Congress in passing the Act." Davis supports a sweeping interpretation of NEPA's application in Indian country and questions the fundamental differences between Indian lands and public lands. The Tribe asks that the Committee clarify that Indian lands are not "public lands" held in trust for the people of the

United States. Indian lands are held in trust or restricted status for the use and benefit of the Indian tribes and its members. All other “federal lands” would still be subject to NEPA.

**BLM Hydraulic Fracturing Regulations.** BLM’s hydraulic fracturing regulations are based on public policy standards set out in the Federal Land Policy and Management Act standards. Not trust standards used to manage Indian lands. The Committee should approve legislation prevents BLM from regulating hydraulic fracturing on Indian Lands. For example, the Committee could including language that “prohibits any Department of the Interior rule regarding hydraulic fracturing, used in oil and gas development or production, from having any effect on land held in trust or restricted status for Indians, except with the express consent of its Indian beneficiaries.”

**Distributed Generation and Community Transmission.** The Tribe also asks that the Committee support new and emerging ways for tribes to beneficially use our energy resources and provide energy security for our communities. We need a new approach to capture and not waste valuable resources that are too far from existing transmission networks. The Tribe asks that the Committee direct the Department of Energy 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.

### Conclusion

The GAO report highlights the need for accountability and reform in Indian energy permitting. The GAO report concluded that, “The development of Indian energy resources has the potential to provide significant benefits to Indian tribes, tribal members, and the Nation through both tribal economic development opportunities and by contributing to the Nation’s energy production.” *Id.* at 35. However, GAO found that a number of factors, including poor management by BIA, limits the ability of Tribes to develop their resources. *Id.* GAO recommended that, “Federal policy calls for providing enhanced self-determination and economic development opportunities for Indian tribes by promoting tribal oversight and management of energy resource development on tribal lands.” *Id.* at 36.

The Tribe asks that the Committee take action to improve the agencies and laws that we must work with to develop our energy resources. There was agreement at the hearing that action is needed now. Thank you for the opportunity to provide this testimony.

---

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO LAWRENCE S. ROBERTS

Mr. Roberts, as I expressed at the hearing, the tribal trust relationship must be upheld appropriately and meaningful consultation with tribes must take place between the Bureau of Indian Affairs and tribes regarding energy projects and also as federal agencies issue regulations that affect them. The Hydraulic Fracturing rule, which we discussed, is a perfect example. You responded describing the Indian Energy Service Center as an aid to the current inadequacy in tribal consultation.

*Question.* Among the vast hurdles to energy development in Indian Country, I have heard from some tribes that BIA personnel is a particular stumbling block to getting approval for energy projects. Whether it’s an expertise or a bandwidth issue, staffing challenges are a consistent theme. Regardless, most tribes seem to prefer to have BIA personnel focused on energy development on the ground in regional and field offices. Especially because this Center would require appropriations from Congress and would be located in Denver, CO, far away from Montana Indian Country, can you explain what specific results would be achieved in Montana Indian Country? Have you established goals for the energy project review process, such as improving timelines for review, measuring cost and staff hours saved, and determining how tribal consultation would be improved amongst other federal agencies?

*Answer.* The mission of the Indian Energy Service Center (IESC) is to provide a wide suite of support services to the Bureau of Indian Affairs (BIA) Agencies and Regional Offices; Bureau of Land Management (BLM) Field Offices and State Offices; Office of the Special Trustee for American Indians (OST) Fiduciary Trust Officers and Regional Trust Administrators; and the Office of Natural Resources Revenue (ONRR) for purposes of expediting the leasing, permitting, developing, and reporting for oil and gas development on Indian trust lands. Fundamental to this effort is responsiveness to trust mineral estate owners (tribal and allotted) and coordination between Federal agencies. In support of this mission the IESC would:



- Serve as a processing center for expediting nationwide trust functions where this service is more efficiently provided by an offsite work team in support of agencies and field, regional and state offices.
- Provide direct support, technical advice and contractual services to:
  - Help formulate and develop consistent policy, rules, regulations, and business processes;
  - Identify and assist with implementation of best practices for deployment throughout the appropriate bureau or office;
  - Develop statements (scope of work) and funding for contracts to provide direct services in support of energy development.
  - Address impediments restricting the timely development of energy resources.
- Consult, coordinate, and collaborate to promote resource sharing between Interior Bureaus, tribes and Indian land owners in the resolution of issues that impede energy development.
- Serve as a center point for collaboration with other Federal bureaus for expediting energy development.
- Support tribal consultation on energy development for BIA, BLM, ONRR, and OST.
- Provide a program assessment and evaluation of existing program operations.
- Conduct training of Interior employees that have a role in energy programs.

As capacity is built, the IESC will perform work for which it has developed expertise in support of the Department's energy and mineral development responsibilities. The IESC work will be prioritized with input from the affected bureau or agencies and adjusted as IESC builds capacity.

The IESC has requested each of the BIA Regional Offices to identify their needs to help expedite energy development and leasing activities. The BIA Rocky Mountain regional office specifically requested training, records management, data entry and examination, field work for abandoned well reclamation, and responding to Indian mineral owner inquiries. IESC support in these areas will allow for the BIA Region and agencies to focus on the day to day energy development activity on reservations. In addition, there were perceived benefits to co-locating the IESC with the existing Office of Indian Energy and Economic Development's Division of Energy and Minerals Development, which has been taking the lead for Indian Affairs in the past several years to fill the gap for Indian energy.

