

**EXAMINING FEDERAL PROGRAMS THAT SERVE
TRIBES AND THEIR MEMBERS**

HEARING

BEFORE THE
SUBCOMMITTEE ON
THE INTERIOR, ENERGY AND ENVIRONMENT
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
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CONTENTS

Hearing held on February 15, 2017	Page 1
WITNESSES	
Mr. Frank Rusco, Director, Natural Resources and Environment, Energy and Science Issues, U.S. Government Accountability Office	
Oral Statement	4
Written Statement	7
Ms. Mary Kendall, Deputy Inspector General, Office of Inspector General, U.S. Department of the Interior	
Oral Statement	21
Written Statement	23
The Hon. Tyson Thompson, Councilman, Southern Ute Indian Tribal Council	
Oral Statement	28
Written Statement	31

EXAMINING FEDERAL PROGRAMS THAT SERVE TRIBES AND THEIR MEMBERS

Wednesday, February 15, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE INTERIOR, ENERGY AND
ENVIRONMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:07 p.m., in Room 2154, Rayburn House Office Building, Hon. Blake Farenthold [chairman of the subcommittee] presiding.

Present: Representatives Farenthold, Gosar, Ross, Palmer, Comer, Chaffetz, Issa and Plaskett.

Mr. FARENTHOLD. The Subcommittee on Interior, Energy, and the Environment will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We appreciate your interest in this topic and welcome your participation today.

We may be having some members from the full committee here today, so I'd like to ask for unanimous consent that all members of the Committee on Oversight and Government Reform be allowed to fully participate in today's hearing.

Without objection, so ordered.

And I'll now recognize myself for 5 minutes for an opening statement.

Today, the Subcommittee on Interior, Energy, and the Environment will examine obstacles that Native Americans face with respect to energy development, education, and health care on tribal land.

The General Accounting Office and the Department of the Interior Inspector General have extensively documented the serious and troubling problems Native Americans face in these areas. Today, we're going to try to do our part to bring attention to these issues by shining a little bit of light, congressional light and oversight on them.

When it comes to energy development, tribes face costs and regulatory impediments that do not exist for development on non-tribal land. Obtaining a permit to drill on Native American land is more expensive and time consuming than doing so off tribal lands. Tribes must conduct detailed environmental assessments, obtain costly permits that not every tribe can afford.

The Department of Interior attempted to address this by creating a special service center to streamline the regulatory process. How-

ever, three of the largest regulatory agencies, the Environmental Protection Agency, the Army Corps of Engineers, and the Fish and Wildlife Service were not included in the service center. Omitting agencies that play such a large role in regulating the energy development undermines the Department's effort to reduce the barriers to energy development on tribal land.

As a result of these unnecessary impediments, valuable development opportunities are wasted and revenue is lost. For example, the Southern Ute Tribe represented here today in our hearing, has foregone almost \$90 million in revenue waiting for Federal approval of right-of-way agreements. Energy resources represent a crucial way for many tribes to meet their budgetary obligations and provide needed services to their members.

As for education, the Bureau of Indian Education, or BIE, has struggled to provide adequate school facilities for tribal children. Roughly 42,000 students attend schools administered by the BIE. Badly outdated schools are in disrepair and pose a major health and safety risk for students. Inconsistent inspections have contributed to deteriorating physical conditions of schools. Problems include asbestos, mold, roofing issues, and electrical danger. I think we have some slides here of some schools.

As you can see here, we've got an upstairs room in a 1930s building that holds elementary classes at Tuba City Boarding School. This school, with this exposed wiring, is listed in good condition.

Let's go to the next slide. Now, I don't know if you can make it out, but there's some bleachers in there by that middle telephone pole. But they've actually put light posts in the middle of the athletic field there. Millions of dollars were spent on infrastructure improvements and we come up with this.

Image three, we see thick walls of asbestos installation are left in one dormitory because the cost to move it is outrageous.

Next slide. And we see structural cracks in the stairwell ceiling at another school.

Next slide. Building space is needed for student activities. In this school, the building is being kept from being demolished despite the fact that snow comes into the building. That's a pile of snow there under the door.

Inadequate staff training contributes not only to inaccurate reporting of schools' physical condition but also to the independent oversight of school expenditures. GAO has found that millions of dollars intended for Native American schools have been lost due to waste and misconduct.

In one instance, over \$1 million in Federal funds intended for a BIE school ended up improperly in a non-school-related offshore account. Despite the fact that BIE schools spend almost three times per student more than public schools, we have a serious problem.

Similarly, the Indian Health Service agency, which serves the medical needs of roughly 2.2 million Native Americans, suffers from inadequate patient care. Patients often experience unreasonably long wait times, and high turnover rates of key personnel negatively impact the quality of care in services at IHS schools.

Hopefully, today we can make some progress by highlighting the issues and discuss it with our panel and come up with some solu-

tions. As the new administration takes office, this is a good time to hold these hearings.

With that, I'd like to thank the witnesses for agreeing to be here today and provide testimony.

At this point, I'd like to recognize our ranking member, the gentlelady from the Virgin Islands, Ms. Plaskett.

Ms. PLASKETT. Thank you so much, Mr. Chairman.

And thank the witnesses and all of the individuals who are here this afternoon about this very important issue.

Mr. Chairman, this hearing that we're having is critically important, and I want to thank you for holding this this early in the term. Tribal concerns are often underrepresented, and I'm glad that we're dedicating a hearing to address these issues and finding solutions.

The GAO high-risk report has outlined several problems that the tribal communities face in the areas of energy, health care, and education, as highlighted by the chairman for the education issues as well. The report highlights problems ranging from inadequate Federal oversight, limited Federal workforce planning, outdated and deteriorated equipment, technology, and infrastructure, and incomplete or inaccurate data.

These shortcomings are creating significant difficulties for these tribal communities. Many tribal communities are heavily reliant on energy resources for their economic well-being and dependent upon the Bureau of Indian Affairs to conduct thorough but efficient reviews.

But the GAO found that it took up to 8 years for the BIA to process permits, a delay which caused the Tribe to lose an estimated \$95 million in revenues that it otherwise would have earned from tribal permitting fees, oil and gas severance taxes, and royalties.

This represents an unacceptable financial burden on this community. And I have to tell you that I especially am very sympathetic and empathetic to these issues, coming from the Virgin Islands where we also feel the inadequate representation of the Federal Government and often feel forgotten, and the last person on the checklist of infrastructure and development, energy issues for our young people, and especially for our children.

It's absolutely unacceptable that children are expected to thrive and to be productive citizens under the conditions that they are now in. The fact that they have speaks to their resilience and the power and the wherewithal of your community to make that happen.

GAO also found that similar delays plagued the Indian Health Service and the Bureau of Indian Education, preventing tribal members from receiving timely health care and making schools unsafe for children. In order to improve these Federal agencies, the Department of the Interior Office of the Inspector General must be able to adequately investigate these issues.

However, I am very concerned that in this new administration, the hiring ban is going to severely compromise the ability of the IG and the IGs throughout the entire government to protect taxpayers from the type of mismanagement the GAO found.

I am asking my Republican colleagues to join me in requesting that the President immediately lift the hiring ban so our IGs can

have the resources and staffing they need to ensure the proper functioning of government and prevent waste, fraud, and abuse.

I'm very much, Mr. Chairman, looking forward to hearing from our witnesses. And I yield back the balance of my time.

Mr. FARENTHOLD. Thank you very much.

And I'll hold the record open for 5 legislative days for members who would like to submit a written opening statement.

I'd now like to recognize our panel of witnesses.

I'm pleased to welcome Mr. Frank Rusco, director of national resources for environment—I'm sorry, let me get your title right. Director of Natural Resources Environment for energy and science issues at the U.S. Government Accountability Office.

He'll be accompanied and supported by Ms. Melissa Emrey-Arras, director of Education, Workforce, and Income Security, also at the GAO; and Kathleen King, director of Health Care at the GAO. Their expertise on this issue will be important for the subject matter of this hearing. So when we swear the witnesses in, we'll ask that you be sworn in as well.

Our other witnesses are Ms. Mary Kendall, Deputy Inspector General within the Office of Inspector General at the U.S. Department of Interior. Welcome.

And finally, the Honorable Tyson Thompson, councilman with the Southern Ute Indian Tribe. Welcome to you all.

Now, pursuant to committee rules, you will all be sworn in before you testify. Would you please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect all witnesses answered in the affirmative. You may be seated.

In order to allow plenty of time for questions and discussion, we do have quite a few members here, we'd appreciate it if you'd limit your initial testimony to 5 minutes. We have copies of your entire written statement, which will be made part of the record.

So Mr. Rusco, we'll start off with you. You're recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF FRANK RUSCO

Mr. RUSCO. Thank you.

Chairman Farenthold, Ranking Member Plaskett, and members of the committee, it's my pleasure to be here today to discuss the new area added to GAO's high-risk list: Improving Federal management of programs that serve tribes and their members. We're adding this high-risk area because we have found longstanding problems in the Federal management of Indian energy resources as well as the administration of Indian education and healthcare programs.

The Interior's Bureau of Indian Affairs has mismanaged Indian energy resources and the Federal role in energy development, and this has limited and delayed opportunities for tribes and their members to use those resources to create economic growth and improve the well-being of their communities.

In addition, we have found numerous challenges facing the Interior's Bureau of Indian Education and BIA and the Department of Health and Human Services, Indian Health Services, in administering education and health care to tribes and their members. These shortcomings have put the health and safety of American Indians served by these programs at risk.

As you know, the United States has recognized the sovereign status of tribes and currently recognizes 567 Indian tribes as distinct, independent political communities that possess certain powers of sovereignty and self-government.

In 2016, Congress found in the Indian Trust Asset Reform Act that through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians. These fiduciary responsibilities reflect commitments made in treaties and agreements under which Indians surrendered claims to vast tracks of land to the benefit of the people of the United States. This history has established enduring and enforceable Federal obligations to which the national honor has been committed.

The remainder of my statement is focused on energy issues, but my colleagues, Melissa Emrey-Arras and Kathy King, are here to answer questions about education or healthcare issues as needed.

Some tribes hold abundant energy resources, including coal, oil and gas, wind, solar, biomass, and hydroelectric resources. And some tribes and members have sought to develop these resources.

While tribes and their members can determine how to use their energy resources, many of these resources are held in trust or a restricted status. In these cases, BIA must review and approve leases, permits, and other documents required for development. We have found deficiencies in BIA's management of Indian energy resources in several areas.

For example, BIA processes to issue leases, permits, rights-of-way, and appraisals often taking a long time to perform, and this has led to delays and missed opportunities for tribes and their members. As has been mentioned, in one case we reported that delays in rights-of-way for pipelines cost the Southern Ute Tribe about \$95 million in foregone fees, severance taxes, and royalties over a period of 8 years. In another case, a 3-year review of a lease to develop wind power led to uncertainty about the viability of the project because the data that were used to support the economic feasibility and environmental impact of the project became too old to use.

We have recommended that BIA develop and document clear processes to track review and response times so they can ensure that documents are moving in a timely and predictable fashion.

BIA has also missed opportunities to streamline review and approval processes by not communicating and coordinating with other Federal agencies that have a role in these processes. Further, BIA has not used best practices to identify key staff needs to support energy development, and this has contributed to a situation where the Bureau does not have the right people with the right skills in the right place to enable energy development.

BIA has also not invested comprehensively in GIS mapping technology required to easily identify resources available for lease as

well as places where leases are already in force. In places without GIS capabilities, BIA has to rely on paper documents, which adds to review and approval times.

Lastly, in some cases, BIA does not have accurate records of Indian land and resource ownership, another piece of information essential for reviewing and improving energy leases and ensuring tribes and their members get paid their share when energy production begins.

We have made numerous recommendations to Interior and BIA to address these deficiencies, and we will be following the progress of the agency and Bureau in improving its delivery of services to tribes and their members.

Thank you. This concludes my oral statement. I'll be happy to answer any questions you may have.

[Prepared statement of Mr. Rusco follows:]

United States Government Accountability Office



Testimony

Before the Subcommittee on the Interior,
Energy, and Environment, Committee on
Oversight and Government Reform,
House of Representatives

For Release on Delivery
Expected at 2:00 p.m. ET
Wednesday, February 15, 2017

HIGH RISK

**Federal Management
Challenges Related to
Indian Energy Resources**

Statement of Statement of Frank Rusco, Director, Natural
Resources and Environment

Chairman Farenthold, Ranking Member Plaskett, and Members of the Committee:

I am pleased to be here today to discuss a new area we added to our High Risk List this year—Improving Federal Management of Programs that Serve Tribes and Their Members.

We are adding this high-risk area in response to serious and long-standing problems in federal management of Indian energy resources and administration of Indian education and health care programs, which are highlighted in several of our prior reports, along with reports and testimony from Inspectors General, tribal nations, special commissions, and others.¹ In particular, we have found that the Department of the Interior's Bureau of Indian Affairs (BIA) has inefficiently managed Indian energy resources and the development process and thereby limited opportunities for tribes and their members to use those resources to create economic benefits and improve the well-being of their communities.² In addition, we have found numerous challenges facing Interior's Bureau of Indian Education (BIE) and BIA³ and the Department of Health and Human Services' (HHS) Indian Health Services (IHS) in administering education and health care services, which put the health

¹See, for example, GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502 (Washington, D.C.: June 8, 2015); Elizabeth Ann Kronk Warner, *Tribal Renewable Energy Development Under The HEARTH Act: An Independently Rational, But Collectively Deficient, Option*, 55 *Ariz. L. Rev.* 1031, 1041 (2013); Department of the Interior, *Report of the Commission on Indian Trust Administration and Reform*, Approved December 10, 2013; Statement of Chairman Mark Fox, Mandan, Hidatsa and Arikara Nation, before the U.S. House of Representatives' Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies, on American Indian/ Alaska Native Programs, March 24, 2015; Office of Inspector General, U.S. Department of the Interior, *Onshore Oil and Gas Permitting*, U.S. Department of the Interior, CR-EV-MOA-0003-2013 (Washington, D.C.: June 2014).

²For the purposes of this report, we use the term Indian energy resources to include energy resources that are held in trust by the United States for the benefit of tribes and their members. See GAO-15-502.

³Both of these bureaus are under the Office of the Assistant Secretary for Indian Affairs (Indian Affairs).

and safety of American Indians served by these programs at risk.⁴ For the purposes of this testimony, I will focus on our prior work related to Indian energy.

As you know, the United States has recognized the sovereign status of tribes since its formation and currently recognizes 567 Indian tribes as distinct, independent political communities that possess certain powers of sovereignty and self-government. Some tribes and their members hold abundant energy resources and have decided to develop these resources to meet the needs of their community, in part because energy development provides opportunities to improve poor living conditions, decrease high levels of poverty, and fund public services for tribal members. While tribes and their members determine how to use their energy resources, if the resources are held in trust or restricted status, BIA—through its 12 regional offices, 85 agency offices, and other supporting offices—generally must review and approve leases, permits, and other documents required for development.⁵ BIA's management of Indian energy resources and oversight of development is to be conducted pursuant to federal law, in a manner that is consistent with the federal government's fiduciary trust responsibility to federally recognized Indian tribes and their members.

In 2016, Congress found in the Indian Trust Asset Reform Act that "through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians."⁶ As further stated in that act, the fiduciary responsibilities of the United States to Indians arise in part from

⁴See, for example, GAO, *Indian Affairs: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, GAO-16-313 (Washington, D.C.: March 10, 2016); GAO, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, GAO-15-389T (Washington, D.C.: February 27, 2015); GAO, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, GAO-13-774 (Washington, D.C.: September 24, 2013); GAO, *Indian Health Service: Actions Needed to Improve Oversight of Quality of Care*, GAO-17-181 (Washington, D.C.: January 9, 2017); and GAO, *Indian Health Service: Actions Needed to Improve Oversight of Patient Wait Times*, GAO-16-333 (Washington, D.C.: March 29, 2016.)

⁵Trust resources are held for the beneficial interest of the tribe or a member, and restricted resources are owned by the tribe or a member but subject to restrictions on alienation. Trust and restricted resources generally cannot be leased without approval of the Secretary of the Interior, who has generally delegated this authority to BIA.

⁶Pub. L. No. 114-178, § 101 (2016)(codified at 25 U.S.C. § 5601).

commitments made in treaties and agreements, under which Indians surrendered claims to vast tracts of land, and this history of federal-tribal relations and understandings has benefitted the people of the United States and established "enduring and enforceable [f]ederal obligations to which the national honor has been committed." Through improvements to federal management of programs that serve tribes and their members, agencies can improve the efficiency of federal programs under which services are provided to tribes and their members. This would be consistent with the expressed view of Congress as to the federal government's trust responsibilities, and strengthen confidence in the performance and accountability of our federal government.

In this context, my testimony today primarily discusses the findings from three of our prior reports on Indian energy development.⁷ Accordingly, this testimony identifies our findings about federal management of programs that serve tribes and their members concerning management and oversight of Indian energy resources and development. In addition, I will highlight several key actions that we recommended in those reports that federal agencies can take to help overcome challenges associated with the management of Indian energy resources.

This statement draws on findings from reports issued from June 2015 through November 2016. To conduct our prior work, we reviewed relevant laws, regulations, and policies; reviewed and analyzed federal data;⁸ and interviewed tribal, federal, and industry officials, among others. More detailed information on our scope and methodology can be found in each of the three reports.

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

⁷GAO, *Indian Energy Development: Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development*, GAO-17-43 (Washington, D.C.: Nov 10, 2016); *Indian Energy Development: Interior Could Do More to Improve Its Process for Approving Revenue-Sharing Agreements*, GAO-16-553 (Washington, D.C.: June 13, 2016); GAO-15-502.

⁸To assess the reliability of these data, we verified key dates and other information with relevant and knowledgeable officials.

provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management and Oversight of Indian Energy Resources and Development

In our prior work, we identified concerns associated with BIA management of energy resources and categorized them into the following broad areas: (1) oversight of BIA activities; (2) collaboration and communication; (3) BIA workforce planning; (4) technology; and (5) BIA's data. In the past 2 years, we issued three reports on Indian energy resources and development in which we made 14 recommendations to BIA. BIA agreed with most of these recommendations, and has identified steps it will take to address some of the recommendations.

Oversight of BIA Activities

In a June 2015 report, we found that BIA review and approval is required throughout the development process, including the approval of leases, right-of-way (ROW) agreements, and appraisals.⁹ However, BIA does not have a documented process or the data needed to track its review and response times—such as data on the date documents are received, the date the review process is considered complete by the agency, and the date documents are approved or denied.¹⁰ However, a few stakeholders we interviewed, including tribal and federal officials and industry representatives, and some literature we reviewed suggested that BIA's review and approval process can be lengthy and increase development costs and project development times, resulting in missed development opportunities, lost revenue, and jeopardized viability of projects.¹¹

⁹A ROW is an authorization to a qualified individual, business, or government entity to use a specific area of land for a specific amount of time for a certain purpose and with certain restrictions.

¹⁰For example, BIA approves seismic exploration permits for operators to identify oil and gas resources, maintains surface and mineral ownership records, identifies and verifies ownership of land and resources, and reviews and approves a number of energy-related documents—such as surface leases, mineral leases for the right to drill for oil and gas resources, and right-of-way agreements. GAO-15-502.

¹¹See, for example, Hearing on the Indian Tribal Energy and Self-Determination Act Amendments (S. 2132), 113th Cong. (April 30, 2014). Statement of the Honorable James M. Olguin, Acting Chairman, Southern Ute Indian Tribal Council on behalf of the Southern Ute Indian Tribe; and Prepared statement of Hon. Nathan Small, Chairman, Fort Hall Business Council, Shoshone-Bannock Tribes. Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities, Field Hearing Before the Committee on Indian Affairs, United States Senate 112th Cong. 1st sess. (Aug. 17, 2011).

For example, in 2014, the Acting Chairman for the Southern Ute Indian Tribe reported that BIA's review of some of its energy-related documents took as long as 8 years. Specifically, as of April 30, 2014, the tribe had been waiting for at least 5 years for BIA to review 81 pipeline ROW agreements—11 of the 81 ROW applications had been under review for 8 years. According to the tribal official, had these ROW agreements been approved in a timely manner, the tribe would have received revenue through various sources, including tribal permitting fees, oil and gas severance taxes, and royalties. The tribal official noted that, during the period of delay, prices for natural gas rose to an historic high but had since declined. Therefore, the official reported that much of the estimated \$95 million in lost revenue would never be recovered by the tribe.

In another example from our June 2015 report, one lease for a proposed utility-scale wind project took BIA more than 3 years to review and approve and according to a tribal official, the lease was only reviewed and approved after multiple calls and letters from the tribe to BIA headquarters. According to a tribal official, the long review time contributed to uncertainty about the continued viability of the project because data used to support the economic feasibility and environmental impact of the project became too old to accurately reflect current conditions.

We recommended in our June 2015 report that Interior direct BIA to develop a documented process to track its review and response times. Interior agreed with the recommendation and stated it would try to implement a tracking and monitoring mechanism by the end of fiscal year 2017 for oil and gas leases. However, Interior did not indicate whether it intends to track and monitor its review of other energy-related documents that must be approved before tribes can develop resources. Without comprehensively tracking and monitoring its review process, BIA cannot ensure that documents are moving forward in a timely manner, and lengthy review times may continue to contribute to lost revenue and missed development opportunities for Indian tribes.

Further, in a June 2016 report, we found that BIA took steps starting in 2015 to improve its process for reviewing revenue-sharing agreements but still had not established a systematic mechanism for monitoring or

tracking.¹² We recommended, among other things, that BIA develop a systematic mechanism for tracking these agreements through the review and approval process. Interior concurred with this recommendation and stated that BIA would develop such a mechanism and in the meantime would use a centralized tracking spreadsheet.

Collaboration and Communication

In June 2015, we reported that the added complexity of the federal process, which can include multiple regulatory agencies, prevents many developers from pursuing Indian energy resources for development.¹³ In a November 2016 report, we reported that Interior has recognized the need for collaboration in the regulatory process and described the creation of the Indian Energy Service Center as a center point of collaboration for permitting that will break down barriers between federal agencies.¹⁴ We found that BIA had taken steps to form an Indian Energy Service Center that was intended to, among other things, help expedite the permitting process associated with Indian energy development. We reported that the Service Center had the potential to increase collaboration between BIA and BLM on some permitting requirements associated with oil and gas development.¹⁵ However, we found that BIA did not coordinate with other key regulatory agencies, including Interior's Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Environmental Protection Agency. As a result, the Service Center was neither established as the central point for collaborating with all federal regulatory partners generally involved in energy development, nor did it serve as a single point of contact for permitting requirements. Without serving in these capacities, the Service Center was limited in its ability to improve efficiencies in the federal regulatory process. We also found that in forming the Service Center, BIA did not involve key stakeholders, such as the Department of Energy—an agency with significant energy expertise—and BIA

¹²The federal government, tribes, Indian mineral owners, state governments, and private landowners can lease land to companies for the development of oil and gas resources. A revenue-sharing agreement, known as a communitization agreement—may be necessary for royalty allocation when federal or Indian leases are involved that cannot be independently developed.

¹³GAO-15-502.

¹⁴Testimony of Lawrence S. Roberts, Principal Deputy Assistant Secretary, Indian Affairs, Department of the Interior, before the Committee on Indian Affairs, United States Senate, on "The GAO Report on Indian Energy Development: Poor Management By BIA Has Hindered Development on Indian Lands" on October 21, 2015.

¹⁵GAO-17-43.

employees from agency offices. By not involving key stakeholders, BIA was missing an opportunity to incorporate their expertise into its efforts.

We recommended that BIA include other regulatory agencies in the Service Center so that it can act as a single point of contact or a lead agency to coordinate and navigate the regulatory process. We also recommended BIA establish formal agreements with key stakeholders, such as DOE, that identify the advisory or support role of the office, and establish a process for seeking and obtaining input from key stakeholders, such as BIA employees, on the Service Center activities. Interior agreed with our recommendations and described its plans to address them.

In addition, in 2005, Congress provided an option for tribes to enter into an agreement with the Secretary of the Interior that allows the tribe, at its discretion, to enter into leases, business agreements, and ROW agreements for energy resource development on tribal lands without review and approval by the Secretary. However, in our June 2015 report, we found that uncertainties about Interior's regulations for implementing this option have contributed to deter tribes from pursuing such agreements.¹⁶ We recommended that Interior provide clarifying guidance. In August 2015, Interior stated the department was considering further guidance. As of December 2016, however Interior had not provided additional guidance.

BIA Workforce Planning

In our June 2015 report, we found that BIA's long-standing workforce challenges, such as inadequate staff resources and staff at some offices without the skills needed to effectively review energy-related documents, were factors hindering Indian energy development.¹⁷ Further, in November 2016, we found that some BIA offices had high vacancy rates for key energy development positions, and some offices reported not having staff with key skills to review energy-related documents.¹⁸ For example, BIA agency officials in an area where tribes are considering developing wind farms told us that they would not feel comfortable approving proposed wind leases because their staff do not have the

¹⁶See Tribal Energy Resource Agreements (TERA) as discussed in GAO-15-502.

¹⁷GAO-15-502.

¹⁸GAO-17-43.

expertise to review such proposals. Consequently, these officials told us that they would send a proposed wind lease to higher ranking officials in the regional office for review. Similarly, an official from the regional office stated that they do not have the required expertise and would forward such a proposal to senior officials in Interior's Office of the Solicitor. The Director of BIA told us that BIA agency offices generally do not have the expertise to help tribes with solar and wind development because it is rare that such skills are needed.

According to BIA officials, through the Indian Energy Service Center, BIA plans to hire numerous new staff over the next 2 years, which could resolve some of the long-standing workforce challenges that have hindered Indian energy development in the past. However, BIA is hiring new staff without incorporating effective workforce planning principles. Specifically, BIA has not assessed key skills needed to fulfill its responsibilities related to energy development or identified skill gaps, and does not have a documented process to provide reasonable assurance its workforce composition at agency offices is consistent with its mission, goals, and tribal priorities. As a result, BIA cannot provide reasonable assurance it has the right people in place with the right skills to effectively meet its responsibilities or whether new staff will fill skill gaps.

We recommended in our November 2016 report that BIA assess critical skills and competencies needed to fulfill its responsibilities related to energy development and identify potential gaps. We also recommended BIA establish a documented process for assessing BIA's workforce composition at agency offices taking into account BIA's mission, goals, and tribal priorities. Interior agreed with our recommendations and stated it was taking steps to implement them.

Technology

In June 2015, we found that BIA did not have the necessary geographic information system (GIS) mapping data for identifying who owns and uses resources, such as existing leases.¹⁹ Interior guidance states 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 GIS data, the process of identifying transactions, such as leases and access agreements for Indian land and resources, can take

¹⁹GAO-15-502.

significant time and staff resources to search paper records stored in multiple locations.

We recommended BIA should take steps to improve its GIS capabilities to ensure it can verify ownership in a timely manner. Interior stated it will enhance mapping capabilities by developing a national dataset composed of all Indian land tracts and boundaries in the next 4 years.

Incomplete and Inaccurate Data

In June 2015, we found that BIA did not have the data it needs to verify who owns some Indian oil and gas resources or identify where leases are in effect.²⁰ 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. The ability to account for Indian resources would assist BIA in fulfilling its responsibilities, and determining ownership is a necessary step for BIA to approve leases and other energy-related documents.

We recommended that Interior direct BIA to identify land survey needs. Interior agreed with the recommendation and stated it will develop a data collection tool to identify the extent of its survey needs in fiscal year 2016. As of December 2016, Interior had not provided information on the status of its efforts to develop a data collection tool.

In conclusion, our reviews have identified a number of areas in which BIA could improve its management of Indian energy resources. Interior has stated that it intends to take some steps to implement our recommendations, and we will continue to monitor its efforts. We look forward to continuing to work with this committee in overseeing BIA, BIE, and IHS to ensure that they are operating in the most effective and efficient manner, consistent with the federal government's trust responsibilities, and working toward improving service to tribes and their members.

Chairman Farenthold, Ranking Member Plaskett, 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.

²⁰GAO-15-502.

**GAO Contacts and Staff
Acknowledgement**

If you or your staff members have any questions about this testimony, please contact me at (202) 512-3841 or ruscof@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Christine Kehr (Assistant Director), Richard Burkard, and Jay Spaan made key contributions to this testimony.

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GAO Highlights

Highlights of GAO-17-434T, a testimony before the Subcommittee on the Interior, Energy, and Environment, Committee on Oversight and Government Reform, U.S. House of Representatives

Why GAO Did This Study

Indian tribes and their members hold considerable energy resources and may decide to use these resources to provide economic benefits and improve the well-being of their communities. However, according to a 2014 Interior document, these resources are underdeveloped relative to surrounding non-Indian resources. Development of Indian energy resources is a complex process that may involve federal, tribal, and state agencies. Interior's BIA has primary authority for managing Indian energy development and generally holds final decision-making authority for leases, permits, and other approvals required for development.

GAO's 2017 biennial update to the high-risk program identifies federal management of programs that serve tribes and their members as a new high risk area needing attention by Congress and the executive branch.

This testimony highlights the key findings of three prior GAO reports (GAO-15-502, GAO-16-553, and GAO-17-43). It focuses primarily on BIA's management of Indian energy resources and development. For the prior reports, GAO analyzed federal data; reviewed federal, academic, and other literature; and interviewed tribal, federal and industry stakeholders.

What GAO Recommends

In the past 2 years, GAO issued 3 reports and made 14 recommendations to BIA to improve its management of Indian energy resources, such as to track its review process, improve collaboration, and conduct workforce planning. BIA agreed with most recommendations and identified some steps it intends to take to implement them.

View GAO-17-434T. For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov

February 15, 2017

HIGH RISK

Federal Management Challenges Related to Indian Energy Resources

What GAO Found

In its three prior reports on Indian energy development, GAO found that the Department of the Interior's Bureau of Indian Affairs (BIA) has inefficiently managed Indian energy resources and the development process and thereby limited opportunities for tribes and their members to use those resources to create economic benefits and improve the well-being of their communities. GAO has also reported numerous challenges facing Interior's Bureau of Indian Education and BIA and the Department of Health and Human Services' Indian Health Services in administering education and health care services, which put the health and safety of American Indians served by these programs at risk. For the purposes of this testimony, GAO is focusing on the concerns related to Indian energy.

GAO categorized concerns associated with BIA management of energy resources and the development process into several broad areas, including oversight of BIA activities, collaboration, and BIA workforce planning.

- Oversight of BIA activities.** In a June 2015 report, GAO found that BIA review and approval is required throughout the development process. However, BIA does not have a documented process or the data needed to track its review and response times—such as data on the date documents are received, the date the review process is considered complete, and the date documents are approved or denied. GAO recommended that BIA develop a documented process to track its review and response times. Interior generally agreed and stated it would try to implement a tracking and monitoring mechanism by the end of fiscal year 2017 for oil and gas leases. Interior did not indicate whether it intends to track and monitor its review of other energy-related documents that must be approved before tribes can develop resources.
- Collaboration.** In a November 2016 report, GAO found that BIA has taken steps to form an Indian Energy Service Center that is intended to, among other things, help expedite the permitting process associated with Indian energy development. However, BIA did not coordinate with key regulatory agencies, including Interior's Fish and Wildlife Service, the Environmental Protection Agency and the U.S. Army Corps of Engineers. GAO recommended that BIA include other regulatory agencies in the Service Center so that it can act as a single point of contact or lead agency to coordinate and navigate the regulatory process. Interior agreed with our related recommendation and described plans to address it.
- BIA workforce planning.** In June 2015 and in November 2016, GAO reported concerns associated with BIA's long-standing workforce challenges, such as inadequate staff resources and staff at some offices without the skills needed to effectively review energy-related documents. GAO recommended that BIA assess critical skills and competencies needed to fulfill its responsibilities related to energy development and establish a documented process for assessing BIA's workforce composition at agency offices. Interior agreed with our recommendations and stated it is taking steps to implement them.

Mr. FARENTHOLD. Thank you very much.
Ms. Kendall, you're now recognized for 5 minutes.

STATEMENT OF MARY KENDALL

Ms. KENDALL. Thank you, Mr. Chairman, ranking member, members of the subcommittee. Thank you for the invitation to testify today about the conditions of Indian country as it relates to DOI's responsibilities to American Indians.

As you know, DOI's mission includes fulfilling trust responsibilities to American Indians. Fulfilling these responsibilities is consistently a top management challenge for DOI. Through the Bureau of Indian Affairs and the Bureau of Indian Education, the Department provides services to 567 federally recognized tribes with a population of about 1.9 million American Indians and Alaska natives, and provides education services to about 42,000 Indian students in 183 schools.

DOI funds Indian country programs that provide social services, law enforcement and detention services, tribal justice systems, housing assistance, repair and maintenance of schools, roads, and bridges, and economic development programs in some of the most isolated and economically depressed areas in the United States.

For many years, the Office of Inspector General has reported that BIA and BIE are failing to meet the responsibilities to American Indians on many fronts. I will focus my comments today on the challenges facing Indian schools. Specifically, substantial work is needed to improve the Indian education system, particularly in creating environments where children are safe and have adequate means to learn.

In May 2015 testimony, BIE leadership acknowledged that they faced unique and urgent challenges in providing a high-quality education to Indian students attending BIE schools. They attributed these challenges in part to difficulty in attracting effective teachers, difficulty in adopting research-based reforms, ongoing organizational and budgetary restructuring efforts, and inconsistent BIE leadership.

A high-quality education is also hampered by crumbling school infrastructure and limited broadband internet access. All of these challenges contribute to low graduation rates for native students. Nationally, the American Indian Alaska native high school graduation rate is 69 percent, below the average national of 81 percent.

BIE's 2014 blueprint for reform recommended a shift in the Bureau's role from direct provider of education to one of a capacity builder and service provider to the tribes that run their own schools. According to the blueprint, greater tribal control of schools promotes self-governance and self-determination, giving tribes more power to engage children, infuse schools with tribal cultural values and native languages, and improve educational outcomes. BIE's goal is commendable, but this vision probably requires more technical and financial assistance for tribes than BIE can presently provide.

To address some of these complex challenges, DOI's fiscal year 2027 budget request proposes \$1 billion to sport a comprehensive redesign and reform of BIE. But to effectively use its Federal fund-

ing in addressing these challenges, BIE needs to improve both its execution and its oversight of school expenditures.

What I fear gets lost in reports such as those issued by GAO and the OIG on Indian country is the impact that the conditions we report on has on real human lives. The young people in Indian country who are dependent upon the schools that BIA operates or oversees are profoundly affected by attending schools with crumbling infrastructure, schools that have wholly inadequate physical safety measures, and schools that are not equipped to prevent or respond to violence or other emergency situations.

This concludes my prepared remarks, and I am happy to answer any questions that members of the subcommittee may have.

[Prepared statement of Ms. Kendall follows:]

TESTIMONY OF MARY L. KENDALL, DEPUTY INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON THE INTERIOR, ENERGY, AND ENVIRONMENT
FEBRUARY 15, 2017

Mr. Chairman, and members of the Subcommittee, good afternoon. Thank you for the invitation to testify on behalf of the Office of Inspector General (OIG) for the Department of the Interior (DOI) today about the condition of Indian Country as it relates to the Department's responsibilities to American Indians.

As you know, DOI's mission includes fulfilling trust responsibilities or special commitments to American Indians. Fulfilling responsibility to American Indians is consistently a top management challenge for DOI. Through the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE), DOI provides services to 567 federally recognized tribes with a population of about 1.9 million American Indian and Alaska Natives, has trust responsibilities for 55 million surface acres and 57 million acres of subsurface mineral estates, and provides education services to about 42,000 Indian students in 183 schools and dormitories. DOI funds Indian Country programs that provide social services, law enforcement and detention services, tribal justice systems, housing assistance, repair and maintenance of roads and bridges, and economic development programs in some of the most isolated and economically depressed areas of the United States.

OIG findings have highlighted the same or similar issues for many years. Specifically, substantial work is needed to improve the Indian education system, particularly in creating environments where children are safe and have adequate means to thrive. In addition, tribal operations have longstanding deficiencies in records management and inadequate policies and procedures, which continue to hinder their accountability when handling public funds. BIA continues to struggle to develop and retain crucial personnel, which reduces the effectiveness of key programs. Issues persist within the BIA detention system as safety measures have continued to be ignored or overlooked. Overall failures in the management of various responsibilities entrusted to BIA compound these findings, making it difficult for BIA to achieve its mission goals.

Management of Contracts and Grants

DOI awarded more than \$2.1 billion in contracts, grants, and other financial assistance to Indian Country during FY 2016. Historically, single audits and OIG audits have identified severe deficiencies and material weaknesses in the capacity of tribes to effectively manage taxpayer funds. DOI-funded programs and operations in Indian Country are susceptible to fraud, waste, mismanagement, and abuse, due in part to the absence of spending oversight and insufficient procurement resources.

Tribes receive funding from a number of Government agencies in addition to BIA, such as DOI's Bureau of Reclamation, and the Departments of Health and Human Services, Transportation, and Education. BIA regional and agency staff are responsible for oversight of these funds. Examples

of inadequate oversight by BIA staff of tribal use of Government funds include inaccurate documentation filed by tribes to certify how they are spending funds and BIA's failure to review single audits submitted by tribes. BIA and BIE are also challenged by a limited number of warranted contracting officers and contracting officer's representatives, who are responsible for monitoring and overseeing contracts.

Land Buy-Back Program

Across Indian Country, more than 245,000 owners of 3 million fractionated interests, spanning about 150 Indian reservations, are eligible to participate in the Land Buy-Back Program. The program was created to implement the land consolidation component of the *Cobell v. Salazar* settlement, which provided \$1.9 billion to consolidate fractionated land interests across Indian Country within a 10-year period, which ends in November 2022.

Land fractionation is a serious problem throughout Indian Country. As lands are passed down through generations, they gain more owners. Many tracts now have hundreds and in some cases thousands of individual owners. It can be challenging to obtain the required approvals for leases or other uses of such lands. As a result, many highly fractionated tracts are unoccupied and unavailable for any beneficial purpose, which hinders tribal communities' process of self-determination and impedes DOI in fulfilling its trust responsibilities to American Indians.

To date, the Land Buy-Back Program has paid more than \$740 million to individual landowners and restored the equivalent of nearly 1.5 million acres of land to tribal governments. DOI has entered into agreements with 31 tribal nations to cooperatively implement the Land Buy-Back Program. DOI has identified 42 locations where land consolidation activities such as planning, outreach, mapping, mineral evaluations, appraisals, or acquisitions are expected to take place through the middle of 2017. These communities represent 83 percent of all outstanding fractional interests across Indian Country.

DOI faces several challenges in its effort to consolidate all land fractionation interests across Indian Country. Among these challenges are a dependence on coordination with other programs and agencies, and the sensitivity surrounding acquisition of Indian lands by the Federal Government. The breadth and scale of the task, limited funding, and the bounded lifespan established for the program are further major challenges to DOI's Land Buy-Back Program.

Indian Country Schools

In a May 2015 statement before the U.S. Senate Committee on Indian Affairs, BIE leadership acknowledged that their Bureau faces unique and urgent challenges in providing a high-quality education to Indian students attending BIE schools. They attributed these challenges to—

- difficulty in attracting effective teachers to BIE schools;
- difficulty in adopting research-based reforms at BIE schools;
- no access to certain programs that are designed, through funding opportunities, to build State educational agency and local educational agency capacity
- ongoing organizational and budgetary restructuring efforts; and
- inconsistent BIE leadership (the Bureau has had 33 directors since 1979).

A high-quality education is also hampered by crumbling school infrastructure and limited broadband Internet access. Some of the major facility deficiencies and health and safety concerns that we found includes:

- asbestos, radon, and mold;
- structural concerns and condemned buildings’
- electrical issues’
- grounds and drainage problems;
- damaged and deteriorated roofs’
- plumbing, corrosion, and moisture damage;
- reliance on temporary structures as permanent solutions; and
- problems with fire safety systems.

All of these challenges contribute to low graduation rates for Native students. Nationally, the American Indian/Alaskan Native high school graduation rate is 69 percent, below the national average of 81 percent.

Moreover, DOI is failing to collect comprehensive and accurate information on school safety and health conditions at all BIE schools, and failing to provide schools with support in addressing deficiencies identified in annual safety reports. Conducting thorough annual inspections at all BIE schools is essential for protecting the safety and health of students.

BIE’s planned restructuring, outlined in the 2014 “Blueprint for Reform,” recommended a shift in BIE’s role from direct provider of education into a capacity-builder and service-provider to tribes that run their own schools. According to the Blueprint, greater tribal control of schools promotes self-governance and self-determination, giving tribes more power to engage children, infuse schools with tribal cultural values and native languages, and improve educational outcomes. BIE’s goal is commendable, but the transition may require more technical and financial assistance for tribes than BIE can provide. Moreover, in order to make this transition successful and to ensure that funds are spent effectively, tribes need to have the capacity to run their own schools.

To address some of these complex challenges, DOI’s FY 2016 budget included \$45 million for school construction projects and funding for a public-private partnership to provide more than 1,000 American Indian students nationwide with improved access to digital technology in their classrooms and dorms. In addition, the FY 2017 budget request proposes \$1 billion to support a comprehensive redesign and reform of BIE, including \$138 million to improve facility conditions and \$25 million to extend broadband Internet and computer access at BIE-funded schools and dormitories.

To effectively use its Federal funding in addressing these challenges, BIE needs to improve its oversight of school expenditures. In a 2014 report, the Government Accountability Office (GAO) stated that BIE continues to be challenged with the development of process documents that detail how BIE oversees expenditures for major programs. BIE also needs to develop procedures that detail the requirements for consistent documentation of monitoring activities and remediation actions to resolve financial weaknesses identified at schools.

Energy Development and Management on Tribal Lands

Indian Country energy resources are underdeveloped relative to surrounding non-Indian resources, but have significant potential. BIA has primary authority for managing Indian energy development and generally holds final decision-making authority for leases and other permits required for development. Indian-owned oil and gas resources are one of the largest revenue generators in Indian Country, with royalty income of \$826 million in 2015.

In 2015, GAO identified BIA “management shortcomings” as a major hindrance to energy development in Indian Country. Management shortcomings, coupled with a complex regulatory framework, limited capital and infrastructure, and varied tribal capacity to address issues, can lead to lost revenue for American Indians. GAO recommended that DOI take steps to address data limitations, track its review process, and provide clarifying guidance, among other actions to improve energy development and management on tribal lands. In 2016, GAO pointed out that BIA is also faced with an extensive backlog, in part due to inadequate staffing and a complicated review and approval process for Indian oil and gas revenue-sharing agreements, known as communitization agreements. In July and August 2015, DOI issued guidance intended to streamline the review process and reduce the approval times administered by BLM and BIA. GAO expressed concern that the guidance did not provide sufficient approval timeframes, systematic methods to track the Federal review process on these agreements, or a robust plan to evaluate the effects of such guidance on timely review.

Among the tools available for promoting energy and resource development in Indian Country are tribal energy resource agreements (TERAs), which aim to promote tribal oversight and management of energy and mineral resource development on tribal lands and to further the goal of self-determination. Federal policy allows for interested tribes to pursue TERAs, which would enable tribes to develop energy-related business agreements, award leases, and grant rights-of-way for energy facilities without having to obtain further approval from the Secretary of the Interior. Although TERAs create an avenue for tribal-directed energy and resource development, according to GAO testimony before the Senate Committee on Indian Affairs in 2015 and an OIG report issued a year later, no tribe has entered into a TERA. This is due in part to the complexity of TERA regulations; thus TERA has not proved a viable option for tribes.

BIA is attempting to improve energy management shortcomings, as GAO recommended, by developing processes to track review and response times for energy-related documents and collect relevant data. BIA has set a goal to implement a tracking and monitoring mechanism for oil and gas leases by the end of FY 2017. Ensuring efficiency, effectiveness, and transparency in the handling of energy-related documents should improve BIA’s ability to appropriately develop Indian energy resources.

In FY 2016, DOI received initial funding to establish an Indian Energy Service Center, to expedite the leasing, permitting, and reporting for conventional and renewable energy. By instituting streamlined processes, standardized procedures, and best practices for all types of energy transactions, the center intends to remediate backlogs and provide expedient energy-related services and support to tribes nationwide. The creation of this center can also improve cross-bureau communication among the BIA regional offices, the BLM field and State offices,

and the Office of the Special Trustee for American Indians' fiduciary trust officers and regional trust administrators. Once this center is operational, DOI will need to conduct regularly scheduled assessments to ensure it is efficiently and effectively mitigating the issues it was designed to address.

Thank you for the opportunity to testify today. I would be happy to answer any questions that members of this Subcommittee may have.

Mr. FARENTHOLD. Thank you. You're all doing very well on the clock.

Mr. Thompson, can you keep up the trend?

Mr. THOMPSON. I'll do my best.

Mr. FARENTHOLD. You need to turn your microphone on and get real close to it. These are kind of very not sensitive microphones. They want you to be real close.

Mr. THOMPSON. Sounds good. Awesome.

Thank you, Chairman Farenthold, Ranking Member Plaskett, and honorable members of the subcommittee. Thanks for having us here today.

STATEMENT OF TYSON THOMPSON

My name is Tyson Thompson, councilman for the Southern Ute Indian Tribe, and, again, it is an honor to be here. Our reservation is located in southwest Colorado, chipped away through the years and years of Federal demands to a section that's about 15 by 75 miles, just a strip in the bottom.

We began to develop oil and gas in our reservation in the 1940s, and since then we have been taking greater and greater control of our mineral resources and destiny. Some examples of this are collecting nearly \$1 billion in revenue since we enacted a severance tax in 1982.

In 1992, our tribe started Red Willow Production Company, which operates wells on and off the reservation and is wholly owned by the Southern Ute Indian Tribe. In 1994, our tribe partnered to create Red Cedar Gathering Company to provide gathering and treating services on the reservation.

Less than 50 years ago, the Tribe could no longer make per capita payments to our members, but with strong vision of our past leaders, internal expertise, informed decisions, and planning for the future, we have come a long way since then. Today, we conduct oil and gas activities in ten States, and we are the largest employer of the Four Corners region of southwest Colorado.

Our success allows our tribe to provide many services to our people, including great health insurance, as well as give a college education to any of our members that wish it. We are the only tribe in the Nation with a AAA credit rating from Standard & Poor's. About 30 percent of the Tribe's income comes from energy development on the reservation.

There is no question that energy development has put the Tribe, our membership, as well as the surrounding community on a more stable economic footing. We could tell you firsthand that Federal oversight often impedes tribal self-determination. For example, the BLM issues drilling permits on tribal lands, which can take 4 to 6 months and cost \$9,500. The State of Colorado, though, can issue drilling permits on private lands typically within 45 days, and it's free. No wonder oil and gas companies would rather drill on private lands.

And unfortunately, our reservation is checkerboarded. If you're not familiar with a checkerboard status of the reservation, it's not unlike this table where the brown color is the entire reservation. Everything you see on top of this table would be trust land. So an operator can go across the fence and have a different set of regula-

tions and still be within the exterior boundaries of the reservation and be utilizing that same resource that's underground.

Willing and able tribes should be allowed greater authority over energy development on tribal lands. We have shown time and time again that we can complete major projects quickly and effectively. Federal agencies have often hindered or flat out refused our efforts to assist in carrying out these functions, or their functions, rather.

In 2014, Office of Trust Review and Audit report was found that the BIA mishandled the Tribe's historical records at the Southern Ute Agency. The Southern Ute Indian Tribe made countless offers to assist the BIA in solving this problem, and after many months, our tribe was finally authorized to enter into a 638 contract, allowing the Tribe to scan and organize our historic files at the agency while using \$1 million of our own funding as well as our own staff.

The Tribe has also streamlined the process of approving, in a single transaction, all right-of-way renewals that an operator has on the reservation. At times, this number is in the hundreds. This approach allows the tribes to easily monitor expiration dates and negotiate renewals, including holding operators accountable to environmental concerns.

When the Tribe presented one of these rights-of-way packages to the Southern Ute Agency for approval, it took the Agency nearly 4 years to approve the package. There was no way for the Agency to enter this transaction and its information into the department's land management system, which they call the TAAMS.

To overcome the problems at the BIA realty function, the Tribe created its own GIS system, known as the land information management system. Our system allows the Tribe to scan realty records into our database where each document is linked to a location on a map, very similar to Google Maps. When you're looking for a store and you click on the store, it tells you the hours and the dates and the times that they're open. And we would be happy to give the demonstration of the system to the committee at your convenience.

The BIA does not have the data resources, staffing, or IT capabilities to meet the Tribe's needs or the other capable tribes' needs for that matter. We have the capability, and more importantly, we have the incentive to improve the situation.

There is not a one-size-fits-all solution for tribes. Some solutions aren't expensive, though. Congress needs to approve legislation to allow tribes the choice to take on more responsibility. Federal positions need to be advertised locally so local people who already live in the area can apply for them. There needs to be a cost-of-living adjustment for our area to entice people to work there. And the BIA needs to stop arbitrarily choosing when they'll exercise trust responsibility.

The BIA abandoned the trust responsibility to protect and organize the Tribe's priceless records but then cited their trust responsibility when they required Southern Ute Agency and the Tribe to use Federal funds to require tribal employees to drive 160 miles to be fingerprinted, have a photo taken, undergo an hour-long interview with the OPM contract investigator before being allowed to work in the office. Those are simple solutions and not too expensive to take on to change that.

To follow up, the Southern Ute Tribe is well equipped, as we said, and to responsibly develop its own energy resources safely and effectively. We do appreciate the efforts of this subcommittee, as well as GAO's office and OIG's office, to help find solutions to the problems that we experience on a day-to-day.

Again, thank you for the invitation to appear before you, and I'm happy to answer any questions.

[Prepared statement of Mr. Thompson follows:]

BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON THE INTERIOR, ENERGY, AND ENVIRONMENT
UNITED STATES HOUSE OF REPRESENTATIVES

Prepared Statement of Honorable Tyson Thompson
Councilman, Southern Ute Indian Tribal Council

On behalf of the
SOUTHERN UTE INDIAN TRIBE

Hearing

"Examining Federal Programs that Serve Tribes and Their Members."

February 15, 2017, 2:00 p.m.

Rayburn House Office Building

I. Introduction.

Good afternoon, Chairman Farenthold, Ranking Member Plaskett, and Members of the Subcommittee. My name is Tyson Thompson. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe (Tribe). Thank you for the opportunity to provide a statement on behalf of the Tribe regarding our experiences as they relate to recent studies and analyses conducted by the Government Accountability Office (GAO) and the Department of the Interior Office of Inspector General (OIG) on the management of federal programs that serve tribes and their members.

The Tribe has extensive experience with the federal government's, and particularly the Bureau of Indian Affairs', shortcomings with respect to Indian Energy Development. On several occasions, we have shared our stories with the GAO and with the OIG regarding Bureau of Indian Affairs (BIA) mismanagement of tribal energy resources and have assisted those agencies in identifying significant problems and potential solutions. Considering our experiences with the BIA and the conclusions reached in recent OIG and GAO studies and analyses on the management of federal programs that serve tribes, we are optimistic that this Congress, and this Subcommittee, is interested in this area of concern. Thank you for taking these reports and analyses seriously and for allowing the Tribe to share with you stories of our experience.

The Tribe, which comprises just over 1,500 members, is a leader in Indian Country with a demonstrated and sterling record of foresight and business acumen. The Tribe is the only Indian tribe in the nation with an AAA+ credit rating, which was earned through years of steady governance and successful and prudent business transactions. Though the Tribe has a diversified portfolio, energy development remains a key component of the Tribe's strategy, with approximately thirty percent of the Tribe's income coming from energy development. Accordingly, we are well positioned to speak to the relationship between energy development, prosperity, and tribal self-determination.

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado. Approximately 311,000 acres of the Reservation is 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 that are held in trust by the United States on additional portions of the Reservation. Federal regulations require federal review and approval of even the most basic realty transaction occurring on lands and minerals held in trust for the Tribe on the Reservation. Because the federal role in tribal energy development has not always served or protected the Tribe's best interests, the Tribe learned early on that if it wanted something done correctly, it often just needed to do the work itself. This is an exercise of the Tribe's self-determination; the Tribe develops internal expertise, makes informed decisions about how and when mineral resources on the Reservation should be developed, and then assists the federal government to perform the federal government's role. In instances where the Tribe recognizes that it could do a better job than a federal agency (royalty accounting is a good example), the Tribe may choose to enter into a contract under the Indian Self-Determination and Education Assistance Act ("PL 93-638 contract"), which allows the Tribe to do the federal agency's work with the federal funding that would have gone to the federal agency to do that job. Choosing to pursue a PL 93-638 contract is one way to exercise tribal self-determination and help address the problem of understaffed and undertrained federal agencies bogging down tribal energy development decisions, but there are other solutions to this problem, such as modifying federal regulations, improving the system for hiring and training federal employees, and allowing tribes that choose to do so to take on a greater role in processing realty transactions.

II. Careful Planning Led the Southern Ute Indian Tribe to Become the Premier Indian Energy Developer in the United States.

The Tribe is a great example of the positive impacts of Indian energy development. Our Reservation is part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940s. Beginning in 1949, the Tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged in any comprehensive resource management planning. That changed in the 1970s as we and other energy resource tribes in the West recognized the potential importance

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

A series of events in the 1980s laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in *Merrion v. Jicarilla Apache Tribe*, the Tribal Council enacted a severance tax, which has produced more than \$800 million in revenue over the last three decades. After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands, and insisted upon flexible provisions that vested the Tribe with business options and greater involvement in resource development. Because the Tribe's leaders believed that the Tribe could do a better job of monitoring its own resources than federal agencies, 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. The Tribe can attest to the importance of federal legislation that allows tribes the option to take on a greater role in energy development on their reservations.

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

These acts of energy development through self-determination are key to the Tribe's economic success. Today the Tribe, through its subsidiary energy companies, conducts sizeable oil and gas activities in approximately ten states and in the Gulf of Mexico. We are the largest employer in the Four Corners Region of southwest Colorado. Energy resource development has unquestionably had a great positive impact on the Tribe, our members, and the surrounding community. The regional

community college even has a new associate degree program in Tribal Energy Management, and because of the Tribe's vast experience in this realm, the college has enlisted the Tribe's assistance and input.

III. Indian Energy Development has an Enormous Impact on the Economic Prosperity of Tribes and the Livelihood of Individual Tribal Members.

Less than fifty years ago the Tribal Council had to suspend 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, the Tribe would not be the economic powerhouse that it is today. Our energy-related economic successes have resulted in a higher standard of living for our tribal members. Our members have jobs. Our educational programs provide meaningful opportunities at all levels. Our elders have stable retirement benefits. We have exceeded many of our financial goals, and we are well on the way to providing our grandchildren and their grandchildren the opportunity to maintain our Tribe and its lands in perpetuity.

Along the way, we have encountered and overcome numerous obstacles, some of which are institutional in nature. We have also collaborated with Congress over the decades in an effort to make the path easier for other tribes to take full advantage of the economic promise afforded by tribal energy resources. As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours." Successful energy development, in spite of institutional obstacles, has also enabled the Tribe to invest in diverse, non-energy projects, laying the foundation for long-lasting economic prosperity. For example, the Tribe has made real estate investments in eleven markets located in eight states. These investments include residential, commercial, industrial, and hotel properties in California, Nevada, Colorado, Texas, Kansas, Illinois, Ohio, and Maryland. Return on these investments has spurred further economic growth for the Tribe, which would not have been possible but for the Tribe's active efforts to control and develop its energy resources.

IV. Federal Oversight Often Impedes Tribal Self-Determination.

The Tribe has achieved its stature despite the federal government's stifling role in Indian energy development. We have been carrying this same message to Capitol Hill since at least 2002. A memorandum from our legal counsel to the Senate Committee on Indian Affairs' legal counsel dated June 30, 2002 states:

The problems with Secretarial approval of tribal business activities include an absence of available expertise within the agency to be helpful Some structural alternative is needed. The alternative should be an optional mechanism that allows tribes to elect

to escape the bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing tribe will act prudently once cut free.

More than a decade later, the Tribe's longstanding concerns were supported by the findings of a 2015 GAO Report that weaknesses in the Bureau of Indian Affairs' (BIA) 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, which is all too aware of this reality. For example, 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 simply wait. In addition, permitting costs are much higher on tribal lands than on fee lands. The BLM's drilling permit fee is \$9,500.00, and none of that money goes to the Tribe. In comparison, a state drilling permit in Colorado is free. These disparities create a comparative disadvantage 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, while potentially 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 federal review and approval of even the most basic realty transaction occurring on the lands held in trust for the Tribe on the Reservation. Federal involvement invariably delays a proposed tribal project. These delays are exacerbated by the fact that a federal 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 federal agencies, the statutory and regulatory requirements for federal approval of tribal transactions must be modified so that federal review and approval of realty-related tribal projects is not required.

The Energy Policy Act of 2005 offered a new and creative alternative to this situation in the form of "Tribal Energy Resource Agreements" (TERAs), which are essentially bi-lateral agreements between an electing tribe and the Secretary of the Interior that would govern energy resource development on Indian lands. Under an approved TERA, a tribe would have the authority to negotiate and enter leases, business agreements, rights of way and other agreements without the prior review or approval of the Secretary.

Entering into a TERA would—at least in theory—address the problems the Tribe has faced. However, the implementing regulations diminished the scope of authority to be obtained by a TERA

tribe by preserving the federal government’s prerogative in carrying out an array of functions—called “inherently federal functions” in the vernacular—an undefined term that could render the Act’s goal of fostering tribal decision-making and self-determination practically meaningless. For example, the Tribe would like to have the authority to issue Applications for Permits to Drill (“APDs”), but it is not clear whether that is an “inherently federal function.” Despite the Tribe’s repeated requests for clarification of the TERA process, and in particular, for clarification on what constitutes an “inherently 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 has explained repeatedly why it has not entered into a TERA, and has even testified on the issue before the Senate Committee on Indian Affairs. So far, Congress has not enacted the amendments that would encourage tribes to assume greater responsibility for processing and approving energy transactions.

Fortunately, Indian energy legislation currently pending would address other inefficiencies in the TERA process, but does not address the “inherently federal function” dilemma. Just last week the Senate Committee on Indian Affairs approved legislation to address some of the weaknesses in the TERA mechanism. The Tribe strongly supports the bill (S.245) and is hopeful it will be enacted into law this year. The bill would help to address some of the problems the Tribe has identified in this testimony by allowing tribes to make the choice to play a larger role in the energy development process and to allow the United States to play a smaller role. This is a solution that could be achieved even despite federal funding and staffing shortages.

V. Willing and Able Tribes Should be Allowed Greater Authority over Energy Development on Tribal Lands.

Some tribes do not need or desire the current level of federal interference and “oversight” in tribal energy development, and in some instances like at Southern Ute, the federal “oversight” is a massive and quantifiable impediment to the Tribe’s ability to develop its own resources. The Tribe has consistently demonstrated that it can successfully complete major undertakings more quickly and effectively than federal agencies can.

For example, after a 2014 Office of Trust Review and Audit (OTRA) report revealed the massive mishandling of the Tribe’s priceless, historical trust and realty records at the Southern Ute Agency¹,

¹ The Tribe’s repeatedly-expressed concerns about delays in BIA approvals led to a series of independent governmental investigations and reports documenting the gross deficiencies at the agency, culminating in a report issued by the Interior’s Office of Inspector General in February, 2016. Bureau of Indian Affairs’ Southern Ute Agency’s Management of the Southern Ute Tribe’s Energy Resources, Report No.: CR-EV-BIA-0011-2014 (Dep’t of the Interior, OIG, Feb. 2016), see also Indian Energy Development – Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development, Report No. GAO-17-43 (GAO, Nov. 2016); Indian Energy Development – Poor Management by BIA Has Hindered Development of Indian Lands, Report No. GAO-15-502 (GAO, June 2015); Trust Records in

and after months of the Tribe virtually begging Interior to be allowed to help solve the problem, the BIA finally entered into a PL 93-638 contract that authorized the Tribe to (largely with the Tribe's own funding) scan and organize the Bureau's own archival files at the Southern Ute Agency before the files were sent to the American Indian Records Repository. The Tribe is then organizing the files in accordance with the Bureau's filing protocol, the 16 BIAM, which has been only loosely followed at the Southern Ute Agency in past decades. The electronic files are then being indexed into the Tribe's proprietary Geographic Information System (GIS). This scanning project, which utilizes \$250,000 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 Tribe is well-equipped to define and articulate its best interests, yet the ethos of federal agencies is to second-guess and overrule it. This makes no sense, particularly given that federal agencies cannot themselves meet the Tribe's needs, and in at least this instance, was the cause of the problem.

As another example, the Southern Ute Indian Tribe and major energy companies on the Reservation prefer to handle the renewal of a company'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. In one instance, the Tribe was even able to leverage the renewals to require an operator on the Reservation to replace several grandfathered high pollutant-emitting 1950s-era compressor engines in lieu of paying compensation for the right-of-way renewal. However, when the Tribe presented one such "global rights-of-way" package to the Southern Ute Agency for approval, it took the Agency approximately *four years* to approve it. 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 the Department's Trust Asset and Accounting Management System (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 BIA cannot assist the Tribe. The problem with the TAAMS system is well documented. (See U.S. Gov't Accountability Office, GAO-15-502, Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands; Office of Inspector General, U.S. Dep't of Interior, Report No.: CR-EV-BIA-0011-2014, Bureau of Indian Affairs' Southern Ute Agency's Management of the Southern Ute Tribe's Energy Resources.)

To improve access to critical mineral resource information and to avoid being hamstrung by TAAMS, 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 Tribe's Department of Energy's "Land Information Management System" and represent a major improvement to tribal operations.

Jeopardy, Report No. OTRA-14-015RA (Office of Special Trustee, Aug., 2014); Records Management at Selected Bureau of Indian Affairs' Agency Offices, Report No. CR-IS-BIA-0001-2014 (OIG, Jan., 2014).

Basically, because the BIA lacks the technology and sophistication 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. When the Southern Ute Agency needs a realty document, sometimes they just call the Tribe's Department of Energy to get it, because it is quicker. Juxtapositions like these—the disparity between the Tribe's technological acuity as compared to Interior's technological bankruptcy—make the “inherent federal function” requirement all the more patronizing and meaningless.

“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 Interior officials. The Tribe has implored the BIA in particular to accept the Tribe's countless offers to assist. BIA has repeatedly resisted those offers for reasons that are not particularly compelling. It is perfectly clear that the BIA does not have the data, resources, technological capabilities, or staffing to meet the needs of tribes. The Tribe has data, resources, staffing, technological capabilities, and the incentive to improve the situation.

The Department constantly cites lack of resources as the reason for delays, but in the Tribe's experience, it sometimes seems as if more federal resources are expended trying to thwart the Tribe's exercise of self-determination than are spent supporting the Tribe. For example, 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 Bureau told the Tribe that because of its trust responsibility, tribal employees assisting with the Tribe's records needed to have extensive background checks, and staff from the BIA's Albuquerque Area Office met with tribal representatives in Ignacio to explain that the tribal employees did not have the knowledge and expertise necessary to assist. To address this, the Tribe had several of its employees go through the Department's 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 Office of Personnel Management contract investigator. This process took many months, as did the negotiation of an MOU to establish the parameters within which the Tribe could provide assistance. The Tribe even hired local museum archivists to conduct training on archival techniques for Agency and tribal staff so that the BIA would allow tribal staff to handle the tribal records that had been desecrated by the BIA for decades. Time and time again the BIA held up its trust responsibility to the Tribe as the reason it could not allow the Tribe to assist.

These issues are exacerbated by the difficult task of recruiting quality staff to fill critical energy-related positions at the Southern Ute Agency. The positions are not advertised locally, there has not been a much-needed cost of living adjustment for the area, and there is no program in place to train new realty staff. To assist with the dire staffing shortage at the Agency, the Tribe has entered into Interpersonnel Agreements with the Bureau to allow for tribal staff, paid with tribal funds, to assist

the Agency in processing realty transactions. This is not a long-term solution. But now, with the current administration's federal hiring freeze, filling these positions is completely impossible. If the current framework requiring BIA approval for energy projects persists, the hiring freeze must be lifted for those BIA positions related to the approvals necessary to get energy projects moving.

VI. Conclusion.

Like other energy tribes, the Southern Ute Indian Tribe's economic prosperity is due in large part to responsible energy development, and because of the Tribe's energy resources, tribal members have education, health, and employment benefits they would not likely otherwise have. The Southern Ute Indian Tribe, like many other tribes, is well-equipped to utilize its own energy resources, particularly if given ever-increasing self-determination, and if limited federal resources are used to encourage those efforts rather than stifling them. We believe that this approach should be at the forefront of any Congressional oversight and action taken as response to GAO's and OIG's reports and analyses. The Tribe appreciates the continued efforts of this Congress, this Subcommittee, and others to encourage tribal self-determination through economic and energy development.

Mr. FARENTHOLD. Thank you very much.

I'll now—we'll now do some questions. I'll recognize myself to begin with.

So let's go, Mr. Rusco, why has it taken so long to get things approved in these agencies?

Mr. RUSCO. Well, I think, you know, it gets to a couple of things: One is leadership attention, so they've not paid as much attention to sort of making sure that they have a plan to get the right staff in the right places to do the job. And so if you're some place where you used to have a lot of, for example, water projects, irrigation projects or something, and you want to move to energy, you'd go to the BIA office, and they might have a whole bunch of hydrologists, but they don't have anybody that knows anything about oil and gas development or wind development or anything like that.

They need to be forward looking. They need to be creative. They have an Indian energy center—

Mr. FARENTHOLD. But you're saying they may not have the expertise. How do we solve this without growing the size of government and bringing more bureaucrats into these agencies who will probably slow the process down?

Mr. RUSCO. So I think there are some potential ways to do that, but under the current law, you have to—you do have to deal with these agencies. I think that there is a lot to be said for building that capacity in a central location, but you have to do it in a smart way. And the Indian energy center that they started is probably a good idea, but they have not executed it well.

Mr. FARENTHOLD. Why didn't they put EPA Fish and Wildlife in the core? I mean, I'm a Texan. I know these are the guys that you've got to mess with whenever you're doing any sort of infrastructure or energy product. How come they weren't included?

Mr. RUSCO. Absolutely. And absolutely, when they were building or creating this office, they did not even ask the question: What do we need to perform the task that we say this is going to perform? They didn't go to that trouble. And that's a leadership problem.

Mr. FARENTHOLD. Right.

Ms. Kendall, do you have anything to add along this line of questioning?

Ms. KENDALL. I really would just rearticulate what Mr. Rusco said. I think it is a leadership issue, and it is a forward-thinking kind of issue. To sit back and look at the entire picture, BIA has so many responsibilities, but I think they try piecemeal solutions without coming together and actually solving things.

Mr. FARENTHOLD. All right. So what about devolving some of this to the States? Mr. Thompson testified that in Colorado, for no charge and 45 days, you could get a drilling permit for oil and gas. In Texas, the Railroad Commission is equally as efficient. Obviously, there needs to be some government oversight where the Tribe itself is not—doesn't have full authority just like no landowner has full authority without going to the government. Why couldn't some of this be devolved to the States?

Ms. KENDALL. Is that my question?

Mr. FARENTHOLD. That's your question, then I'm going to ask Mr. Thompson the same question.

Ms. KENDALL. All right. Thank you, sir.

I think, in part, because Interior does have the trust responsibility, it would take a change in legislation.

Mr. FARENTHOLD. Wait, we're Congress. We can do that.

Ms. KENDALL. Yes.

Mr. FARENTHOLD. Mr. Thompson.

Mr. THOMPSON. I think Southern Ute is in a unique position. I think there's a lot of tribes that may not be as fortunate or as lucky as we have been to get to the point where we are today. And I think some of those moneys that are redirected towards assisting those tribes versus us, when we can—we can handle a lot of these situations that come up to really make business attractive on the reservation. I don't think giving up or taking these regulations to the State would be in the Tribe's best interest, just do the self-determination to sovereignty issues as we want to be doing what we need to do to survive in the world that we're given.

Mr. FARENTHOLD. So you're—you would more support reform within the existing Federal system?

Mr. THOMPSON. I think there's a chance to do things differently. It would take a little bit of letting go of that parental side of treatment that tribes have suffered through the years, and in redirecting those available resources to other tribes that may request it if they feel like they want to request it, and increase the ability of that internal function of BIA to be better than it's ever been. But that's only going to take place with good management in place.

Mr. FARENTHOLD. All right. We were talking about how much money you guys lost on the oil and gas. I assume, I mean, been saying that some of this permitting process took 8 years. I would love to be selling my natural gas and oil at prices 8 years ago as opposed to today. Do you have any other examples of where we can—where we should be focused? Obviously, the schools, the permitting process. Is that all we need to be looking at?

Mr. THOMPSON. I think better consultation for all Indian tribes is a great idea. Consultation has always been good for some and not good for others. I've seen firsthand what the lack of consultation can do. But good proper consultation to make the programs that work for specific tribes. Every tribe is different. Every tribe's needs are different, and to really make something that works for each tribe, I mean, it's a big challenge, but it's something that can be accomplished.

Mr. FARENTHOLD. All right. I see I'm out of time. If we get to the end and we still have some time, I'll ask more questions, but I do want to give everybody an opportunity to get their questions answered.

So we'll recognize the ranking member now for her questions.

Ms. PLASKETT. Thank you very much, Mr. Chairman.

Thank you again, testifiers, for your testimony this afternoon.

Mr. Thompson, sir, you brought up some very interesting points. And one of the phrases that I thought you utilized, which I'd like you to elaborate on, is arbitrary trust responsibility, where you stated that in some instances, the trust wants to be responsible, and then in the times when you want them to be responsible they're not. Can you elaborate on that. Do you remember?

Mr. THOMPSON. Yes. I'm just thinking how to word it to you. But what I believe where the trust responsibility is really coming into

play is they're taking that trust responsibility and applying it to where they would like to, which is maybe the easier, better function for those in the agency at the top and instead of, you know, it really addressing the trust responsibility, we're asking them to achieve at the moment with—in regards to realty transactions. If we could just really push some of these things for our tribe that benefit us now and quickly and in the long run, I mean, it would be a great thing to accomplish.

As far as trust responsibility not being done in other fashions, I mean, there's a lot of examples out there. And I'd be happy to provide you some certain examples in writing as well.

Ms. PLASKETT. Thank you. You also talked, and all of the witnesses today mentioned the Tribal Energy Resources Agreement, and as a tool intended to promote efficient energy and resource development by allowing tribes to enter into energy-related business arrangements without further approval of the Secretary of Interior.

Would that be a correct summary, Ms. Kendall, of the agreement?

Ms. KENDALL. That's my understanding of that provision. But as of today, to the best of my knowledge, no tribe has entered into a TERA agreement.

Ms. PLASKETT. That's what I wanted to talk about. Why do you think that has been, and what's been the impediment to the tribes being able to do that?

Ms. KENDALL. Well, I'd need to defer to Mr. Thompson to a certain extent because I know that the Southern Ute Tribe thought about that at one point. I think that there are some impediments relative to what the trust responsibilities of the Department are and what they could and should give up. I know that the Tribe has asked the Department for clarification on some issues and has not received that, and I think that's one of the impediments.

Ms. PLASKETT. Well, I understood that some of the—this goes back to the arbitrary discussion that Mr. Thompson talked about. But isn't it also because the Interior's regulations may not necessarily be very clear to some of the tribes and what will be imposed and not be imposed on that?

Ms. KENDALL. That's very possible, yes.

Ms. PLASKETT. And then, Mr. Thompson, is that correct? Did you—I understand that your tribe did do an analysis on whether or not they should enter into this agreement and decided not to.

Mr. THOMPSON. Uh-huh, that's true. We've been looking at this for a while, and some of the things that keep us from this—I mean, one of the biggest points that comes to mind is the inherent Federal function part. The Interior has not defined that. We've been asking for a definition for some time. Once we can figure out what that is and then we can better plan to see what functions we'd actually be assuming. And even once assuming those functions, one of the things is TERAs are not going to provide funding for us to take over these Federal functions. So, I mean, our tribe, like other tribes, were just reluctant to move into that.

Ms. PLASKETT. Mr. Rusco, would you think that analysis is correct from your review?

Mr. RUSCO. Absolutely. I think, you know, as—you know, every tribe is different. And the abilities and capabilities to take over

what have been Federal functions are going to differ, and there's going to have to be capacity building. And so tribes are, understandably, weary about sort of saying, yes, I'll take on this responsibility without knowing what exactly that entails, how much will be on them, how much will be—still remain Federal function, and then will they have support in order to get—build the capacity to take over the functions that are part of the TERA.

Ms. PLASKETT. Thank you.

Mr. Chairman, I just want to, as clarification, the pictures that you showed, which tribe was that from?

Mr. FARENTHOLD. They were from various locations. Let me take a look.

Flandreau Indian School was one of them. And where were the—all of the pictures are out of the OIG report.

Ms. PLASKETT. Okay. Great.

Mr. FARENTHOLD. The details are in there. There was a boarding school in there as well.

Ms. PLASKETT. Mr. Thompson, is the conditions that were evidenced in those photographs, is that some of the issues that you're dealing with as well?

Mr. THOMPSON. At this point, I believe that there's a lot of tribes that utilize that funding for education. We are in a bit of a different situation, so I might not be the best person to ask. There's other tribes—

Ms. PLASKETT. Right. Because your tribe actually, you know, with your AAA rating, you have a little bit more funding for education. Is that correct?

Mr. THOMPSON. Yes.

Ms. PLASKETT. Mr. Chairman, it would be great if we could, in the future, maybe have some tribes as a witness who are really facing some of the economic—the challenges in education that we've stated today.

Mr. FARENTHOLD. Absolutely.

Ms. PLASKETT. Thank you.

Mr. FARENTHOLD. Thank you.

At this point, we'll go to the gentleman from Alabama, Mr. Palmer, for 5 minutes of questions.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Thompson—and thank you to all the witnesses for being here—I'm particularly interested in the work that you're doing in oil exploration and utilizing those resources. I assume, and I'm not sure the geography of the—your tribal lands, but does that include the Green River Formation?

Mr. THOMPSON. I believe Green River Formation might be a different—another Ute Tribe. There's three of us.

Mr. PALMER. It's north of you, I believe. Isn't it? Okay. So you talked about over—since 1982, you've generated over \$1 billion in revenue from your activities. Is that correct?

Mr. THOMPSON. Yes, through severance tax.

Mr. PALMER. Severance tax. Are these companies that are owned and operated by the Ute Tribe?

Mr. THOMPSON. No, these are operators that have leased—or through the Tribe have leased trust lands within the exterior boundaries of the reservation.

Mr. PALMER. So—but you're collecting the revenues through the leases, and of the royalties you get a part of the royalties?

Mr. THOMPSON. Yes.

Mr. PALMER. I'm trying to understand this, because I'm a big believer in utilizing the natural resources and doing it in the right way. And what little I understand about the Ute tribal history, you have a great reverence for the land.

Mr. THOMPSON. Uh-huh.

Mr. PALMER. So you want to take advantage of these resources in a way that respects the land that you occupy, that you've occupied before anybody else occupied Colorado. Is that correct?

Mr. THOMPSON. Yes.

Mr. PALMER. Okay. And you've been able to do that?

Mr. THOMPSON. Yes. I mean, we—like I said before in my oral statement, we've used that in the past as a way of leveraging environmental issues. We had one producer that had hundreds of, I guess, rights-of-ways that were coming to time to renew them. And at the time, they had grandfathered in a compressor system that was from the 1950s and dumping a lot of air pollution. We have real strict air regulations on the reservation. We work real close with the State on those air regulations. And so we used that as an opportunity to tell them they need to replace their compressor systems or they're not going to be renewed on the reservation.

Mr. PALMER. Good.

Let me continue along this line on the permitting process. The Bureau of Land Management is responsible for the permitting?

Mr. THOMPSON. Yes. Well—

Mr. PALMER. And—

Mr. THOMPSON. Sorry. Our department, we have our own department of energy, and they take that task on. And the land information system is a part of DOE along with our IT folks.

Mr. PALMER. Maybe I misunderstood. I thought I understood you to say that on private land, they can—through Colorado, they can get a permit within 45 days.

Mr. THOMPSON. Yes.

Mr. PALMER. And it doesn't cost them anything. But on Ute land, how long does it take?

Mr. THOMPSON. Oh, it takes 4 to 6 months, usually.

Mr. PALMER. And why is that?

Mr. THOMPSON. Just the time it takes to walk through from the moment it leaves our office and goes to the agency office and then to the regional office and then to the interior office at HQ and then recirculating back to—with all those approvals.

Mr. PALMER. Does that put you in a—at a disadvantage?

Mr. THOMPSON. It does. As we know, the competitive business of oil and gas, time is money, so to speak. And if things aren't expedited, it takes its toll.

Mr. PALMER. Especially when most of the companies that are doing the type of oil expiration, they're the smaller companies and they can't really afford a long lead time after they secure a lease.

Mr. THOMPSON. Yes.

Mr. PALMER. Okay. Well, the reason I bring that up is because of some of the issues involving the Bureau of Land Management Federal lands and big companies being able to buy the leases and

basically hold the leases to impact the market. And I wanted to know if that was the case, but if you're doing the leases, you're doing it—you're utilizing the resources for the benefit of the Tribe.

Mr. THOMPSON. We do a lot of hard work to make business attractive on the reservation, and it's a team effort of good quality staff that make that happen.

Mr. PALMER. How does this impact tribal employment?

Mr. THOMPSON. Tribal employment, we push real hard for tribal employment. We have our growth on employees, quite a few tribal members. We'd like to see that increase. And through our education program we stress the fact that if we can get some engineers or geologists through our education program, they'd have a job waiting for them when they leave.

Mr. PALMER. What's your unemployment rate?

Mr. THOMPSON. Unemployment on the reservation, I don't have those numbers, but I can definitely provide that to you.

Mr. PALMER. I would appreciate it if you'd provide that to the committee.

Mr. THOMPSON. Okay.

Mr. PALMER. I had something else I wanted to address in the context of utilizing these revenues. For years, the United States had a ban on exporting crude oil. We have now lifted that ban. I think—what was that, Mr. Chairman?—that was in December of 2015?

Mr. FARENTHOLD. Right.

Mr. PALMER. Have you seen any uptick increase in interest in those resources?

Mr. THOMPSON. Most of what we've been paying attention on since 2015 has been the focus of, you know, the falling oil prices. So I don't know if that had any effect on that or how that all played a part. But, I mean, just the fall in the oil prices—

Mr. PALMER. How has the regulatory regime, the new regulations that have been handed down impacted the opportunities for companies to come in and secure a lease and actually start production?

Mr. THOMPSON. I think that the regulations that come through the BLM and onto the reservation, one of the toughest parts was BLM trying to place us under the title of public lands, and that really concerned us towards the choice of—or not towards the choice but the discussion of sovereignty. And we took charge in that to try to head that off.

Mr. PALMER. Mr. Chairman, I think there's something that we need to explore a little bit further about how the Bureau of Land Management is impacting the ability of—

Mr. FARENTHOLD. This is our introductory hearing, and we're going to figure out where we're going to go from here, so absolutely.

Mr. PALMER. Thank you, Mr. Chairman. I yield back.

Mr. FARENTHOLD. That would be appropriate.

And the gentlelady from the Virgin Islands, we're going to go back over to the Democratic side and let her ask some questions and then we'll be back to Mr. Comer.

Ms. PLASKETT. Thank you, Mr. Chairman.

I'll be Mr. Raskin if you need me to be for this portion.

Mr. FARENTHOLD. I think you're fine being who you are.

Ms. PLASKETT. Thank you.

Thank you all so much again for this. And I wanted to ask some questions to you, Mr. Rusco. In the high-risk report, there are some issues related to education of the tribal youth. I wanted to talk about that a little bit.

It appears that not only are the children not being properly educated, but they're being placed in harm's way with outdated and deteriorating equipment and infrastructure. We saw pictures of this earlier. Is that—would you say that that's a correct assessment?

Ms. EMREY-ARRAS. That is correct. Actually, we found instances where boilers had failed inspection because of carbon monoxide leaks, natural gas leaks. And those leaks persisted, in some cases for as much as 8 months, in student dorms with staff and students still there.

Ms. PLASKETT. And that's very disturbing. And I wanted to know, has any of that resulted in injuries to the children or staff at this point?

Ms. EMREY-ARRAS. We know that they did fix it. We don't have any information regarding the medical situation for those individuals, but it's certainly not a condition that we want our schools to be in. And it is not acceptable for students and staff to be in those environments.

Ms. PLASKETT. Thank you. And this is an ongoing problem that I know the GAO has identified. From previous reports, have you seen any improvements in this? Have there been changes that are done since the reports that were done previously?

Ms. EMREY-ARRAS. There have been some improvements, I think, because of our work and because of the work of this Congress in terms of shining a light on issues. We did find, for example, last year, that about a third of schools had not been inspected for many years for health and safety issues. And in response to our work, the Department made sure that every school was inspected for the first time this past fiscal year.

However, we're not sure that those inspections were complete or accurate. And the reason I say that is that because in the past, there were situations where, for example, someone did a drive-by where they never left their car. They did the inspection from their car, never went into a single building. And in one case, there was a school with 34 buildings, inspector never went inside and produced an inspection. Not surprisingly, there were no deficiencies noted for inside the buildings.

Ms. PLASKETT. So with seeing that there—what would be the thing that would allow for these, not just the inspections to be done and not just us shining a light on them, but actual movement in terms of improvement for children and the environment in which they're expected to go to school?

Ms. EMREY-ARRAS. The bottom line is you need to be able to identify these safety hazards and then fix them. The schools need to get help in remedying these issues, and we made a recommendation that the Department assist schools in doing this, and that has yet to be implemented.

Ms. PLASKETT. And when you say the department, which department do you mean?

Ms. EMREY-ARRAS. Department of Interior, Indian Affairs.

Ms. PLASKETT. Okay. And so then, Ms. Kendall, what have been the measures that your department or DOI has implemented or have you seen done to address these issues? And for those issues that have not been addressed, what would be the impetus or the assistance to help you get that done? Because I can't believe that the Department of Interior wants children to be in these positions of, you know, going to school and in environments like this. So what is the help that you need to make sure that that's done? What are the things that are keeping you from getting that done?

Ms. KENDALL. Well, we've identified issues with the Bureau of Indian Affairs and the Bureau of Indian Education's resource levels, but I think much of it is more distribution and using those resources effectively. The Office of Inspector General, of course, has no programmatic authority to make any of these things happen.

But I think that greater oversight over BIA and BIE by this body and other congressional oversight, in addition to the oversight that my office and GAO conducts, would go a long way, as well as some really serious leadership action by probably new leadership in the Office of Indian Affairs, BIA, and BIE.

Ms. PLASKETT. Now, this is the second time that you've mentioned a change in leadership or the problems coming from leadership, coming from the top down. Why have you said that?

Ms. KENDALL. Well, it hasn't gotten significantly better. I've been with the Office of Inspector General for 17 years, and frankly, I think we could probably reissue many of the reports that we issued 10, 12 years ago and find much the same kind of conditions that we find today. Perhaps here and there things have gotten better, based usually on recommendations by GAO or the OIG. But as a whole, the system is very, very problematic.

Ms. PLASKETT. Thank you.

So, Mr. Chairman, I think that sounds like a witness list for us for potentially another hearing.

Mr. FARENTHOLD. We'll work on it. We've got a very busy schedule for this committee, as you know.

Ms. PLASKETT. Let's get to work. No problem.

Mr. FARENTHOLD. All right. So now we'll go to—we're going to finish out on the—let everybody get their first round in here. So we'll move on to Mr. Comer from Kentucky.

Mr. COMER. Well, thank you.

I wanted to focus on development and drilling there. Obviously, there's a window of opportunity in Washington to try to open back up and redefine our energy policy, and certainly your economy, this would be a huge boost to it.

I have a question, Mr. Thompson, where does the money go that BLM charges for the permit fee?

Mr. THOMPSON. We don't get a report on that.

Mr. COMER. I understand. You don't get any of that? It's a—

Mr. THOMPSON. It's—

Mr. COMER. Do you know the amount?

Mr. THOMPSON. \$9,500 is the permit fee, but where that goes, I couldn't tell you.

Mr. COMER. Does anyone know where that money goes?

Mr. RUSCO. It goes into the general fund.

Mr. COMER. The general fund.

What prevents BLM from approving the drilling permits for tribal land sooner?

Mr. RUSCO. That's a question of concern. We don't know exactly why, but there are a number of things we've pointed out. And so the first thing is they don't track the times so—for permits very well. So we've been down this path. We have oil and gas development on Federal lands in general on the high-risk list.

We've found that there's problems of having people in the right places at the right times. They often don't have the staff they need to do all the jobs that they have to do, and they haven't been very creative in getting them there. There have been a couple of good pilots to pull people from some places to busier—less busy places to busier places, and those have worked. They need to be better at that. They need to be more nimble and more creative.

Mr. COMER. Okay. That's all. Thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you very much.

We will now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the chairman.

A couple things I want to talk about. Do you know—any of you know what the percentage of students who are considered to have grade-level math skills is? Because my statistics that are right here before me say that only 5 percent of students are reaching grade-level math skills. Does that sound right? Crickets. Nobody? Could you please look at that.

I'm reading another stat that says—does anybody know what the national dropout rate is of the students, Native American students, or high schools, grade schools? No?

This is something, I guess, I would plead with both the GAO and the Office of Inspector General to have at the top of their minds as they look at this. My understanding is that is 47 percent. Forty-seven percent, pretty high.

Part of the issue that we have in Utah, right across, Mr. Thompson, across the border there in the Four Corners area—I happen to represent Utah's Third Congressional District—we have a lot of the Navajo Nation, 3 percent of the Navajo Nation, the greater Navajo Nation is in Utah. We have seven chapters in my congressional district.

We have a heavy—or a big problem with roads and the ability to get to school and back. Mr. Thompson, I don't know what it's like on the Colorado side of the line, but do you have these types of problems, school buses, kids, their ability to get to school? How far do they travel to get to school? What's your personal experience on this issue?

Mr. THOMPSON. Again, because of the checkerboard nature of the reservation, we also have a municipal city close by to the tribal headquarters. So the tribal community surrounds this municipality, and it's pretty close. So, I mean, the access isn't difficult, and it's an improving school system, happy to say.

Mr. CHAFFETZ. Good. Good.

Mr. THOMPSON. We work pretty close to our education department and the school to make sure people are where they need to be.

Mr. CHAFFETZ. I think if you would look, though—and this is my plea also to GAO and the Inspector General's Office—as you go out

and visit this part of the world, what people don't realize is how expansive it is. My county, San Juan County, is bigger than New Jersey. We have one stoplight.

And if you look probably into Mr. Gosar's district, look into, you know, in the Four Corners area, one of the big problems that we have is the ability of our students to get to school, because when it rains or there's snow, there is a big problem with—and we've got lots of pictures. The school funding levels have not changed to deal with road maintenance.

San Juan County is doing everything it can. But you have students that on average, in many places, miss more than a day of school per month just because they can't get to school.

And I think she would like to say something. Have you been sworn in, I hope?

Ms. EMREY-ARRAS. I have.

Mr. CHAFFETZ. Okay. Good.

Ms. EMREY-ARRAS. My name is Melissa Emrey-Arras. I'm with the GAO. I think this is very much on point, and I want to let you know that GAO is currently investigating this issue of tribal roads and school attendance, and we have a forthcoming report on this topic.

Mr. CHAFFETZ. Very good. Do you have a sense of the timing of this?

Ms. EMREY-ARRAS. I believe it's late spring.

Mr. CHAFFETZ. Very good. That is greatly appreciated. We did offer an amendment on an appropriations bill and were able to get that through. But because of the CR, I don't know that it actually made it all the way to the finish line, but—to the level that we'd like to see in the future. But it is a big problem and your report would be much, much appreciated.

The per-pupil spending is much higher than it is actually in other parts of the country. Your ability to help us understand why the dropout rate is so high, reading and writing and certainly the math level is so low, we would very, very much appreciate.

Ms. EMREY-ARRAS. I could speak to some of that, if that would be helpful at this moment.

Mr. CHAFFETZ. Sure. Sure.

Ms. EMREY-ARRAS. We have done a look at school spending, and you're completely right. It's much higher on a per-pupil basis for the BIE schools. We found that it was 56 percent higher than comparable public schools. A lot of that has to do, as you point out, with the remote locations of the schools. Also, the schools tend to have lower enrollments than public schools. And in addition, quite a few of the students tend to be low income and in need of special education services, which are more costly. So those are some of the driving factors for the difference in cost.

And in terms of the academics, as you point out, students in the BIE school system do perform worse than students elsewhere. We found, for example, that students attending BIE schools scored 22 points lower for reading tests and 14 points lower for math tests in the fourth grade than other Indian students attending public schools. So this is, you know, very comparable in that way.

Mr. CHAFFETZ. Right.

Ms. EMREY-ARRAS. And as you all know, the graduation rates are also much lower for Indian students attending BIE schools than Indian students nationwide.

Mr. CHAFFETZ. And so my plea, I guess, for the panel and everybody is we can keep doing what we're doing and we'll probably get the same results. But if you want a different result, we're probably going to have to do something different. So suggestions, ideas on what to do different rather than just spend more money, because we're already spending more money, we've got to be able to figure out how to get a different result. And we're open to the ideas and possibilities.

I've gone over my time. Thank you, Chairman. I yield back.

Mr. FARENTHOLD. Thank you very much. We'll now recognize the vice chairman of the subcommittee, the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. I thank the chairman. Mr. Thompson, my family is from Durango and Bayfield. So thank you very much for all that you do.

Mr. THOMPSON. Thank you.

Mr. GOSAR. I want to highlight your tribe. Because you've taken advantage of your resources and development. Right?

Mr. THOMPSON. Yes.

Mr. GOSAR. That's why you're in the position you are today. Right?

Mr. THOMPSON. Part of the reason, sure.

Mr. GOSAR. Pretty aggressive. Right?

Mr. THOMPSON. Oh, yeah. Pretty aggressive.

Mr. GOSAR. So I want to go back to these TERAs. Okay? Because they're of high conflict in your opinion. Right?

Mr. THOMPSON. Yes.

Mr. GOSAR. Okay. So part of the problem is is that the interior has—or BIA has been very poor on their promises. Right? In keeping their promises?

Mr. THOMPSON. Historically, yes.

Mr. GOSAR. So if you were to write, looking at these TERAs, have you had any direct review of these TERAs personally yourself?

Mr. THOMPSON. Personally, we've gone through a few since my time. And it's been a discussion for quite a bit of time, actually, within our legal team and other council members of the past.

Mr. GOSAR. Have you made proposals to BIA and BLM in regard to how those TERAs could be better defined or how their interpretations are?

Mr. THOMPSON. Yes. We've made suggested changes, requested information, especially on the inherent Federal functions. We've also asked about how they were measured, travel capacity, how they will define the inclusion of public in the discussion process, and also the—just what is the assumed Federal functions the tribe will take on. That's been some unclear answers since the beginning of questioning.

Mr. GOSAR. Did you get any answers?

Mr. THOMPSON. Not to this day.

Mr. GOSAR. Would you—would it be possible to get those— those letters of inquiry to the committee?

Mr. THOMPSON. I'm sure we could provide you with a lot of documentation to that effect.

Mr. GOSAR. So in getting back to these TERAs and giving up to—because I thought I heard some of the aspects of impugned sovereignty. Non-sovereignty. Right?

Mr. THOMPSON. Okay.

Mr. GOSAR. Is that what I heard?

Mr. THOMPSON. Just—

Mr. GOSAR. Within these TERAs.

Mr. THOMPSON. I think it's close to how TERAs will affect our sovereignty. And we want to always empower tribes, our tribe, other tribes to have more—to have more responsibility over what governs themselves and how we govern ourselves, and so we try to get to that.

Mr. GOSAR. See, I like where you're going. So I'm going to go back to these permitting processes because of the inherent bias within—I think is going on within the agency. Do you have the same kind of problems for alternative energy?

Mr. THOMPSON. No. We actually received a pretty good grant to get solar projects started on our reservation—

Mr. GOSAR. Are they fast tracked?

Mr. THOMPSON. It should come up on online this spring.

Mr. GOSAR. Wow. What wind of permitting time was that?

Mr. THOMPSON. It was started right before I came in. Do we know how long that was? It was a few years of permitting process, though.

Mr. GOSAR. So it went through a full long line of permitting. So something still similar to that application?

Mr. THOMPSON. Yes.

Mr. GOSAR. Was there a change in aptitude in regards to looking at alternative energy versus oil and gas?

Mr. THOMPSON. I'm not sure there was a change in aptitude on that.

Mr. GOSAR. So was it easier to find people to come out then to review it? I would be just—I would be really intrigued by that because I'm a believer in all-the-above energy policy. And so, you know, I think that we have got to feign away the biases. My—go ahead.

Mr. THOMPSON. I'm sorry. I think this would be a great opportunity to invite you to our reservation to see what we do and maybe—

Mr. GOSAR. I go through there all the time.

Mr. THOMPSON. Well, I mean just meet with our staff and really talk about these things and get these answers firsthand. It would be a great opportunity.

Mr. GOSAR. Well, and it drives me to my point about sovereignty is that if you're truly sovereign, really, why is it that the BIA or the BLM is truly involved?

Mr. THOMPSON. I think it comes down again to what they define as tribal trust responsibility and—

Mr. GOSAR. No, but I think they are two different things.

Mr. THOMPSON. There is.

Mr. GOSAR. Because in sovereignty, I mean, there shouldn't be an inherited trust obligation because you're taking that.

Mr. THOMPSON. Yes.

Mr. GOSAR. So I think that conversation should be a very innate one. But I'd really like to explore more about the TERAs. And in regards to you, because you have been a very successful tribe, and I think a lot more tribes need to understand how you leverage that. Because it's very similar to what western states were promised in regards to royalties and shared royalties for the betterment of education and government—rural governments stuff like that and infrastructure projects.

So we'll keep this up. I've run out of time. I appreciate it, Mr. Thompson.

Mr. THOMPSON. Thank you.

Mr. ISSA. [Presiding.] The gentleman yields back. I'll now recognize myself for a round of questioning.

This morning at the full committee in this same room we had Gene Dodaro. And I asked him basically three questions related to this afternoon's hearing. And it went like this: Isn't it true that the Federal Government has failed our tribes when it comes to their education? Isn't it true that we have been less than responsive at helping them build their energy requirements? I didn't name oil versus anything else. I just said energy, and he said yes. And as I went through that process, what I've discovered was we, the Federal Government, have failed.

And when I asked the general what we should do about it, he said: Well, I will be meeting with HHS when it comes to the health care part, which was the third failure, I'll be meeting with the new Secretary. And when I meet with, when confirmed, the new Secretary of the Interior, he's got a big job. And he's going to have to make fundamental changes.

Now, I say this just to make sure that you knew what your boss had said. Do you see any difference in the fact that our Federal Government in the past several years has failed in these three areas sufficiently that for the first time that I've been looking at it these are on the high risk?

Mr. RUSCO. No, I was at this morning's hearing. And I'd never disagree with the Comptroller General. But—

Mr. ISSA. Well, this is one place you're welcome to shed some light. We'll give you congressional immunity, of course.

Mr. RUSCO. Thank you. But no, I agree—I agree 100 percent. This is a case where in all three areas we all agreed that the body of work that had been done in there showed a persistent failure to efficiently and appropriately manage Federal programs designed to serve tribes and their members.

Mr. ISSA. And I'm particularly concerned about health care. It would seem that at a time when we put just in ObamaCare subsidies \$51 billion into subsidies for less-well-off people, it sounds like Indian health didn't get their share of that.

Mr. RUSCO. Kathy King is here from our healthcare group to—

Mr. ISSA. Kathy, good to have an expert.

Ms. KING. A few years ago we did some projections about the number of Indians that would be eligible for—or potentially eligible for care under the ACA, both under Medicaid and under the exchanges. And we found that there were hundreds of thousands that

could be potentially eligible, depending upon whether you live in a State where Medicaid has expanded.

Mr. ISSA. But in most cases, if you live on tribal land, such as the Navajo and others, you're very likely to be below that 135 percent of the poverty

Ms. KING. Yeah. Yes. We have not gone back and looked to see how many of them have actually enrolled in those programs. But the enrollment in those programs can be potentially helpful in two ways.

One, if people enroll in Medicaid or the exchanges and they seek care at an IHS facility, then they—IHS can bill for those services and they can augment their revenues and serve more people. Or if they go elsewhere, that frees up more money for people at IHS.

Mr. ISSA. Well, and that begs the question of if somebody comes in to a Native facility, are they asking: Are you on it, and then assisting them in getting on it, which ultimately is a self-funding method. Did you find that in your overview?

Ms. KING. We did our work before the ACA actually took effect. But one of things that we were concerned about—

Mr. ISSA. But Medicaid was still a question back then.

Ms. KING. Yeah, Medicaid was still a concern. But—were the expansions. They do have patient care representatives. But one of the things that we would have liked them to do is to expand their use of patient care representatives to help with what we thought would be an onslaught of enrollment. And they said that they were not able to do that.

Mr. ISSA. And as a result, what could have improved life for Native Americans didn't happen. And that's why they're on the endangered—or the high risk list.

Ms. KING. Some of our work predated that. So we don't know for sure. But, you know, there are two ways that people get care through the IHS. You can get care at an IHS facility, or if the services are not available there, which they frequently aren't, then they buy services on the open market. And when they do that, there is a priority listing that varies from area to area. So in some areas the only people who get care are people who are in danger of life or limb.

Mr. ISSA. In other words, we're giving less than the care that they were promised because we either—either they can't come to a clinic that has the facility or we're crying poor and rationing care.

Ms. KING. There is a trust responsibility.

Mr. ISSA. Okay. I'll close quickly because the energy issue Mr. Gosar touched on I want to just run one question. And I'm not a lawyer. So that means that I may ask a question I don't know the answer to. But in a nutshell, the last 8 years, in my estimation, there's been a war on carbon, on coal, on oil, and natural gas.

When you look at the difficulty the tribes have getting through a bureaucracy even though they pay for something that is their asset on their sovereign land, is there any possibility that not that they were singled out but they were caught up in a war on carbon that occurred that caused them to be simply not able to exercise their rights? And I ask that because clearly Federal land usage for natural gas, oil, and coal dropped over the last 8 years while it rose on non-Federal land.

Mr. RUSCO. There is a lot there. So we did find that these delays and problems with permitting and development occurred across the board for energy on tribal lands. So there are wind projects that had been languishing for years, and meanwhile State or utility agreements to purchase the power expired and they had to renegotiate these things. And we found that kind of across the board.

Mr. ISSA. So if I can summarize what you said, you're saying the last several years they've been inept at allowing Native Americans to utilize the resources. And as a result, it has hurt their ability to help themselves?

Mr. RUSCO. Certainly when you miss an opportunity and, you know, for example, for oil and gas, development is all about the price of the resource and the location of the resource. When prices are high, companies are like all over the place. And if you can't get a permit through in time and the price falls, they're less interested. So there is a—there's an inherent disadvantage if you know you're going to go into a long permitting process.

Mr. ISSA. Well, since the gentleman from Texas comes from a place where they do permits on a State basis and they do them quickly, I will let him reassume the chair. And I thank all of you and yield back.

Mr. FARENTHOLD. [Presiding.] Ms. Plaskett, do you have some more questions?

Ms. PLASKETT. I do have a couple more questions. Thank you for your indulgence, Mr. Chairman.

Touching on the question that was just raised by my colleague Mr. Issa about the Affordable Care Act, Mr. Rusco, do you know, is it possible for GAO to make a determination on how many American Indians are currently using—I know that that was not part of your last report. But do you or, Ms. Kendall, have you looked at ways of determining who is taking advantage of that?

Ms. KING. We could examine eligibility rolls.

Ms. PLASKETT. And would that also tell you the other question I asked, was his informing tribal members that the Affordable Care Act was available for them?

Ms. KING. They did do—in response to our recommendations, they did begin doing some outreach. There was a delay because of there was some uncertainty about whether the Affordable Care Act would go into effect or not. But they did do some outreach. But we could now go back and look at eligibility rolls and determine whether—determine how many people enrolled.

Ms. PLASKETT. I mean, I just find this, you know, heartbreaking because this really correlates to so much of what's happening in my own community and in most communities, minority communities, underserved communities, where people are dying of preventable diseases.

And a lot of it is treatable health conditions related to diabetes and hypertension and some of these other areas that we should be taking up the slack in.

Ms. KING. Yes. And we do know that Native Americans have a shorter life expectancy and greater comorbidities.

Ms. PLASKETT. Okay. Thank you very much.

And the other questions that I have are related to Ms. Kendall. When there was the creation of the inspector general, which you

say you've been there now for 17 years, to detect waste, fraud, and abuse, you do that by hiring auditors and investigators. Correct?

Ms. KENDALL. That's correct.

Ms. PLASKETT. How many do you have on staff now?

Ms. KENDALL. We have roughly 100 auditors and about 95 investigators.

Ms. PLASKETT. And that's for the Department of Interior?

Ms. KENDALL. For the entire Department.

Ms. PLASKETT. And what are they reviewing? What's the scope of their review?

Ms. KENDALL. Well, we have nine bureaus and offices that comprise the Department of the Interior. So our oversight responsibility is vast.

Ms. PLASKETT. Okay. And "vast" meaning how many thousands of—

Ms. KENDALL. Seventy thousand employees. About that again of grantees and contractors.

Ms. PLASKETT. So that's a good point. So you're not only reviewing yourself, but you have contractors and vendors and others that you do review for.

Ms. KENDALL. That's correct.

Ms. PLASKETT. So the announcement of a hiring freeze in the recent administration has—what has happened in the past when you've had hiring freezes in terms of the agency and the inspector general being able to complete their operations?

Ms. KENDALL. Well, essentially like all the OIGs, we are very personnel driven. And close to 80 percent of our budget goes to salaries. We have no programmatic functions or funding. And so a hiring freeze, much like budget reductions, hit us in a fundamental ability to do our job.

Ms. PLASKETT. And that's important under this committee because we rely on you all so much for the reports and the timely reports that you give us so that we can identify these areas that are of concern so we can address the Bureau of Indian Affairs and their discrepancies, deal with the school issues that we have.

Can you describe for us some of the challenges that your office will face now if there's a hiring freeze in the Office of Inspector General?

Ms. KENDALL. Well, certainly we do not have a great deal of vacancies right now. But if we were to continue to lose people to retirement or to other agencies or to the private sector, we would be limited considerably in being able to fill those positions.

As I heard Mr. Dodaro this morning talk about hiring freezes, I believe he said that historically they have not been particularly effective in terms of saving funds. But certainly agencies like ours who are really personnel driven, we are affected fairly significantly.

Ms. PLASKETT. Okay. Thank you.

Thank you so much, Mr. Chairman.

Mr. FARENTHOLD. Thank you. And I just want to follow up on one thing. My inner tech geek is going to come out.

So I wanted to talk to Mr. Thompson about your scanning project. One of the—I also serve on the Technology Subcommittee of this committee. And one of things that I've noticed is our Federal Government couldn't compute its way out of a paper bag some-

times. Could you outline the scanning program and the GIS program and how you all took that over and how that is helping the Federal Government.

And do you think there's some ways that, based on what you have done, the Federal agencies or other tribes could improve the service within the Federal Government by things that you do yourselves?

Mr. THOMPSON. Awesome. I guess there was—a few years ago there was a deadline set on realty records and BIA records all being consolidated to a place in Oklahoma. It was concerning to us and we needed those documents to do our business on a day-to-day.

So that's when this—there was a rush to try to do something to start scanning these records in. At the same time we needed a better system of—then TAAMS could ever provide. And we needed something more efficient to help us be better stewards of our land and our opportunities.

So we developed the land information—the land information management system as a way of making it easier to track all realty functions that take place on the reservation, all the rights of ways, anything related to energy going into this system to give us a point and kind of situation that we can get to the documents we need to do what we need to do.

Mr. FARENTHOLD. And you were able to find a software solution, hardware pollution, to do that relatively easily and inexpensively?

Mr. THOMPSON. No. We created the system ourselves internally. It wasn't something that anybody else had to offer that would work for us. So it was something that we developed on our own with good people and time.

Mr. FARENTHOLD. Okay. And do you—given the—in hindsight, would you do it again?

Mr. THOMPSON. Well, I think if we had to go through this entire process of having to do it, I wish that that could have been different. But, I mean, it did produce an opportunity for us to create something that—

Mr. FARENTHOLD. And is that something you're open to sharing with potentially other tribes or, you know, sharing your experience in there working together to make things better for everybody?

Mr. THOMPSON. I think Southern Ute's always willing to help other tribes as much as they can, showing them what we have done as a success story in any country in energy development. And, again, we are throwing out the offer or the invitation to see a demonstration.

Mr. FARENTHOLD. All right. Great. Ms. Plaskett, do you have anything else?

All right. I'd like to thank our witnesses to for taking time to appear before us today.

I'd also like to ask unanimous consent that members have 5 legislative days to submit questions for the record. Without objection, that's so ordered.

If there's no additional business, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:26 p.m., the subcommittee was adjourned.]