

**THE FUTURE OF TRIBAL ENERGY DEVELOPMENT:  
IMPLEMENTATION OF THE INFLATION  
REDUCTION ACT AND THE BIPARTISAN  
INFRASTRUCTURE LAW**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MARCH 29, 2023

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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WEDNESDAY, MARCH 29, 2023

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

The Committee met, pursuant to notice, at 2:56 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,  
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon. I call this oversight hearing to order.

Last Congress, we made historic bipartisan investments in long-standing unmet infrastructure needs for clean water, sanitation, and energy. We also made significant steps toward a clean energy future with investments in generation, grid resiliency, and electrification.

We pushed nearly half a billion dollars directly to Native communities for energy needs, and made them eligible to apply for billions of dollars more. This down payment should begin to address the United States' history of actively exploiting Native energy resources for non-Native gain and willfully neglecting Native energy needs.

This legacy of neglect needs to stop now. We need a course correction to support Native energy development, and it needs to start with the agencies that you represent.

We have been funding the Tribal Energy Loan Guarantee program for six years, and you have backed zero projects. You needed direct lending; we gave you that. You needed more authority; we gave you \$20 billion worth of authority. You needed 100 percent guarantees; we gave you that. You needed credit support; we gave you \$75 million.

Now I hear that you are turning away applicants who have supplemental grant funding. I also hear that you are subjecting tribal governments to creditworthiness tests that they can't possibly meet.

No more excuses. I want to know when these loans are going out. And it should go without saying that six years is too long.

I also can't keep hearing from Native communities that they are being kept away from grant funding by poor outreach and coordination and consultation with Native matters buried in 60-page RFIs, burdensome application requirements like concept papers, forced partnerships with outsiders, and shovel-ready project pre-approvals.

And I just want to be very clear: none of this is in statutory law. We are not asking you to do this. We are asking you to push this money out to Native communities, which is what the Federal law says. I thought I was going to do a normal oversight hearing on how we are doing on tribal energy. What we got back from Native communities is terrible, we are doing terrible. They are being treated like they are interlopers. They are being treated like they are not sovereign. And they are not being permitted to participate in the programs that the Congress has authorized and appropriated money for.

This is just for formula funding and set-asides like grid resilience funding. Tribes are having to work so hard to get the money that was designated for them that they have no bandwidth left to go after competitive funding. They are also eligible for competitive funds. I am hearing that there is no Native outreach and consultation, even for programs like battery recycling and manufacturing where the statute prioritizes tribal partnerships.

No TA on applications, more square peg-round hole requirements like community benefit plans for Native projects that by definition benefit the Native communities.

Requiring online—this was the one that got my attention in the first instance. Now, granted it got fixed. Tribes without internet had to apply for broadband using the internet. It sort of makes you chuckle, and I do want to point out it was fixed.

But the idea that there is a Federal law and it makes tribes eligible, and then they have to apply online even though they don't have internet connectivity, and then they have to come to us to do our oversight to troubleshoot. Those of you who know me know I have perhaps an unearned reputation for being relatively even keeled. But I am mad. This is preposterous.

I don't come here and berate people. But I am left with no choice, because we passed laws, we passed appropriations bills. And the Native communities that are coming to us are saying, I don't know how to apply, they have requirements that are not statutory, that are just process and procedure, or custom.

So this has to be fixed. I understand that a lot of this is the legacy of how some of these programs have been structured over many, many years, and that many of your offices at least at Energy are not accustomed to working with Native communities and their unique structures and needs. But everything has changed in the last two years, and we all have to adapt.

Native communities cannot be left out. I expect your agencies to actively support Native energy development, and not just solve a problem when it is brought to the Committee's attention and then we bring it to your attention.

It has been more than seven months since we passed the Inflation Reduction Act, and nearly a year and a half since we passed the Bipartisan Infrastructure Bill. It is time to implement.

I will now turn to the Vice Chair for her opening statement.

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Mr. Chairman, I am glad to hear you are a little cranky this afternoon. To your point, these have been issues that have been part of Indian Country's reality, part of the reality of Alaska Native peoples for far, far, far too long.

For far too long, we hear about these programs, we hear about the funding that we have put, outlined in legislation, in law with specific, specific set-asides for tribal interests. We are thinking proactively.

I have been a member of the Indian Affairs Committee since I came to the United States Senate 20 years ago. Part of what I have been doing for 20 years is looking to those programs that we have where there should and must be more opportunities for Native people, opportunities to compete, opportunities to better themselves, opportunities for self-empowerment.

But when it is our own systems that effectively hold them back, that is not fair to anybody. I think those of us that are sitting on this side of the dais have a right to be frustrated and angry and disappointed and a whole host of other emotions, because we are trying to do right. I believe that those within the agencies are trying to do right.

So I am not quite sure where we got this gap here. Because I hear the exact same concerns that the Chairman has heard. We had a pretty major symposium hosted by the Alaska Federation of Natives just about a month ago. The Chairman was there and spoke at it. We had presentations from just about every department and agency that was relevant to Alaska Native peoples.

We hear these frustrations, we hear about the mind-blowing situation with, in order to apply for funds to upgrade your internet or to obtain internet services, you have to apply online. Those are things that most people would just scratch their head and say, that is ridiculous, that is insanity, that is the government at its worst. But that is seemingly what is happening here.

I want to underscore again using my State as an example, Alaska Native peoples as an example of why it is so imperative that we improve tribal energy development. Fourteen percent, about 14 percent of households in Indian Country don't have electricity. That is what the Department of Energy's Energy Information Administration, EIA, says, 14 percent don't have electricity.

That is staggering. So whether you are from Alaska, where it is cold, or you are from the South or the Southwest, where it is hot, and you can't heat, you can't cool, you can't light, what we did in the Infrastructure Bill, what was done in the Inflation Reduction Act spends prolifically, particularly in the IRA, prolifically on rebates and incentives for electrifying home and energy efficient home appliances.

But I will tell you, none of that is any good to a place like Alaska where the electricity is unaffordable and the service is unreliable. Native people pay more for electricity as a percentage of their household income than any other demographic out there. Native communities are at high risk for frequent and prolonged weather

power outages due to their rural locations, vulnerabilities to extreme weather and climate.

I can't count the number of communities where they have been in the dark, literally for days, and in the frozen dark for days, and what happens as a consequence of that. In some of our villages, we have electricity rates that exceed a dollar per kilowatt hour. That is roughly 1,000 percent higher than what the average American pays for electricity, which is about 10.4 cents per kilowatt hour.

So again, when you talk about some of these grand innovations and what we are going to bring you with rebates, well, if you are paying a dollar a kilowatt hour, tell me how you line up for any kind of a rebate here.

Most Native communities in Alaska still are relying on diesel fuel and heating oil. They don't want to, but that is what they have. Right now, you are looking at \$7 a gallon. Some communities, up in Noatak, this winter, it was \$17 a gallon. Some families are spending nearly half their annual income on heating fuel, gasoline and electricity.

I mentioned reliability, and the fact that we don't have it. You can't count on it. You can't afford it and you can't count on it. Fuel delivery may be limited to one or two barge shipments per year. So you have to buy it ahead. You have to purchase in bulk.

But think about what happens when a village and a community, it is not like you have tax revenue coming into a community of 400 or 500 people, and you need to pay the fuel delivery folks ahead of time, you have to pay the contract barge service ahead of time. So you order as much as you can afford, not how much will get you through the winter.

We are approaching April. This is the time of year we start hearing from our communities saying we have run out. We have run out of fuel, and there are still another six weeks of winter left in many parts of the State. What do we do? You know what the answer is? We fly it in. Fly in 50 gallons a barrel of fuel in an airplane. If you don't think that is expensive.

And that is our reality. So when they hear me coming to them and saying, we have tribal energy programs, we have a way to help you, believe me, they are interested. So when we talk about the Bipartisan Infrastructure Law and the promise that it holds, it is exciting in so many ways.

But many of them are starting to feel like, is this a false promise? Is this a false promise here?

So we have to do more as the Chairman says. We have to do better. We can't be in a situation where the problems arise because people just can't take it anymore and they don't know where else to turn. So they call their Senators, they call their Congressman and we say, we have this great tribal energy loan program.

And to the Chairman's point, not a single loan has been issued. That Energy Policy Act, 2005, that was a long time ago. We have increased the program's loan guarantee authority, as the Chairman mentioned, from \$2 billion to \$20 billion. We made permanent the direct lending authority to the tribes that we included in the Omnibus from last year.

But I think it still remains to be seen whether the Department is going to be able to make the loan program work. I think it is



important to remind colleagues about the disparity, the extreme disparity, and sometimes Alaska's examples are a little bit on the extreme. But I know each and every one of us on this Committee representing Native people have similar stories when it comes to access to energy and the energy poverty amongst our Native people.

This is an important oversight. It has to be important that there is an action plan as a consequence of where we go from here.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We will now turn to our witnesses. We are pleased to have Dr. Kathleen Hogan, the Principal Deputy Under Secretary and Acting Under Secretary for Infrastructure at the Department of Energy, and Mr. Bryan Newland, Assistant Secretary for Indian Affairs at the U.S. Department of Interior.

I want to remind our witnesses that your full written testimony will be made part of the official hearing record. Please confine your statements to no more than five minutes, so that members may have time for questions.

Dr. Hogan, please proceed.

**STATEMENT OF DR. KATHLEEN HOGAN, PRINCIPAL DEPUTY UNDER SECRETARY/ACTING UNDER SECRETARY FOR INFRASTRUCTURE, U.S. DEPARTMENT OF ENERGY**

Dr. HOGAN. Chair Schatz, Vice Chair Murkowski and distinguished members of the Committee, thank you for this opportunity to provide an update on the Department of Energy's efforts to implement the Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law and the Inflation Reduction Act, IRA, as they pertain to Indian Country.

All of us at the Department really are incredibly grateful for the leadership of this Committee in formulating and enacting these landmark laws, and really, for your ongoing guidance during all of this implementation. Taken together, these laws do represent a historic investment in renewing energy infrastructure in tribal communities through competitive and formula grant programs, rebates, loan guarantees and tax credits, so that we could maximize the benefits from these programs.

Last year the Department of Energy underwent a strategic realignment in which we did create this new Office of the Under Secretary for Infrastructure. This new Under Secretariat includes new offices like the State and Community Energy Programs, SCEP, and our existing mission-aligned offices, like the Office of Indian Energy and the Loan Programs Office, all under one roof.

With this new structure, we are working hard to deploy quickly and effectively, because we know the need is great, and that the solutions are long overdue in Indian Country. These investments are intended to address the longstanding need for updated infrastructure across Indian Country with a keen focus on creating lasting, good-paying jobs and helping to tackle the ongoing challenges, including energy access, reliability, and cost. I am pleased, very pleased to be here today to talk about our efforts in implementing these laws in Indian Country and really just to highlight a couple examples of these programs.

First, to help tribal households lower their energy costs and boost efficiency, the Inflation Reduction Act includes \$225 million set aside from the High Efficiency Electric Home Rebate Program. Here, each tribal household can receive up to \$14,000 in rebates for equipment and other efficiency related upgrades, and here we are actively engaged in a formal consultation process to receive input from tribes, including a tribal consultation event just this afternoon.

Also, I will highlight that to improve resilience, we are implementing the Grid Resilience Formula Grants, which is a five-year, \$2.3 billion formula grant for States and tribes to harden the grid and make it more resilient to disruptive events. To properly implement this program, we have conducted significant outreach to States, tribes and territories, including direct outreach to over 170 tribes, as well as tribal regional organizations and tribal utilities.

Just this past March 20th, we announced a new mail-in option to address internet connectivity challenges, and we extended the deadline to May to allow tribes additional time to work on their applications.

Also, to address specific challenges in remote areas, we are providing \$1 billion for the Energy Improvements in Rural and Remote Area Program, which will help increase energy affordability and promote climate resilience in rural and remote communities. This effort also includes a \$15 million prize competition called the Energizing Rural Communities Prize, to help tribes and rural communities build the capacity needed for clean energy development and deployment.

Additionally, and really thanks to you, to this Committee for your leadership, Congress did make some very critical changes to the Tribal Energy Loan Guarantee Program that we call TELGP, including the permanent ability to issue direct loans to tribes through the IRA. So this change in combination with other changes in our Fiscal Year 2022 Omnibus we see has greatly increased the interest in and accessibility to these loans.

LPO is growing its TELGP outreach footprint with group and individual tribe leaders to solicit feedback and to better employ this program. Since January, we have held over 270 outreach meetings. We now do have four applications officially submitted to this program totaling nearly \$500 million in requested TELGP loan programs.

So we will continue to work diligently to utilize the \$20 billion in aggregate loan authority provided by IRA to deliver the important benefits this program offers to tribes.

In closing, we are working across the department in close coordination with the Office of Indian Energy to solicit input and feedback from communities on program design, details and technical assistance so we can build toward their priorities and their energy sovereignty, including through a DOA Tribal Clean Energy Summit last fall.

We continue to offer no-cost technical assistance through our Office of Indian Energy to help tribes chart their course. We know there is more work to be done here, and any number of challenges we do need to address. We look forward to addressing them with you and continuing to put this really important money to work.

Thank you for the opportunity today. We do look forward to answering your questions.

[The prepared statement of Dr. Hogan follows:]

PREPARED STATEMENT OF DR. KATHLEEN HOGAN, PRINCIPAL DEPUTY UNDER SECRETARY/ACTING UNDER SECRETARY FOR INFRASTRUCTURE, U.S. DEPARTMENT OF ENERGY

### **Introduction**

Chair Schatz, Vice Chair Murkowski, and distinguished Members of the Committee, thank you for this opportunity to provide an update on the Department of Energy's (DOE or the Department) efforts to implement the Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law (BIL), and the Inflation Reduction Act (IRA) in Indian Country. All of us at the Department are incredibly grateful for the contributions of this committee in formulating and enacting these landmark laws and for your ongoing guidance during their implementation.

Taken together, the BIL and IRA represent historic investments in renewing energy infrastructure in Tribal communities for decades to come through a variety of competitive and formula grant programs, loan guarantees, and tax credits. These investments are intended to address the longstanding need for updated infrastructure across Indian Country, with a keen focus on creating lasting, good-paying jobs, and helping to tackle ongoing challenges including energy access, reliability, and costs. On behalf of DOE, I thank you and your staffs for your vision, leadership, and partnership in the passage and implementation of these laws.

Last year, the Department underwent a strategic realignment, in which we created the new Office of the Under Secretary for Infrastructure. This new Under Secretariat includes the new Office of State and Community Energy Programs (SCEP), Grid Deployment Office (GDO), and Office of Manufacturing and Energy Supply Chains (MESCC), the BIL-created Office of Clean Energy Demonstrations (OCED), and existing mission-aligned offices, like the Office of Indian Energy (IE) and the Loan Programs Office (LPO). Housing these offices, among others, under "one roof" is helping DOE maximize the effectiveness of BIL and IRA programs and boost DOE's ongoing work to reduce energy costs through low-cost clean energy resources, create jobs and stimulate American manufacturing and industrial competitiveness, increase equity and environmental justice, and support meeting ambitious climate goals. I am pleased to be here today to detail our efforts in implementing these laws in Indian Country, as well as the successes and challenges we have encountered thus far.

### **Highlights of BIL and IRA Energy Provisions for Native Communities**

#### *Office of State and Community Energy Programs (SCEP)*

The Office of State and Community Energy Programs, also known as SCEP, designs and implements several formula grant programs that are distributed to Tribes, as well as to state and local governments. With a new \$550 million investment allocated by Congress in the BIL, SCEP is implementing the Energy Efficiency and Conservation Block Grant (EECBG), which can be used by Tribes for a wide array of uses, ranging from standing up financial incentive programs for energy efficiency improvements to upgrading community infrastructure like streetlights and traffic signals to installing renewable energy technology. EECBG sets aside \$8.8 million in formula allocations for 574 Federally recognized Tribes, 229 Alaska Native Villages, and 13 Alaska Native Regional Corporations.

The EECBG program's formula allocations opened for applications on January 20, 2023, with a deadline of April 28, 2023. For Native communities and local governments that are not eligible for a formula allocation based on population, EECBG sets aside an additional \$8.8 million for a competitive grant program. Earlier this year, the Department solicited public feedback from State-recognized Tribes and other stakeholders on the design of this competitive grant program through a Request for Information (RFI). The Funding Opportunity Announcement (FOA) for the EECBG competitive grant program is expected in the coming weeks.

SCEP also leads the Weatherization Assistance Program (WAP), which was allocated an additional \$3.5 billion by Congress in the BIL. The formula Weatherization Assistance Program provides services to income-eligible households throughout the country including on Tribal lands. Most commonly, DOE WAP funds are provided to state governments and the funding is passed through to a local weatherization agency or Tribe. Eligible weatherization services under the program include insula-

tion repairs and upgrades, installation of energy efficient doors and windows, and home air sealing. The application for WAP formula funds under the BIL closed on July 1, 2022. The Department is currently in the process of distributing allocations.

To help Tribal households lower their home energy costs and boost efficiency, the Inflation Reduction Act includes a \$225 million set-aside from the High-Efficiency Electric Home Rebate Program. Grants from DOE can be used by Tribes and Alaska Native Villages and Regional Corporations to set up home energy rebate programs that directly fund housing upgrades for Tribal households. Rebates will provide immediate discounts on a variety of equipment and energy efficiency upgrades, including heat pumps, heat pump hot water heaters, heat pump clothes dryers, induction stoves, electrical panel upgrades, electrical wiring upgrades, and air sealing and insulation. If a Tribal household earns between 80 and 150 percent of the Area Median Income (AMI), they are eligible for rebates worth half the cost of the energy efficient upgrades. Tribal households below 80 percent of the AMI are eligible for rebates covering the full cost of the upgrades. Each Tribal household can receive up to \$14,000 through the rebates.

While Congress has already stipulated States' formula allocations under this program, SCEP is continuing to engage with Tribes to discuss program design and Tribal allocation amounts. SCEP is working with other DOE programs and with the U.S. Department of Housing and Urban Development to discuss various formula options based on population, poverty, and other factors. SCEP is also going through a formal consultation process to receive input from Tribes. SCEP will host a Tribal Consultation virtual event on March 29, 2023. Executives of Tribal Governments and Alaska Native Entities received "Dear Tribal Leader" letters inviting them to this virtual event on March 1. Executive leaders of Indian Tribes and their designees are also welcome to submit written comments to DOE on their preferences for the forthcoming Tribal rebate programs by April 28. DOE is also reaching out to a variety of other Tribal organizations, Tribal networks, and Federal programs that work with Tribes to spread awareness of this program, the March 29 Consultation, and the opportunity to submit comments to DOE.

#### *Grid Deployment Office (GDO)*

By passing the BIL, Congress enacted a mandate on the Department to renew the Nation's electric grid infrastructure, making it more resilient, efficient, and reliable for generations to come. The Department's newly created Grid Deployment Office, also referred to as GDO, is leading our effort on this front. This effort includes the BIL's Grid Resilience Formula Grants—a five-year, \$2.3 billion formula grant program for states and Tribes to carry out activities to harden the grid and make it more resilient to disruptive events.

GDO has opened the first round of funding made available for fiscal years 2022 and 2023, including allocations for Tribes, Alaska Native Village Corporations, and Alaska Native Regional Corporations for the first two fiscal years of the five-year program. GDO has conducted significant outreach to states, Tribes, and territories to implement the State and Tribal Formula Grants program, including direct outreach to over 170 Tribes, Tribal regional organizations, and Tribal utilities; public outreach to Tribes by attending local Tribal conferences; direct outreach and meetings with Tribal Leaders and providing application assistance through application templates and identifying additional sources of funding for Tribes to help meet cost-matching requirements such as the U.S. Treasury Department's Local Assistance and Tribal Consistency Fund (LATCF). Tribes have been clear about the challenges they face in accessing funding to apply for programs. Specifically, remote and rural Tribes have identified that lack of reliable Internet prevents them from applying to the program through an online portal. On March 20, 2023, GDO announced a mail-in option to address this challenge and extended the deadline to May 31, 2023, to allow Tribes additional time to complete their applications. Tribes have noted the challenge of the statutorily required cost-match; the deadline extension also allows more Tribes to apply to the LATCF, which can be used as matching funds.

Additionally, Tribes have indicated an interest in using consortium applications for this program to help address capacity constraints for Tribes applying to and administering these funds. The statutory language in BIL requires that funding is provided directly to Tribes. To address the capacity constraints of Tribes to apply to this program, DOE allows Tribes to designate a third-party to the prepare, submit, and administer a resulting grant. Once individual Tribes receive funds, they are eligible to work together to use funds on a joint project with that shared funding.

Our team has worked to maximize the flexibility of this program to meet the needs of Tribes, while ensuring we are working within the clear statutory language in the law. GDO will continue to work with Tribes to address any challenges they are facing, and our team is happy to meet with the Committee and its members

to discuss these challenges further and how to address them. We would welcome the opportunity to work with this committee to provide additional flexibility to meet the needs of Tribes. The Grid Deployment Office also leads the Inflation Reduction Act's Transmission Siting and Economic Development grant program, which allocates \$760 million to support Tribes, States, and local communities in the siting and permitting of interstate and offshore electricity transmission lines as part of a broader effort to boost grid reliability and resilience. If a Tribe does not have a designated "siting authority" for transmission projects, including projects crossing reservation lines, they may still be eligible for a grant under the program for economic development activities for communities that may be affected by the construction and operation of a covered transmission project. The Arctic Energy Office is working with stakeholders in the Department and Alaska on the challenge of non-interstate and microgrids for Alaska communities.

The RFI for the Transmission Siting and Economic Development grant program closed on February 28, 2023. Program experts are currently undertaking a detailed review of public comments received during the RFI solicitation. GDO also plans to seek additional feedback in the coming months through listening sessions with interested stakeholders, including Tribal Nations, to ensure that the transmission siting program can effectively meet the transmission and economic development needs of these communities. The Department anticipates issuing the first Funding Opportunity Announcement under this program later this year.

#### *Office of Clean Energy Demonstrations (OCED)*

In the BIL, Congress allocated \$1 billion for the Energy Improvements in Rural or Remote Areas (ERA) program, which will help increase energy affordability and promote climate resilience in rural and remote communities. The first round of funding from this program made \$300 million available and opened on March 1, 2023. Concept papers for the funding announcement are due April 14 and full applications are due June 28.

ERA also includes a \$15 million prize competition, called the Energizing Rural Communities Prize, to help Tribes and rural communities build the capacity needed for clean energy development and deployment. This prize competition will help build partnerships by connecting Tribes and communities to government funding and a network of partners that can help implement clean energy projects. The prize will help selectees develop plans to access capital and/or develop community ownership models. Full applications for the Energizing Rural Communities Prize are due May 24, 2023.

#### *Loan Programs Office (LPO)*

In the IRA, Congress made permanent the ability for the U.S. Treasury Federal Financing Bank to issue direct loans, guaranteed by DOE via LPO, to Tribes under the Tribal Energy Loan Guarantee Program (TELGP). This change—in addition to other changes in Fiscal Year 2022 to the TELGP solicitation to clarify ownership requirements, lending obligations, and fees—has increased interest in and accessibility to TELGP loans. The IRA also increased the available loan authority under TELGP from \$2 billion to \$20 billion and provided \$75 million for the Loan Programs Office to carry out the program. Under TELGP, DOE can support Tribal energy financing to eligible Indian Tribes, including Alaska Native Villages or regional or village corporations, or Tribal Energy Development Organizations certified by the Secretary of the Interior under 25 CFR Part 224, Subpart J, for the development of energy resources like solar, wind farms, microgrids, mining and fossil energy production, and transmission and distribution.

Through funds allocated in the IRA and in base appropriations, LPO continues to grow its TELGP Outreach and Business Development footprint—through ongoing communication with Tribal leaders to solicit feedback about the proposed design of TELGP, one-on-one meetings with Tribal leaders to better understand areas of need, and participation in Tribal energy summits and events. Through the first three months of FY 2023, 270 (123 initial and 147 follow-ups) outreach meetings were held, and four applications were officially submitted, totaling nearly \$500 million dollars in requested TELGP financing. LPO will continue to work diligently to utilize the \$20 billion in aggregate loan authority provided by the IRA to ultimately deliver important energy and economic benefits to Indian Tribes.

#### *Office of Indian Energy (IE)*

The Department's Office of Indian Energy Policy and Programs plays a critical role in DOE's outreach to Tribal communities and coordinates across the Department to ensure that the programs we launch that have Tribal elements—out of any of our program offices—are thoughtfully crafted to best serve the needs of Indian Country.

In addition to leading programs that are funded through annual appropriations and conducting internal coordination across DOE, IE hosts a series of webinars and other external stakeholder engagement events to solicit input and feedback from Tribal communities on program design, program details, and technical assistance to build toward their priorities, including the deployment of clean energy infrastructure in Indian Country.

The Office of Indian Energy hosts the Indian Country Energy and Infrastructure Working Group, which brings government and Tribal leaders together to collaborate and gain insight into real-time Tribal experiences representing obstacles and opportunities in energy and related infrastructure development. The Working Group's most recent meeting was in Blue Lake Rancheria, California, and participants included the Loan Programs Office, Grid Deployment Office, Office of Cybersecurity, Energy Security, and Emergency Response, Office of Clean Energy Demonstrations, and Office of Manufacturing and Energy Supply Chains. The next Working Group meeting is slated for late May, hosted by the Seneca Nation in New York.

IE also helped lead the effort and hosted the DOE Tribal Clean Energy Summit in October 2022—a nation-to-nation discussion to explore how Tribes can harness clean energy to enhance energy sovereignty, address climate resilience, and build stronger economies. This input and collaboration are especially important given the sizeable new investments in Tribal energy infrastructure through the BIL and IRA.

#### **Challenges in the Implementation of BIL and IRA in Indian Country**

While we are proud of our track record of outreach to Tribes as well as our pace of implementation of the BIL and IRA, the Department has also encountered some challenges as we continue to deploy clean energy across Indian Country.

One consistent challenge that we hear is a lack of administrative capacity to successfully complete applications for competitive grants and loans. Many Tribes oftentimes lack the technical expertise and resources to fill out more complex longform applications—like with TELGP—and comply with annual reporting requirements.

What makes this more difficult is that in some cases—like with the Grid Resilience Formula Grants program described above—the statute requires that grants be awarded to individual Tribes, which prohibits Tribal consortia from pooling their resources to apply for and receive funds. A suggestion that we have heard from Tribal leadership is to allow for consortia to apply to help increase capacity and maximize efficiencies among Tribal communities. Another suggestion we have heard is to better promote non-competitive sources of funding (i.e., formula grants) that offer Tribes a more level playing field and do not necessitate the same level of administrative capacity.

As mentioned previously, the Grid Deployment Office has made a number of thoughtful program design decisions within statutory boundaries, like allowing Tribes to utilize a third-party to help with grant applications and administration, as well as making it clear that Tribes can work together after receiving competitive grant funding on a joint project. Even so, these design elements do not have the same impact that allowing pooled funds and applications would have.

A related challenge that we face in implementing these historic laws in Indian Country is the cost-share requirement that many of our programs have. Depending on the project, Tribes are oftentimes statutorily required to cost match at least 15 percent and up to 115 percent of Federal funds, making several of our programs cost-prohibitive for smaller and less-resourced Tribes. In 2020, Congress authorized DOE to lower the cost-share requirement for programs administered by the Office of Indian Energy from 50 percent to 20 percent, which could be further reduced to 10 percent if the Tribal applicant falls below certain poverty and median household income thresholds. We thank Congress for taking this important step and encourage similar policies moving forward.

The Department has also heard concerns from Tribes regarding a “return on investment” issue. For example, the Energy Independence and Security Act of 2007 stipulates that two percent of EECBG program formula funds be allocated to Federally recognized Tribes through a formula established by the Secretary. In the BIL, Congress appropriated \$550 million to the program, substantially less than was appropriated by the American Recovery and Reinvestment Act, but did not change this formula. This has meant that the vast majority of Tribes are eligible for allocations of less than \$15,000. DOE has done what it can to mitigate this, and in this case the Department used its authority to establish a minimum of \$10,000 per allocation, since many Tribes would otherwise have been significantly less. However, this allocation amount is very small relative to the amount of work required by a small Tribe to apply for and manage a Federal grant. An increase in the percentage of funds allocated to Tribes through the EECBG allocation formula would enable DOE

to provide additional formula funding to Tribes, including a higher minimum funding level.

We have encountered similar issues in the implementation of the Grid Resilience Formula Grants; the Department has implemented a minimum formula allocation of \$30,000 to mitigate how miniscule the allocations would have otherwise been for Tribes, but due to statutory constraints it remains far from sufficient for the magnitude of investments needed to bring Tribal communities in step with their non-Tribal counterparts in terms of lower-cost, reliable clean energy infrastructure.

#### **Conclusion**

The Bipartisan Infrastructure Law and Inflation Reduction Act have tremendous potential to shift Tribal energy transition into the next gear, with equity and opportunity at the top of mind. The Department of Energy looks forward to continuing our work with Congress and this committee specifically to build on our shared successes and find paths forward to overcome the challenges we face in the implementation of these laws. Thank you again for the opportunity to testify before you today. I look forward to your questions.

The CHAIRMAN. Mr. Newland, please proceed.

#### **STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. NEWLAND. Thank you, Mr. Chairman, members of the Committee. It is always great to have the opportunity to appear before the Committee and testify. I do appreciate the opportunity to be here today.

My name is Bryan Newland. I have the privilege of serving as Assistant Secretary for Indian Affairs at the Department of the Interior.

As you noted, Mr. Chairman, the Inflation Reduction Act is a historic law that makes transformational investments to address the climate crisis, lower costs for working families, and create good-paying jobs for all Americans. Overall, the Department of the Interior will receive \$6.6 billion in direct funding through the IRA. Of this, \$150 million is provided to the Bureau of Indian Affairs for a new tribal electrification program.

There is a great need for home electrification in Indian Country. In 2022, our colleagues at the Department of Energy, Office of Indian Energy reported that nearly 17,000 homes in Indian Country lacked electricity, with most being in the Southwest and in Alaska. The Department of Energy's report highlighted that 21 percent of homes on the Navajo Nation and 35 percent of homes on the Hopi Reservation lack electricity.

Access to electricity is something that most Americans take for granted. We know that it benefits our health, welfare, education, and our overall lives. Without electricity, the basic standard of living that most Americans enjoy is out of reach, things like running water, reliable lighting, home heating and cooling, and appliances like refrigerators and microwaves.

With electrification, Native families can stop traveling hundreds of miles to get their water, and they will be able to ditch their portable coolers that they use to preserve their food at home.

Our goal is to get this funding to where it is needed as quickly as we can and to fulfill our obligation to consult with tribes. We held two consultations on the IRA programs just this past December, and we intend to hold additional listening sessions in April with our partners at the Department of Energy.

We received valuable feedback from tribes and these consultations helped us understand the scope of energy and electrification needs as well as how to help build capacity for implementation.

We also want to ensure that we maximize the impact of these funds. We expect our funding to be awarded through a competitive proposal process with an emphasis on need, and we will provide technical assistance throughout and move these funds through 638 contracts.

We also plan to offer two-year funding in two separate rounds for electrification projects, with half to be obligated by the end of the fiscal year and all funds obligated by the end of Fiscal Year 2025.

The Department has been coordinating with other Federal agencies in the implementation of our bill and IRA funds. This is consistent with what tribes have asked of us and it also reflects President Biden's commitment to an all-of-government approach to solving problems.

In particular, we have worked closely with the Department of Energy, with FEMA, and with USDA, to coordinate our consultations and funding announcements, and will continue to do so along with partnering with Indian Country.

The Department commends and thanks the work of this Committee and Congress to enact the Bipartisan Infrastructure Law and the IRA with the historic funding investments you have made in Indian Country. We look forward to continuing our work with tribes, our Federal partners, and the Committee to ensure that the energy needs of tribes are met.

Thank you, Mr. Chairman. I look forward to answering your questions.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony at this important oversight hearing, "The Future of Tribal Energy Development: Implementation of the Inflation Reduction Act and the Bipartisan Infrastructure Law."

The Inflation Reduction Act (IRA) is an historic law that includes transformational investments to address the climate crisis, lower costs for working families, and create good-paying jobs. Combined with the Bipartisan Infrastructure Law (BIL), these two initiatives represent the largest investments in climate resilience in the nation's history and provide a once-in-a-generation opportunity for the work of the Department.

Overall, the Department will receive \$6.6 billion in direct funding through the IRA. This funding will help bureaus and offices across the Department to transition to a clean energy economy, advance key habitat restoration and resilience projects, and secure environmental justice for historically disadvantaged communities. Of the funding provided to the Department, \$150 million is provided for the Bureau of Indian Affairs for a new Tribal Electrification Program.

The Tribal Electrification Program will coordinate financial and technical assistance to Tribes to increase the number of Tribal homes with zero emission electricity. The need across Indian Country is significant. In 2000, the Energy Information Administration issued a report which estimated that 14 percent of households on Native American reservations had no access to electricity, this was 10 times higher than the national average. In 2022 the Department of Energy Office of Indian Energy issued a report citing that 16, 805 total Tribal homes were unelectrified with most being in the Southwest region and Alaska. Specifically, 21 percent of Navajo Nation homes and 35 percent of Hopi Indian Tribe homes are unelectrified. Access



to electricity will improve the health, welfare, education, and overall lives of Native Americans. Whereas running water, reliable lighting, modern forms of home heating and cooling, and appliances such as refrigerators and microwaves were simply out of reach, with electrification, Native American families can stop traveling hundreds of miles to procure water and will be able to retire their portable coolers filled with ice to preserve their food. Recognizing each Tribe has its own energy and electrification related needs and implementation capacity, the program will work to meet the unique needs of individual Tribal communities.

Our goal in implementing the Tribal Electrification Program is to ensure we maximize the impact of the funds while working to meet the need to deliver electricity to Tribal homes. We also aim to deploy the funding quickly while also fulfilling our commitment to meaningfully consult with Tribes. The Department held two consultations on the IRA programs in December 2022 and intends to host additional listening sessions in April. Our plan is to offer two-year funding in two separate rounds for electrification projects with half to be obligated by the end of fiscal year 2023 and all funds obligated by the end of fiscal year 2025.

The Department conducted consultation with Tribes to understand the unique energy and electrification needs as well as implementation capacity. Funding will be awarded through a competitive proposal process to be deployed via Indian Self-Determination and Education Assistance Act and Tribal Self Governance Act of 1994 agreements, using varied criteria, and supported by technical assistance. We estimate it will cost roughly \$70,000 per home to deliver electricity to homes that are not already on or immediately near a power grid or wired for electricity. To maximize impacts with the \$150 million available from the IRA, we will use a project-based process to focus on funding projects that can deliver electricity to the most homes across Indian Country. Projects may range from implementation-ready to ones that require support to develop implementation capacity. Technical assistance will be provided to further support the Tribes as they work through their communities' projects with focus on those Tribes that lack sufficient project development and implementation capacity.

The Department has been coordinating and collaborating as appropriate with other federal agencies in the implementation of BIL and IRA funds. The need for coordination has been a consistent theme in consultations with Tribes and supports our commitment to ensure these historic investments reach as many homes as possible. We have worked closely with the Department of Energy, Federal Emergency Management Agency, and Department of Agriculture to coordinate our consultations and funding announcements. We will continue to coordinate and host joint listening sessions as appropriate.

### **Conclusion**

The Department commends the work of Congress to enact the IRA and BIL with historic funding and we look forward to continuing our work with Tribes, our federal partners, and the Committee to ensure the energy needs of Tribes are met.

The CHAIRMAN. Thank you, Mr. Newland.

I will also note that you finished a minute early, which I think is an historic moment. Not for you in particular, but just generally speaking.

[Laughter.]

The CHAIRMAN. Dr. Hogan, we as you know expanded the DOE's Tribal Energy Loan Program in the IRA to get tribes access to low-cost credit. But tribes are being turned away if they receive some grant funding for the project and need the DOE loan to cover the remaining costs. Why?

Dr. HOGAN. Under our loan guarantee program, there are provisions against something called double dipping. This is something we would be happy to work with you further on so that we —

The CHAIRMAN. Hold on a second. Provisions?

Dr. HOGAN. Provisions.

The CHAIRMAN. Is it a rule?

Dr. HOGAN. It is in statute, yes. There is a rule that has been provided from Congress that does not allow the use of certain, of Federal funding in two different ways for the same project.

There are ways that we have been working to get through these types of things in terms of how you define a project. We can guide the Indian tribes into how to structure things like that.

But we would really enjoy sitting down and working with you on better ways that we can navigate this and improve the access to the tribal loan program.

The CHAIRMAN. Go ahead, if he was advising you.

Dr. HOGAN. That is explicitly in the IRA, yes, the constraints in which we are working through are explicitly in the Inflation Reduction Act.

The CHAIRMAN. Let me ask you a question the other way, because I have a bill of particulars. We gathered it from Indian Country, Native Hawaiian organizations and Alaska Native organizations. I just want to stay at the conceptual level here, because I don't have access to all the statutes, and I left my law degree in the car.

Would you agree that not all of the impediments that are being presented to Indian Country in particular in terms of participating in these programs are either in rule or statute, but some of them are customs, procedures, practices, sort of muscle memory about who you provide resources to and who you don't, and not kind of understanding the unique configuration of tribes?

Just to give you an example, the requirement that S&P, for instance, to a creditworthiness of a tribe who has land in trust, now, if you are a big nation and you have lots of land and lots of casinos, you can go to S&Ps and get a AAA rating. But a lot of these tribes, and by design we decided to push this money out to small communities, to rural communities.

So to ask them to, what, get a bunch of lawyers, go to Wall Street, do a presentation? I was in State government, you go up to Wall Street, you say, here is our balance sheet, here is our collateral, and look how creditworthy we are, and can you give us that AAA rating so we can borrow. Nobody can do that if they are a small tribe.

So the broader question I have for you is, can you at least concede that some of the problems are on your end and not solely the new problem for Congress to solve? Because the frustration here is that you have asked us for multiple things, and we keep doing the things that you ask us for, and now you are telling me, well, if you want that problem solved, you need to change the statute again. What problems are yours that you need to fix?

Dr. HOGAN. Let me be clear. Can we do a better job? We can always do a better job.

The CHAIRMAN. In what ways?

Dr. HOGAN. Well, first, let's just get a little bit more of the landscape mapped out with regard to the Tribal Energy Loan Guarantee Program. It has been on the books for a number of years. The direct funding need was real.

But when it was first put in place, it was put in place for a year. We did not get much interest from the people that would take advantage of that when you only have a one-year runway given—

The CHAIRMAN. I get it. That is why we fixed that. So my question is—

Dr. HOGAN. So now—

The CHAIRMAN. Hold on. My question is just a more general one. Let's just pretend it is the two of us talking about this. What do you guys need to fix?

Dr. HOGAN. Well, right now, we are implementing what you have given us as this new tool, which is a great new tool, which is the permanence of the direct funding that goes with this.

As I have said, we have done close to 300 outreach engagements with tribes. We have four projects in the pipeline now that are real. We have several more that we believe are in the sort of pre-application stage. We are assisting the tribes in numerous ways from the pre-application stage—

The CHAIRMAN. I hear you.

Dr. HOGAN. Okay. We actually believe, given that the IRA was put in place with this more permanent place, as of last August, and the complexity of these projects, they are complex, that we are getting some great examples through the program right now which we are committed to get through and get in place so that you can turn around and really have good models for more tribes and more tribal—

The CHAIRMAN. I hear you. But I am just going to ask the question one final time. Is there anything that you think that the Department of Energy ought to fix? Just name one thing that you guys think you are not doing well enough on that you need to do better.

Or is it that all of the tribal organizations and Native organizations and my staff and everyone that I am hearing from just has it all wrong? You guys are doing this perfectly, and to the extent that there is an implementation problem, all you need is new statutes, more money, or it is DOI's fault, it is the White House's fault?

Just name one thing that you think you should fix.

Dr. HOGAN. Please don't misinterpret me as saying that we are doing everything perfectly.

The CHAIRMAN. Right. So give me an example of something you need to work on.

Dr. HOGAN. We are out there working to engage. Can we engage more? Can we engage more often? Absolutely. Can we try to connect the dots and help more tribes?

The CHAIRMAN. I am actually trying to bail you out here. I am trying to offer you an off-ramp where you can say, look, I think we haven't done this particular thing as well as we could, and we are going to work on it. But you can't give me a specific example of anything you think you should fix that doesn't require someone else to take action first. So I would just like an example of something you need to work on.

Senator Cortez Masto, happy birthday. Your witness.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you. I appreciate that.

Let me follow up. As an attorney, I am curious what is the double dipping provision in the IRA. Do you have specifically the statute that prevents a tribal community from getting a loan as well as a grant for the same energy? What is that provision? Do you have that specifically?

Dr. HOGAN. There is a provision in the Inflation Reduction Act that says that the funding that is provided to tribes cannot also take, access the funds that are provided in other ways. So we can get you that provision.

Senator CORTEZ MASTO. Please provide that to me. Because that was not the intention when we passed the Inflation Reduction Act. If the attorneys are interpreting it that way, I would like to see it as well. I appreciate that. Thank you.

I think we are all in agreement, this is such an important issue for our tribes, to get the money out there to them in a manner that that can receive it. They have challenges, technical assistance challenges, staffing challenges, so many others. We are hoping that both of your agencies are providing that information to the tribes, but also educating them about what is available.

So that is the first question I have, are you educating them? What types of education and outreach are you doing for our tribes across the Country to make sure they are aware that this is happening and these monies are available?

Two, is it a workforce issue? Do we need to understand that you have a staffing issue? These are new programs, additional money that is out there. Is it a staffing issue for your agencies to be able to do the outreach and talk to our tribal communities, Native communities across the Country?

Dr. Hogan, let me start with you, and then I will go to Mr. Newland.

Dr. HOGAN. Thank you for that. BIL and IRA did give the Department of Energy close to \$90 billion to put to work with a fair amount of that to, either eligible to or formula to tribal country. So as one can imagine, there is a staffing effort that we are going through to staff up and be ready to field and support and provide TA and do outreach around that flow of money.

Much of the money that we are putting out the door, it really isn't through formula, it is through the design and then the fielding of competitive solicitations, which takes a fair amount of work to go out and consult and engage and figure out how to do it right.

We believe that we are working very hard to balance the urgency of the need with getting it right. Because you do need input from the stakeholders on the ground in the design phase of all of this work.

That said, as we sit here today, we have staffed up quite considerably, I would say, at a record pace for what the challenge is that we have and the work that we have to do. We have engaged really substantially in outreach in tribal country around each of the major provisions that we engage with them on, from the grid resilience provisions to, as I highlighted earlier, the electrification rebates provisions where we are consulting now.

And we have done that any number of ways, by being at tribal conferences, by webinars that are targeted regionally, by broad tribal consultative events. We have been actively engaging, doing outreach really from day one.

I think the other great asset that is at the Department of Energy that goes beyond the BIL and the IRA work is our Office of Indian Energy, which you all have supported tremendously over the years, and continues to grow in terms of what it can deliver on the ground

with outreach and helping tribal entities get ready for what these other opportunities are.

It has been growing in budget and people as well, providing no-cost technical assistance for tribes to think through the types of projects that make sense on their ground and put them in the driver's seat relative to these other opportunities.

Senator CORTEZ MASTO. I only have so much time. Assistant Secretary Newland, same to you, staffing issues if you have any, and then what types of outreach are you providing.

Mr. NEWLAND. Thank you, Senator. We do face staffing challenges in the BIA, but a lot of that is, to go back to the Chairman's question about what you can do better, hiring faster is a challenge we face. I know it is common across Federal agencies, so it is not necessary a funding issue.

But that is one of the reasons why we have elected, with our electrification program, to use the 638 contract as the vehicle. Because we have the staffing in place to move those funds, and there is a well-worn path.

When it comes to outreach, the tribes, one of the frustrations, actually, that I have heard with, I am not being facetious, tribes say that sometimes they get too much consultation from us, or that they are getting flooded with these notices.

So we have tried to tailor our outreach to tribes to account for that, and in instances like this do direct outreach with our regional staff right to tribes, particularly for a program like this in Alaska, at Navajo Nation and in the Southwest where we know there is a higher concentration of tribes with unelectrified homes.

Senator CORTEZ MASTO. Thank you.

The CHAIRMAN. Vice Chair Murkowski?

Senator MURKOWSKI. Thank you.

Secretary Newland, or to you, Dr. Hogan, with regard to this outreach, because I do think that this is something where sometimes the agencies just expect the tribes to come to them. And again, you have incoming, you have so much coming at you that you can't sort it through it to know. It is not straightforward most of the time.

One of the challenges that we have in Alaska, just as it is difficult to get things in, you have to fly barrels of fuel in at the end of winter, it is equally difficult to get things out. So I think sometimes people go out to rural Alaska and are just horrified as what they view as junk, a broken-down snow machine. But the fact of the matter is that broken-down snow machine is like your NAPA auto body store right there, because I am going to need these parts for something else.

But we also have things like batteries out there, things that we really don't want to have sitting out there. How can we do more when we think about recycling? We have some opportunities within the Bipartisan Infrastructure Law, you have opportunities for partnering with tribes in battery, certainly recycling grants.

How realistically are we getting to the tribes to share with them that these are opportunities to take advantage of? Because we are looking at some appropriations requests right now where we are trying to help with this whole backhaul effort, because we have to get the stuff out. Somebody is going to gain an advantage of that, but it may as well be the tribes.

How are we doing that outreach?

Mr. NEWLAND. Thank you, Vice Chair. Again, within the Bureau of Indian Affairs, we have the general “dear tribal leader” letters that we issue. But I have been on the receiving end of those, and they come, several of them come a day, it seems like. So we try to follow that up with calls.

Senator MURKOWSKI. So you don’t consider that outreach, do you?

Mr. NEWLAND. It is a part of it. It is an important part of it. In Alaska in particular, we also rely on our regional office staff to call tribal leaders directly. Also, consortia and other partner organizations to help get the word out on things like what you are discussing.

In this Administration, particularly going back to the ARP and the Bipartisan Infrastructure Law, we have also assisted partner agencies in doing that outreach directly because a lot of tribes at the staff level have familiarity with our staff. They may not recognize the number calling from another agency, or they may not recognize the person.

So we have also opened our doors to our colleagues at other agencies to assist in that outreach, and we will continue to do so.

Senator MURKOWSKI. Let me ask you, Dr. Hogan, I know we are focused on the Inflation Reduction Act, the Bipartisan Infrastructure Law. But we implemented the Energy Act of 2020 and laid some groundwork for improving tribal access to the energy programs there. And we did a couple of things for tribes and ANCs in particular.

First, the Act lowered the cost share requirements to 10 percent for grants and technical assistance programs in DOE Office of Indian Energy. Then we also expanded the definition of tribal lands to include ANCSA lands.

Now that DOE has pretty substantial financial resources for technical assistance grants under the Bipartisan Infrastructure Law, do you anticipate that there is going to be greater use of the reduced 10 percent cost share requirement?

Dr. HOGAN. I think we are looking at continuing to use that cost share reduction opportunity for the type of work that we are doing there. A lot of that is the formative technical assistance that tribes need to get organized around how they want to think about their energy future. Certainly, we want to be able to meet as many tribes as possible where they are.

Senator MURKOWSKI. If you have greater resources, it would seem to me reasonable that this would certainly free that up. Would you not agree?

Dr. HOGAN. Absolutely.

Senator MURKOWSKI. And then can you assure me that the Alaska Native Corporation, ANCSA lands, will absolutely be covered by the DOE programs?

Dr. HOGAN. They will be covered wherever we can. I know there is a little bit of —

Senator MURKOWSKI. Well, let me just clarify. Because we did expand the definition of tribal lands to include ANCSA lands.

Dr. HOGAN. Yes, in the Energy Policy Act of 2020. So wherever the statute supports it, we are there. I know that there is an issue

with our grid resiliency provision in terms of whether it can go to any entity other than directly to a tribe. We are trying to work through what those issues are, including helping them understand how to go and use third parties to help them get their work done. But there is still a little bit of, I don't know, unnecessary complication there.

Senator MURKOWSKI. I would just suggest that there should be no unnecessary or necessary complications when we have specifically expanded the definition of tribal lands to include ANCSA lands. We did it, it was pretty clear. There shouldn't be any ambiguity to it. To us, that is legislative intent, and it is specified, so it should be easy and we would expect the DOE to include and absolutely cover ANCs within those DOE programs.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith?

**STATEMENT OF HON. TINA SMITH,  
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you, Mr. Chair, Vice Chair Murkowski.

Mr. Newland, I wanted to acknowledge, with the support of the Chair and Vice Chair, you came out to Minnesota last summer, I think it was, and we had a field hearing to talk about the opportunities in the Infrastructure and Jobs Act. It was before we passed the IRA.

I know that Minnesota tribes really appreciated having you there. One of the biggest topics of conversation we had was the struggles that tribal nations face, especially smaller ones, trying to figure out how to engage with this octopus of the Federal Government, an octopus that often reaches out all of its arms in so many ways, doesn't always understand what it is reaching out to, which is tribal nations that have their own way of doing things.

I thought we had a really good conversation. We talked about the need for, all the needs that Minnesota tribes have to try to participate in the Infrastructure and Jobs Act. I am wondering maybe if we could take this a different way. Could you describe, if there is anything that you learned from that experience or other similar conversations you have had that have caused you or others in the agencies to change the way you do things in order to make the implementation of these bills work better for tribal nations?

Mr. NEWLAND. Thank you, Senator. It was just the other day I had to call a different large organization and I was getting passed from person to person, or told no, call this person at this department. I think everybody understands how maddening that is.

Senator SMITH. Yes. Particularly if you are a small organization, you don't have big grant-writing departments. Right.

Mr. NEWLAND. It is particularly maddening with your trustee, when you are a tribe.

One of the things that the President did early on when he came into office was to reconstitute the White House Council on Native American Affairs. We meet regularly across agencies. In fact, just before I came to this hearing, we finished our monthly staff meeting.

One of the things we try to do, we are not perfect yet, but we try to do, is to make sure there is no wrong door to the Federal

Government, that there is no wrong number. So if folks, a lot of times folks call the BIA and they say, I need to get hold of somebody at the Department of Energy, or they will call IHS and ask for somebody at the Department of Labor.

So what we have tried to do through the White House Council is to make sure that we are all communicating regularly and that we can pass people along to the right person. We don't want that "it is not my job" mentality. It is especially important when we are talking about the funding investments that Congress has made in these laws, and the timelines associated with them.

So that is one of the things we are trying to do. We heard it when we were in Minnesota, and we hear it all the time.

Senator SMITH. Thank you. I want to touch on something else you mentioned. You talked about how BIA is using your 638 contracting authority, which is the self-governance process that works. Could you talk about how you think 638 authority might help other agencies to work more efficiently and effectively with tribal nations?

Mr. NEWLAND. Absolutely, thank you, Senator. I think that is an authority that we have had a lot of practiced at the BIA, over half a century now, with that.

But the concept is new to other agencies. It really ensures that tribes have the flexibility to take these funds and design how they are used at the ground level. It also comes with the contract supports costs oftentimes, which helps with the staffing and the capacity at the tribal level to make sure program dollars aren't swallowed up in the staff.

And the third thing is that it allows the money to move very quickly once you have the agreements in place. So rather than a competitive grant process, that is a way to make sure these funds get to tribes, allow them to design how they are used on the ground, support their own capacity, and it gets it done quickly.

Senator SMITH. Thank you. I will just mention, Mr. Chair, that I think there is an opportunity for us to make improvements and expand 638 authority to other agencies.

But let me close. Dr. Hogan, I want to say, I don't have a question for you, but I have had a lot of experience since I have come to the Senate working with Federal agencies and trying to act, myself, as a bit of a translator between what tribes are trying to accomplish and what they encounter with Federal agencies.

To what Senator Schatz was saying, and I am not speaking even directly about the Department of Energy, I have often run into the experience of like people speaking two different languages.

I have to also say that I have found in some agencies, again, I am not even speaking of the Department of Energy, an unwillingness to speak the language of the tribes. I am not talking about literally, I am talking about directly, so that problems can be solved.

This is what I think Senator Schatz is discussing and trying to bring out. You have explicit authority, and then there are ways of solving problems that you can work on if you try to understand what the issues are. I have had many experiences of talking with Federal agency folks who will say, I don't have explicit authority to do that, and therefore I cannot solve this problem. That is in-



credibly frustrating, because it often feels as if there are, those problems are solved in other places in other ways.

So in response to Senator Schatz' frustration, which I also feel, we should be working together to try to figure out how we can solve some of these problems without looking for statutory changes that means that we enter into another cycle of honestly, frustration for people who feel that because of our trust and treaty relationships with these tribal nations, we should be in a position from the get-go of meeting people's needs.

Dr. HOGAN. Thank you very much for that. Again, I think we are trying to hear from the stakeholders on what their issues are, and I think over the last number of months, we have executed on any number of things that you would not have found the Department doing five years ago.

So if we hear of a problem that we think we can be creative around within our statute and solve it, we are doing it. As we have said, we are putting on, we have application templates to streamline it, we are putting mail-in applications in place. We are using the prize authority you all gave us years ago in a way to have very low burden ways to help communities move forward and execute, develop plans and execute on plans.

So again, we really want to hear what it is you are hearing so we can continue to figure out creative solutions to these things.

The CHAIRMAN. Dr. Hogan, I want to give you a hypothetical. A tribe has a \$25 million energy project. They get \$10 million in grant money. They can round up \$5 million on their own. And they want to make up the remaining delta, the last \$10 million, with a loan program.

Now, my understanding of this law preventing so-called double dipping is to say, you, tribe, you, entity, cannot get paid twice for the same thing, not that you are not permitted to have multiple sources of Federal funding.

So when you do a housing project, you might have a capital stack that includes a community service block grant, a community development block grant, and a LIHTC. Then you might end up with Section 8 vouchers, tons of Federal funding coming in.

That is not double dipping. Double dipping is, you get the same dollar amount to cover the same costs twice. Right? And what we are hearing is that this prohibition on double dipping is being interpreted in an extremely punitive way and in an extremely restrictive way that is unique to this situation.

I would just ask, to the extent that it is colorable, to the extent that this is a close call, that if you have the Committee on Indian Affairs here saying, that is not what we meant when we said don't double dip, what we said is, you can't get, let's say it is a \$10 million project, and you get a \$10 million loan and a \$10 million grant. You can't do that.

But if you are just creating a capital stack, every municipality does that. States do that, non-profits do that, the for-profit sector does that.

So to the extent that it is colorable, all I am asking you to do is to go back and huddle with your lawyers and try to make a determination about whether the statute is clear. Because I have some pretty good experts here on Indian law in particular, and

they think that although your interpretation is plausible, it is not the only one that you could arrived at. There is a basic principle in Indian law that when it is a close call, you interpret the law to the benefit of Indian Country.

I don't see that happening here. I would like your thoughts.

Dr. HOGAN. We are happy to take that back and take another look. I think we like to believe that we too, when there is ambiguity, that we solve that ambiguity in a way that benefits the people that the law is there to benefit. So we are happy to take that back, take another look and come back and talk with you.

The CHAIRMAN. Thank you.

Senator Luján?

**STATEMENT OF HON. BEN RAY LUJÁN,  
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Mr. Chairman, and thank you to our Vice Chairman for this hearing and to our panel for being with us today.

Dr. Hogan, like you, and I hope like everyone in this room, I am very concerned about the lack of basic utilities for too many brothers and sisters across the Country. Friends that don't live far from where I live, constituents that I am honored to represent, projects where children are asked to draw pictures of where water comes from and several of those children will show pictures of a pickup truck with a tank behind it, or of a loved one having to carry a pail of water from a river. Some children will draw water coming from a faucet, but not all of them.

Electricity, broadband, wastewater, this just isn't right, not in our incredible Country. That is where some of my concerns are, I am looking for some direction from both of you here. It starts around this study. It is my understanding that the Department of Energy Act of 2020 to conduct research and report back the status of access to electricity amongst tribal homes is why we are here. My understanding is this report is almost finalized and will be released to Congress soon. Is that correct?

Dr. HOGAN. Fairly soon, yes.

Senator LUJÁN. In a week, a month, a year?

Dr. HOGAN. Less than a year, more than a week.

Senator LUJÁN. I appreciate that.

Dr. Hogan, my understanding is that 16,805 figure for the total number of unelectrified tribal homes that Assistant Secretary Newland noted in his testimony will be in the Department's final report. Is that true?

Dr. HOGAN. I am sorry, say that again, sir?

Senator LUJÁN. One thousand six hundred eight hundred and five homes that don't have electricity, that number will be in the report?

Dr. HOGAN. That number is in the report, yes.

Senator LUJÁN. Dr. Hogan, my understanding is that this number is based in part on a poll conducted during one of two listening sessions with 217 individuals during the pandemic in 2021. Is that true?

Dr. HOGAN. It is based on a number of ways that we collect information and piece it together. Yes, we have done a number of

things, including asking for people to report in categories, broad categories of what the number of unelectrified homes are, yes.

Senator LUJÁN. Mr. Chairman, one question I would like to submit for the record is to ask for how data was collected, then, since I am basing my questions on those polls to 217 individuals. It is my understanding those were conducted, that the polls were conducted virtually.

Dr. HOGAN. There were virtual opportunities for people to come and talk to us and provide information that they had on electrified homes, yes.

Senator LUJÁN. And in person?

Dr. HOGAN. During the pandemic, there were “dear tribal leader” letters, there were any number of ways that the tribes could provide us information over that period of time.

Senator LUJÁN. So I am looking for how that information was gathered. Because here is my concern, is that if in fact a large amount of this data was collected over a virtual line that requires electricity, and the question is, how many of you don’t have electricity, I am missing something. It is similar to when people come in and tell me, we had a virtual meeting on how many of you don’t have broadband.

Dr. HOGAN. I can understand your concern. Certainly, we are happy to explain how we collected this data. What you are referring to in terms of these virtual sessions was one of a multi-faceted approach to collect the data, including that we get data in every application that the tribes provide to us when they are applying for things, we ask these questions.

So we really had years of data to really sort of pull together. What you are referring to is one of the ways that we tried to get another lens on the data that is out there.

It does turn out, unfortunately, that this is very hard data to collect and again, so we are trying multiple avenues to try and piece this together and provide the best snapshot we can today. But again, it can always be improved.

Senator LUJÁN. Mr. Chair and Ms. Vice Chair, this is an area where we should have inquiries with IHS, for example, who does collect data on wastewater. I have had a terrible time also trying to get accurate data on the number of tribal homes that don’t have electricity or don’t have broadband. There should be a number so that we make improvements everywhere across the Country.

I venture to say there is more than 16,800 homes on the Navajo Nation that don’t have electricity. I think that is how flawed these numbers are. I am very concerned with the amount of investment that is being made across the Country that we don’t have accurate data to measure from, so we can make improvements and progress in every corner of Indian Country.

I know my time is expired, Mr. Chairman. One thing I hope to explore, well, Mr. Newland, back in 2014, the Bureau of Indian Affairs conducted a rulemaking around a CFR, 169, is that the number? I think it is CFR 169, that was looking at the difference between distribution power lines, transmission power lines, and easements. The CFR requires connectivity from an investor-owned utility or cooperative into tribal lands. But it also allows for a perpetual easement.

The question at the time, where different tribes and Pueblos, they were on different sides of the rulemaking, but the question was, is there a difference between distribution and transmission. As a former public utility commissioner, my answer to that question would be yes. There is a difference between distribution and transmission.

Especially distribution, who will get power to the end user, connecting whatever the substation is from the transformer and then providing that path of power to connect more tribal households, for example.

I don't know what the conclusion was there, if there was agreement. But it seems to me as we are identifying the number of homes that need to be connected that we can make investments into, to make progress, one leader at a time. Make sure that we respect sovereignty in this space.

But if there are other areas like that one easement, that one rulemaking on connectivity that needs to be addressed, that all of that be on the table as we are looking to make these improvements with permitting and things of that nature. I don't know if that one rings a bell, or if there is something you might have along those lines.

Again, thank you for the indulgence, Mr. Chairman.

The CHAIRMAN. Vice Chair Murkowski.

Senator MURKOWSKI. I didn't know whether the Assistant Secretary was going to respond to that.

The CHAIRMAN. Oh, sorry.

Mr. NEWLAND. I can. Thank you, Senator.

So yes, I am not familiar, I don't have the provisions in front of me on the right-of-way regulations. But I am familiar with the discussion.

Just generally speaking on these types of connectivity things, we have been looking at all of our administrative authorities to speed that process up. We have a national policy memo through the BIA to speed up the review of rights-of-ways. We are looking at all our categorical exclusions under NEPA that we can use to speed this up.

Also, we have our general regulatory waiver authority that we are also looking at to speed up this process, so that those rights-of-way can be done more quickly and the money can flow more quickly.

I don't know if that is directly responsive to what you are asking.

Senator LUJÁN. Mr. Chair, Madam Vice Chair, it is related, but not specific. But I appreciate that information and look forward to reviewing that as well.

Thank you for the time.

The CHAIRMAN. Vice Chair?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Dr. Hogan, a couple of final questions for you. These relate to the grid resilience State and tribal grant program that has been mentioned. So the deadline to apply for the first round of funding now has been extended to May 31st to give tribes more time to apply through non-electronic means, which was good.

Are you hearing from tribes that this extended deadline, May 31st, is going to be achievable for them?

Dr. HOGAN. We believe that this is achievable, but we have also, we will continue to work with them so that they can apply for the dollars that should be going to them. As you know, this is the first two years' worth of these dollars. We will be providing additional opportunities for the appropriated dollars to come in the future as well.

So we will be continuing to refine these procedures so that they can take advantage of these funds.

Senator MURKOWSKI. Speaking about refining the procedures, of course you are familiar with the, in Alaska, the tribal consortia, and how they really are able to harness economies of scale. We expected to see consortium applications in the grid resilience program, and other infrastructure programs within the Infrastructure Bill. My staff has told me, and leadership at AFN have told me that they have reached out to your grid deployment office and were told that you are not awarding these applications to consortia.

Now, you have other agencies, you have IHS, you have NTIA, the Telecommunications Information Administration, they are also implementing the Infrastructure Law. They are allowing tribal consortia applications.

So the question is whether DOE will work with the tribes to award consortium applications and allow them to administer and thus ensure compliance.

Dr. HOGAN. This is what I was referring to earlier, that we are working hard to work through with the tribes, so that they can designate these third-party administrators and they can work on regional projects together within the way that the statute is structured. This statute is structured somewhat differently than other agency statutes that you are mentioning.

Senator MURKOWSKI. I understand what you have just said. I guess I would just ask you to understand that in Alaska, the model really has become one of trying to build out these efficiencies, these economies of scale. That is what these consortia are able to do. They are able to build capacity so that these many, many much smaller and much less advantaged tribes, they are the most disadvantaged, they are the ones that need it most, and yet they have the least capacity to do it.

So when we are able to come together through these consortia, it makes a world of difference. So as you are working to advance this program, please understand that the reason they are allowing consortia in NTIA and through IHS is because this is what works. This is what works, and this is what gains the greatest efficiency.

And speaking of efficiency, I am also told that DOE is requiring tribes to issue quarterly reports on the use of these grid resiliency grants. That is tough on your small tribes. Tough, when you have limited resources and even more limited manpower.

Department of Treasury only requires annual reports for most, if not all, tribal programs within ARPA, within the American Rescue Plan. I have been asked to be the liaison to you to ask whether or not the Department would consider a more reasonable reporting time frame for tribes like we have done under the American Rescue Plan. They don't think that makes sense.

Dr. HOGAN. We are happy to take that back and take another look.

Senator MURKOWSKI. I would encourage you to do that.

And then the last comment on this is, again, relating to cost match. I understand that DOE is going to impose 100 percent cost match on tribes that elect to build their grid project if their partner utility cannot provide the required 15 percent cost share.

In Alaska, again, with small tribes, it is complicated, but most utilities are also small and simply can't afford the match. But it seems that penalizing a tribe for doing the work basically by themselves seems like you are not really working to promote tribal self-determination, self-governance. So I would ask again if you could look into adjusting these cost share requirements before the May 31st deadline.

Dr. HOGAN. Again, we are happy to get together with you and put our heads together on what these legal issues are, as we see them and as you see them, and see what we can work out. This is a place where we have just had a lot and a lot and a lot of conversation in the building and I am happy to share what we are seeing and figure out what we think the options are here.

Senator MURKOWSKI. So, do you see that there is a legal impediment—

Dr. HOGAN. Yes.

Senator MURKOWSKI—with reduction of a cost share requirement?

Dr. HOGAN. Based on—yes, we do.

Senator MURKOWSKI. I would ask that our teams sit down and talk about this, because as we are talking about it, you have a deadline that is coming up with opportunities for grant funding that is going to make a difference to tribes. But we have to get it out the door, or it makes zero difference for the tribes.

So if we can resolve some of these things quickly to allow for these applications to be submitted, and again, to take advantage of this, that is where we are going to make a difference. If I can ask you to have our folks get together as soon as possible, I would appreciate that.

Dr. HOGAN. Absolutely. We would love to solve this.

Senator MURKOWSKI. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. If there are no further questions for our witnesses, members will submit follow-up questions for the record. The hearing record will be open for two weeks. I want to thank our witnesses for their time and their testimony today.

This hearing is adjourned.

[Whereupon, at 4:06 p.m., the hearing was adjourned.]

## A P P E N D I X

### PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the March 29, 2023 hearing on, “The Future of Tribal Energy Development: Implementation of the Inflation Reduction Act and the Bipartisan Infrastructure Law.” USET SPF appreciates SCIA’s focus on evaluating how various Tribal programs authorized under the Inflation Reduction Act (IRA) and the Bipartisan Infrastructure Law (BIL) are being implemented across Indian Country. Enactment of the IRA and BIL included historic investments in infrastructure projects and programs. During the hearing, SCIA acknowledged the historic injustices Tribal Nations have experienced in the exploitation of our resources for the benefit of the United States and that a course correction is needed to address the disparities in energy access for our communities and citizens. Moving forward, Congress must understand that the historic investments made by the IRA, BIL, and other laws, while appreciated, do not correct the historic injustices or represent a Marshall Plan for Tribal Nations as some in the policy arena have suggested. Indian Country’s lack of access to affordable energy services, among many other critical infrastructures, are the direct result of centuries of the U.S.’s neglect and failure to fulfill trust and treaty obligations to fully fund Indian programs and services. It is important to recognize and remember that these obligations exist in perpetuity due to the cession of vast land holdings and natural resources by Tribal Nations, oftentimes by force.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

USET SPF shares SCIA’s concerns regarding issues with non-duplication restrictions on federal funds included in the IRA, BIL, and other laws, and the restrictive, narrow interpretations of these provisions by federal agencies to limit, if not outright prohibit, Tribal Nations from accessing these critical infrastructure funds. Additionally, accelerated deadlines to apply for these funds, unnecessary reporting requirements, and shortages of federal agency staff knowledgeable in working with Tribal Nations and able to provide technical assistance are all issues that have slowed or prohibited Tribal Nations from applying for and obtaining these vital infrastructure dollars. USET SPF strongly recommends that SCIA, Congress, and the Administration address and correct these barriers to accessing critical funds for all infrastructure projects as implementation of these and other laws continues. Furthermore, we strongly recommend that SCIA and Congress exercise oversight in ensuring federal agencies interpret laws for the benefit of Tribal Nations and apply

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

the Indian Canons of Construction during Tribal consultation, the policymaking process, and beyond.

**Issues with Non-Duplication Restrictions on Federal Funds**

In several of the recent COVID-19 relief laws, the IRA, and BIL, provisions have been included to prevent the non-duplication of federal funds for infrastructure projects. Referred to as “double dipping” provisions during the March 29th hearing, these non-duplication restrictions have been interpreted by federal agencies to prevent Tribal Nations from utilizing multiple federal funding sources for a single infrastructure project. As SCIA aptly acknowledged during the hearing, it was not Congress’s intent to limit the stacking of multiple federal capital funding sources to meet the total amount of funding needed for an infrastructure project. Rather, it was to ensure that, for instance, a \$10 million federal grant and a \$10 million federal loan could not be obtained to cover the costs of a single \$10 million project.

Non-duplication of federal funds language was included in the establishment of the Tribal Broadband Connectivity Grant (TBCG) Program administered by the National Telecommunications and Information Administration (NTIA). The Consolidated Appropriations Act of 2021 (P.L. 116-260), specifically Sec. 905(c)(2), included non-duplication language restrictions on entities eligible to receive NTIA TBCG Program funds in combination with funding received from the Universal Service Fund (USF) administered by the Federal Communications Commission (FCC). Under P.L. 116-260, NTIA was directed to coordinate with the FCC to ensure that there was no duplication of federal funding for broadband support in the TBCG Program for Census tracts receiving FCC USF support. The interpretation of Sec. 905(c)(2) of P.L. 116-260 to limit critical broadband funds to unserved Tribal Lands is counter-productive to address the broadband access disparities that exist in Indian Country and does not uphold the federal government’s solemn trust and treaty obligations to Tribal Nations. While NTIA worked with Tribal Nations to develop flexibility in awarding these funds, the non-duplication language should not have been included in the law to begin with. Moving forward, if any legislation is to include language restricting the non-duplication of federal funds, then it should explicitly state that Tribal Nations and entities can use multiple federal funding sources to meet program and service delivery costs.

Similarly, another instance where non-duplication restrictive language was included in a federal statute was in the American Rescue Plan Act of 2021 (P.L. 117-2), specifically in the expansion of Treasury’s State Small Business Credit Initiative (SSBCI) Program. Under P.L. 117-2, the SSBCI Program included a \$500 million set-aside for Tribal Nations to assist in increasing the availability of small business capital in Indian Country. Although there were numerous flaws within the statutory language to expand this state-centric and structured program to Indian Country, the inclusion of non-duplication language did not allow the use of other federal funds to fulfill the SSBCI Program’s matching requirement. Instead, the SSBCI Program required the use of private capital to be leveraged to fulfill the program’s matching requirement, which, as SCIA is well aware, Indian Country has difficulty in obtaining.

These are just two examples of issues regarding the inclusion of non-duplication language in federal statutes and how federal agencies have referenced these provisions to prevent Tribal Nations from accessing multiple sources of federal funds to meet the costs of proposed infrastructure projects. During the March 29th hearing, the Department of Energy stated that such non-duplication language was included in the IRA for the Tribal Energy Loan Guarantee Program. We strongly urge SCIA to direct the Department of Energy to reevaluate how it interprets the non-duplication language to ensure that Tribal Nations can access the Tribal Energy Loan Guarantee Program, and all programs authorized under the IRA, BIL, and other federal laws, while leveraging other federal sources to meet project costs. These actions would uphold the federal government’s trust and treaty obligations to Tribal Nations and support efforts to address critical infrastructure disparities that have persisted throughout Indian Country due to the chronic underfunding of these obligations.

**Interpret Laws for the Benefit of Tribal Nations and Direct Federal Agencies to Implement Section 3 and Section 6 of E.O. 13175**

The use and interpretation of language on non-duplication restrictions in federal statutes by federal agencies is a single example of how laws and regulations can restrict or prevent Tribal Nations from accessing funds across the federal government. For these reasons, and others, USET SPF strongly recommends that SCIA and Congress direct federal agencies to implement Sections 3 and 6 of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”



(E.O. 14175). Section 3 of E.O. 13175 includes directives to extend “maximum administrative discretion” to Tribal Nations by encouraging Tribal Nations to develop our own policies and standards to achieve program and service delivery objectives as well as consult with us on the necessity of any federal standards. Implementing this practice will ensure that Tribal Nations are the sole decisionmakers on how to utilize federal funds and structure programs and services to best serve and address the priorities of our communities and citizens. Section 6 of E.O. 13175 encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. With some notable exceptions, this section does not appear to be actively implemented across the federal government. Implementation of Section 6 by the Department of Energy could address its issues with the non-duplication language it has stated was included in the IRA to restrict the use of other federal funding sources in combination with the Tribal Energy Loan Guarantee Program. Furthermore, we strongly recommend that SCIA and Congress direct federal agencies to always apply the Indian Canons of Construction during Tribal consultation, the policymaking process, and beyond. Any ambiguities in law or policy should be interpreted in favor of Tribal Nations.

#### **Support Expanded Tribal 638 Authority Across the Federal Government**

During the March 29th hearing, Assistant Secretary-Indian Affairs Bryan Newland stated that to maximize the impact of the \$150 million authorized under IRA for a new Tribal Electrification Program, the Bureau of Indian Affairs (BIA) would allocate awards through Indian Self-Determination and Education Assistance Act (P.L. 93-638, or 638) contract agreements. The 638 contracting and compacting process has a proven track record in being critically successful for Tribal Nations to administer federal programs and dollars to better serve our citizens and communities. While USET SPF fully supports this approach in allocating federal dollars for the Tribal Electrification Program, we do not support the award of funds through a competitive process, as stated in Assistant Secretary Newland’s testimony.

We recognize that this decision was perhaps made due to the limited \$150 million authorized for the Tribal Electrification Program, but funds awarded through 638 agreements should be made equitably to Tribal Nations with demonstrated and real deficiencies in access to affordable electric services. We strongly recommend that SCIA and Congress consult with Tribal Nations and work with the Departments of Energy, the Interior, and the federal government as a whole to fully ascertain the electricity needs of Indian Country and appropriate the necessary funds needed to address these disparities. Furthermore, USET SPF has consistently supported and called for an expansion of 638 authority to all program and service delivery offerings across the federal government. In a December 2022 report (GAO-23-105473) issued by the Government Accountability Office (GAO) it highlighted ‘lessons learned’ during the COVID-19 pandemic to improve future distribution of federal emergency relief to Tribal Nations. GAO found that programs that distributed relief funds through existing mechanisms, such as 638 self-determination compacts and contracts, were effective in expediting the distribution of funds and mitigating administrative burdens for federal agencies and Tribal Nations. GAO recommended that Congress enable federal agencies to distribute future emergency relief funds to Tribal Nations using the 638 contract and compact process. Based on GAO’s findings on the effectiveness of awarding emergency relief funds through 638 compacts and contracts, we are hopeful that SCIA and Congress will propose and enact legislation to expand 638 authorities across all federal programs. This action would adhere to and uphold the federal government’s trust and treaty obligations to support Tribal sovereignty and self-determination by empowering Tribal Nations to administer federal programs and prioritize dollars in ways that would best benefit our citizens and communities.

#### **Increase Appropriations for Federal Agencies to Hire Additional Personnel and Provide Technical Assistance to Tribal Nations**

Enactment of the COVID-19 relief laws, the American Rescue Plan Act, IRA, and BIL have included historic investments in Indian Country. However, with the large influx of capital and grant funds to Indian Country under these laws, Tribal Nations and our staff have been inundated with meeting application deadlines and requirements, issues with the high costs associated with completing application and reporting requirements, issues with non-duplication restrictions to leverage multiple federal funding sources to meet project costs, and the inclusion of caps in federal statutes on how much funds can be used to cover administrative costs.

During the March 29th hearing, the Departments of Energy and the Interior explained the challenges its agencies have in hiring additional personnel to implement

programs authorized under these laws, as well as limited capabilities to provide technical assistance to Tribal Nations. Just as we advocate for fully funding Tribal Nation programs, we strongly urge SCIA and Congress to fully appropriate funds for these Departments to hire the necessary staff needed to support Tribal Nations in accessing these programs as well as providing technical assistance to Tribal Nations through all phases of program implementation. Furthermore, if Congress were to enact legislation to expand 638 authority to all federal programs and service delivery offerings, funds for direct Contract Support Costs should be fully appropriated, made permanent, and reclassified as mandatory funding to support Tribal Nations in administering these programs and funds. Federal agencies should also be required to hire self-governance experts to assist Tribal Nations in utilizing the 638 process for federal programs, as well as inform and educate federal staff on how to work with Tribal Nations to apply for and implement a 638 compact or contract.

### **Conclusion**

The federal government has a solemn and moral duty to uphold its trust and treaty obligations to Tribal Nations by fully funding programs and service delivery that supports our efforts in Nation rebuilding. USET SPF has consistently advocated for foundational and systemic change to how the federal government appropriates, implements, and manages federal programs and service delivery to Indian Country. A primary focus and emphasis must be placed on enacting laws and developing regulations that support our inherent sovereign authority and self-determination to administer federal funds and programs. Tribal Nations are best situated to determine how to administer these funds and services in a manner that best serves and improves the quality of life for our communities and citizens.

We strongly urge SCIA and Congress to enact legislation to expand 638 contracting and compacting authority in all federal programs and the removal of non-duplication of federal funds language in laws that have restricted Tribal Nations from leveraging funds from multiple federal sources to meet the costs of infrastructure projects and service delivery. We also urge SCIA and Congress to enact legislation to fully appropriate, make permanent, and reclassify Contract Support Costs as mandatory funding. To fully realize the goals of self-governance, Congress must enact legislation to advance the next evolutionary step in recognizing Tribal sovereignty self-determination. SCIA and Congress must ensure that trust and treaty obligations and the unique issues affecting Tribal Nations are fully considered and prioritized in all legislative packages. This is especially important when Congress drafts legislation to expand eligibility for Tribal Nations to apply for state-centric and structured programs, as well as legislation that may not be Tribal-specific but has implications for federal funds and service delivery offerings that Tribal Nations rely upon.

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### PREPARED STATEMENT OF THE WESTERN STATES AND TRIBAL NATIONS NATURAL GAS INITIATIVE

The Western States and Tribal Nations Natural Gas Initiative (WSTN) is a state and tribal nation government-led 501(c)4 organization formed in 2019 to advance the principles of rural economic development and Tribal self-determination through responsible development of energy resources. WSTN is led by the tribal governments of the Ute Indian Tribe of Uintah and Ouray Reservation, the Southern Ute Indian Tribe and the Jicarilla Apache Nation. WSTN's leadership also includes the states of Wyoming, New Mexico and Utah; the Colorado Counties of Mesa, Rio Blanco, Garfield, and Moffat; and the state of Baja California, Mexico. The membership of the Canadian Provincial Government of Alberta is pending.

Since its founding, WSTN has been able to facilitate a multi-state and international dialogue with decision makers here in the U.S. and in our allied nations in Asia about the benefits and challenges associated with the current and emerging energy markets of low-carbon fuels such as natural gas, hydrogen, ammonia and their related priorities.

To advance these goals, our tribal nations and partners in our state governments are utilizing investments made available in the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA). Specifically, WSTN governments participate in the Western Inter-state Hydrogen Hub which recently received a favorable recommendation for BIL funding from the Department of Energy. Specifically, like our organization, this memorandum of understanding will help facilitate a regional approach to developing and scaling up hydrogen infrastructure to bring lower carbon fuel through our states to our communities and allies overseas.

The development, deployment, and transportation of hydrogen from our communities and our western states involves the responsible production and transportation of natural gas produced in our communities as a feedstock. The investments from Congress in the BIL and the IRA have helped make these goals a reality, helping to incentivize more private capital and partnerships that are necessary to bring our energy to customers.

Demand in emerging economies is soaring and developed economies are re-adjusting their energy policies to meet net-zero goals. Specifically, as Japan leads the G-7 Summit later this year and announces its own energy goals, which incorporate a significant interest in American LNG, we believe our tribally owned resources have a significant role to play at this moment in history.

The pipelines and other infrastructure needed for a long-term, reliable supply of natural gas from our communities to LNG export facilities in Mexico and Canada will require hundreds of millions of dollars in capital improvements, funded partially by programs in BIL and the IRA, and the approval of federal agencies, which will trigger substantial review under the National Environmental Policy Act (NEPA). This is largely due to the patchwork of federally controlled land along pipeline and transmission routes, including our federally reserved lands. Almost every applicable use of a Tribe's lands requires federal approval from the Department of the Interior, Bureau Indian Affairs ("BIA"). The Tribes support having an expanded role in evaluating the alternatives and environmental consequences of decisions affecting their lands and reducing the perpetual delay and expense of NEPA review of Tribal decisionmaking. The WSTN member Tribes are interested in a NEPA process that would provide certainty to energy development and related infrastructure projects so that tribes may develop their natural resources to advance the financial security of sovereign tribal nations.

The potential time delays and uncertainty of litigation surrounding NEPA must be narrowed in order for clean energy projects, pipeline and transmission infrastructure alike, to effectively move forward. In fact, the challenges of NEPA pose a substantial impediment to realization of the Clean Energy Transition goals of Congress and the Biden Administration.

As the Committee considers legislation to improve implementation of these new federal investments and as Congress considers permitting reform, we ask that you consider these improvements to permitting of the infrastructure necessary to bring emerging energy technologies to market and our perspective from sovereign tribal nations.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HOEVEN TO  
HON. BRYAN NEWLAND

*Question 1.* The Three Affiliated Tribes of Mandan, Hidatsa and Arikara are leaders in oil production, with about 90 percent of the tribes' revenue coming from oil production. This helps provide critical funding for essential needs like infrastructure and health care. The Three Affiliated Tribes have produced as many as 300,000 barrels of oil per day; however, production remains down at only 146,949 barrels per day. Should we be doing more to help Tribes develop their trust resources and empower themselves through energy development?

*Answer.* The Department of the Interior (Department) supports Tribal sovereignty and economic development to help make lives better for people in their communities. It is important that Tribes maintain the ability to implement, regulate and benefit from energy development in their communities.

The Department is currently reviewing mineral development leasing regulations. If the Department moves forward with the proposed updates, it will be done consistent with the Department's policy on tribal consultation.

- The Department has taken steps to support Tribes by creating the Indian Energy Service Center (IESC) and transferring the Division of Energy and Mineral Development (DEMO) under the Bureau of Indian Affairs (BIA). The DEMO supports Tribes and Indian beneficiaries with the development of their trust resources including minerals, energy, and renewable energy.

There are currently 10,375 active mineral leases on Indian lands encoded into the BIA's Trust Asset and Accounting Management System (T AAMS) which is the official system of record of trust title, ownership, encumbrances and land records. The breakdown is as follows:

*Mineral Leases by Contract Type*  
CA—Coal Lease—4

FM—Fissionable Material Lease—1
GA—General Agreement (Other)—15
GS—Gas Lease—295
IM—Indian Mineral Development Act—98
LO—Lease Other—7
MO—Misc Other—12
OG—Oil and Gas Lease—8817
OL—Oil Lease—1054
PG—Permits (Other)—4
PP—Prospecting Permit—10
SG—Sand and Gravel—24
SS—Subsurface—34

In contrast, there are currently 46 renewable energy leases on Indian lands encoded into TAAMS. The breakdown is as follows:

*Renewable Energy Leases*

Solar—31
Wind—9
Hydro—3
Biomass—1
Unk—2

The IESC hosts quarterly Federal Partner Meetings with the Three Affiliated Tribes (Tribe) to discuss Indian energy and mineral resource development, royalty management coordination, and information exchange at the local office level. The departmental bureaus and offices represented on the Partnership team operate under the Federal trust responsibility to Federally recognized Indian tribes, Indian individuals, and Alaska Natives.

The Department will continue to work with Congress to help Tribal Nations further empower themselves through energy development. The Department and BIA coordinates and serves on various committees with bureaus, federal partners, and the White House Council on Native American Affairs (WHCNA) to deliver opportunities and investments to Indian Country. This coordination includes discussion regarding the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), is providing several resources and the opportunity to improve services in every Tribal community and advance self-determination to Tribes.

Timely approval of permitting and realty actions are critical to infrastructure investment in Indian Country. To this end, BIA recently announced an updated National Policy Memorandum (NPM—TRUS-44 Al) which streamlines the rights-of-way (ROWs) and business lease application process for projects funded by the American Rescue Plan Act and BIL, as well as Telecommunications and Renewable Energy Projects. This action advances the policy of the BIA to support Tribal Nations in exercising their sovereignty to govern their lands and pursue economic self-sufficiency, conservation practices, and climate resiliency. Specifically, this NPM provides clear direction to ensure that ROWs and business leases are expedited so there is no unnecessary delay in deploying critical infrastructure to Indian country. NPM Link: [https://www.bia.gov/sites/default/files/dup/assets/public/raca-national\\_policy\\_memoranda/pdf/npm-trus-44-al\\_streamlining-rows-and-business-lease-applications-amendment-1\\_final\\_signed\\_508\\_0.pdf](https://www.bia.gov/sites/default/files/dup/assets/public/raca-national_policy_memoranda/pdf/npm-trus-44-al_streamlining-rows-and-business-lease-applications-amendment-1_final_signed_508_0.pdf)

The Department is also supporting Tribes to confront legacy pollution from oil and gas development. The BIL provides \$150 million for Tribal well plugging, remediation and restoration. Tribes may seek funding to undertake the well plugging or may request that the Secretary administer the well plugging on behalf of [“in lieu of”] the Tribe. The \$150 million will be distributed over multiple funding opportunities, with an initial \$50 million available in fiscal year 2023. Up to \$50 million is available through the 2023 award cycle for three categories of projects:

- Tribal Implementation Grants: Funds are available to plug, remediate and reclaim orphaned well sites on the Indian Tribe’s respective trust or restricted lands.
- Program Development Grants: Funds are available to assist Tribes in the development or administration of a Tribal program to carry out any activities associated with plugging, remediating, and/or reclaiming orphaned well sites on the Indian Tribe’s respective trust or restricted lands.
- “In Lieu Of Funding: Tribes have the option to request the Department to administer and carry out plugging, remediation and reclamation activities on the Tribe’s behalf.

*Question 2.* How will you support Tribes that are seeking to develop all of their energy reserves, including their oil trust resources?

Answer. The BIA offers several programs that support Tribes' efforts to develop all types of energy resources, including renewables, biomass, distributed generation, hydropower, minerals, and oil and gas. Within the BIA, DEMD administers the Energy and Mineral Development Program (EMDP) annual competitive grant program, which provides financial assistance to Tribes for the evaluation and development of energy and mineral resources on their lands. Oil and gas development is an eligible resource for funding under this program. The EMDP helps Tribes achieve economic independence through development of energy resources. Created in 1983, the DEMO provides technical advice to Tribes with respect to the location, definition, and development of renewable and traditional energy and minerals. The DEMD also helps Tribes create sustainable economies through environmentally sound development of their energy and mineral resources.

Established in 2016, the IESC is a multi-agency office that utilizes the services of the BIA, Bureau of Land Management, Office of Natural Resources Revenue, and Bureau of Trust Funds Administration. Each bureau plays a key role in the management of mineral and renewable energy resources. The increased coordination and support between these key bureaus has alleviated many of the administrative burdens and backlogs that were previously present and affecting Tribes and individual beneficiaries' development of their trust mineral and energy resources. The IESC continues to facilitate coordination between these key bureaus and as a result all bureaus are more responsive to the needs of the Tribes. As a result of the IESC's efforts, the Department has collected and disbursed approximately \$1.795 billion in oil and gas royalties to Tribes and Indian individuals as of July 26, 2023.

The IESC and DEMO have worked with the Assistant Secretary—Indian Affairs' Office to develop the Renewable Energy Accelerated Deployment Initiative for Indian Country (READ!), which aims to inform decision makers of Tribal visions and needs regarding renewable energy development on Indian lands through Tribal engagement. READI is underway and scheduled for implementation by December 2023. READ! will provide five hybrid virtual/in-person and two virtual-only listening sessions, the first of which took place on August 21, 2023. READ I will receive input from Tribes on their future plans for renewable energy development and associated needs. At the end of the listening sessions, READ! will provide a compilation report for decisionmakers' use to allocate resources and program development.

*Question 3.* What steps are being taken to help Tribes access and navigate federal programs?

Answer. In addition to the EMDP, the BIA also administers the Tribal Energy Development Capacity (TEDC) grant program. This is a competitive, discretionary grant program that provides Tribes with the necessary resources to develop or enhance Tribal policies, codes, regulations, or ordinances for energy resource development. The TEDC and EMDP programs have collectively provided grant funding and technical assistance to over 200 Tribes via over 600 separate projects since its establishment in 1983. Since 2011, the programs have granted \$40 million.

The Department also held two consultations with Tribes regarding the funding from the Inflation Reduction Act (IRA) to understand the unique energy and electrification needs. To assist Tribes in navigating the implementation and award process for the BIL and the IRA, the Department has also coordinated with other federal agencies, such as the Department of Energy, Federal Emergency Management Agency, and Department of Agriculture.

The IESC has also worked with the Office of Environmental Policy and Compliance, Orphaned Well Program to administer grants and assistance to Tribes looking to remediate abandoned well sites within their land. This program will be distributing \$50 million in funds for 2023 and anticipates distributing \$100 million more in the next two years.

BIA is also coordinating with the Federal Permitting Improvement Steering Committee (FPISC) through a Memorandum of Agreement (MOA) to transfer funds for Tribes to support permitting for FAST 41 projects to BIA. Within the MOA, BIA will transfer one-time funds to Tribes on behalf of the FPISC. BIA will:

- Serve as a pass through as requested by the Tribes during Consultation;
- BIA Office of Trust Services (OTS) will serve as a point of contact (POC) to FPISC on initial transfer;
- BIA will provide support to Tribes in the distribution of the funds;
- OTS will serve as POC to the Government Accountability Office on the distribution of funds;

- OTS will coordinate with the BIA Regions and the Office of Self Governance for response when required.

Tribes also will be eligible for funding once the Tribal Environmental Review Improvement Fund (ERIF) goes live.

The Department remains committed to working with Tribes, our federal partners, and Congress to ensure the energy needs of Tribal Nations are met.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO HON. BRYAN NEWLAND

*Question 1.* I think workforce development is a crucial part of infrastructure, and I think it's an area that's especially important to tribes. Do you see this as a big barrier in native communities and what can we be doing with programs like the 477 program as it relates to infrastructure?

Answer. Many Tribal communities face unemployment that is higher than non-Tribal communities. Public Law 102-477, the Indian Employment, Training and Related Services Demonstration Act allows federally recognized Tribes and Alaska Native entities to combine federal grants implemented for certain purposes (25 U.S.C. § 3404(a)) into a single plan with a single budget and a single reporting system. That single plan, colloquially referred to as the "477 Program," integrates employment, training, and related services based on Tribal goals and initiatives.

In 2022, the Department led a multi-agency effort to streamline the implementation of Public Law 102-477 to better support Tribal sovereignty through the negotiation of an updated Memorandum of Agreement (MOA). The Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Justice, Labor, Transportation, and Veterans Affairs each signed on to this updated MOA. The Department continues to work with each agency to ensure a uniform approach to supporting Tribal sovereignty and self-determination in the Tribal use of Public Law 102-477.

Public Law 102-477 may be used to build out infrastructure in Tribal communities. Tribes have used Public Law 102-477 to construct childcare facilities, do minor renovations, and obtain facilities for program services. Consolidation of "477" services and activities in one location reduces the Tribal need to manage multiple locations thus significantly reducing overhead costs. Congress can support the continued success of Public Law 102-477 by ensuring each agency supports Tribes who utilize the 477 Program when disbursing infrastructure funds.

Strong Congressional support for the Bureau of Indian Education (BIE) heightens the opportunity for American Indian and Alaska Native students to receive a quality education at 183 Bureau-funded elementary and secondary schools, located on 64 reservations in 23 states, two postsecondary institutions, and through higher education scholarships. The investment develops the workforce across Indian Country including for advancing infrastructure.

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\*Responses to the following questions were not available at the time this hearing went to print\*

WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
DR. KATHLEEN HOGAN

Lead-up: Last Congress, I worked to include a provision in the FY 2022 Omnibus to bolster the Tribal Energy Loan Guarantee Program by allowing the Department of Energy (DOE) to make loans directly to Tribes and Tribal energy development organizations through the Federal Financing Bank. This was later made permanent by my legislation—the Tribal Energy Investment Act—which was included in the Inflation Reduction Act (IRA).

Dr. Hogan—Your written testimony provided an overview of the enhancements made to the loan program last year, and highlighted meetings and communication that the Department has undertaken since the enactment of the IRA.

*Question.* Can you please expand on this engagement and provide an update on next steps for this Program?

Follow-up: From your perspective, is the Department adequately staffed to solicit all of this feedback and begin issuing loans from this Program? What is the current timeline (or target) for the Department to issue loans from this Program?

**Tribal Bonding**

Lead-up: State and local governments use sizable amounts of tax-free debt obligations like bonds to build out infrastructure without raising taxes. Yet for decades tribes have been effectively shut out of the ability to issue non-taxable bonds as all bonds must pass an “essential government functions” test.

*Question.* Dr. Hogan, what needs are you seeing by Tribes in in developing energy infrastructure projects? How are they being limited by not being able to effectively issue bonds?

**Tribal Energy Workforce**

Lead-up: Dr. Hogan—the Bipartisan Infrastructure Law includes a provision that created the 21st Century Energy Workforce Advisory Board. Throughout your testimony, you mention various programs that Congress has passed to support tribes in energy infrastructure. Yet these programs tend to look at the infrastructure rather than the people.

*Question.* How will DOE ensure that Tribal partners have the tools they need for workforce development in the energy space?

