

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
ENERGY DEVELOPMENT IN INDIAN COUNTRY**

FEBRUARY 16, 2012

Good afternoon, Mr. Chairman and Members of the Committee. My name is Jodi Gillette, and I am the Deputy Assistant Secretary - Indian Affairs at the Department of the Interior (Department). I am accompanied by Karen Atkinson who is the Director of the Office of Indian Energy and Economic Development within Indian Affairs. Thank you for the opportunity to present testimony today concerning economic development opportunities available for American Indian and Alaska Native communities through energy resource development.

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

Overview

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

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

On June 21, 2011 DOI published “The Department of the Interior’s Economic Contributions.”¹ This report documents the critical role that energy and mineral development plays in creating jobs and generating income throughout Indian Country.

Highlights include:

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

Surface Leasing Regulations

The Department has proposed a new rule to remove federal roadblocks to economic development and to restore greater control to tribal governments in business and residential leasing, including wind and solar energy projects. The reform underscores President Obama’s commitment to empower Indian Nations and strengthens their economies by expanding opportunities for Indian landowners and tribal governments. The Department published proposed rules for Federal surface leasing covering Indian trust lands on November 29, 2011.² The public comment period for the rules ended on January 31, 2012. These rules constitute the most significant and comprehensive reform to Indian land leasing rules in 50 years. We included surface leasing provisions for wind and solar energy development in addition to other business and residential leasing and streamlined the process.

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

The proposed rules also set out a nationwide process for approval of mortgages, amendments and assignments to ensure consistency across BIA regions and set deadlines for BIA review. Under the proposed rules, appraisals of tribal land are not required unless a tribe requests appraisal. The tribe negotiates rentals and authorizes rates and BIA defers to a tribe’s valuation for fair market value, thus reducing the time period for approval of business leases.

We conducted tribal consultation meetings in Indian Country for the proposed rules, then incorporated comments and again conducted consultation for the proposed rules in Rapid City,

¹ See <http://www.doi.gov/ppa/upload/DOI-Econ-Report-6-21-2011.pdf>.

² See <http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/pdf/2011-29991.pdf>.

South Dakota; Palm Springs, California; and Seattle, Washington. Following review of the comments and necessary revisions, we expect to publish final rules by June of this year.

Carcieri

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

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

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

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

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

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

This proactive approach has helped tribes to proceed with development and realization of economic benefits from their energy and mineral resources. Today, our major objective is sustainable resource development focusing on Indian employment and income to the Indian mineral owner. This goes further than resource assessment which is the identification of the quantity and quality of mineral resources. This proactive focus on resource development has

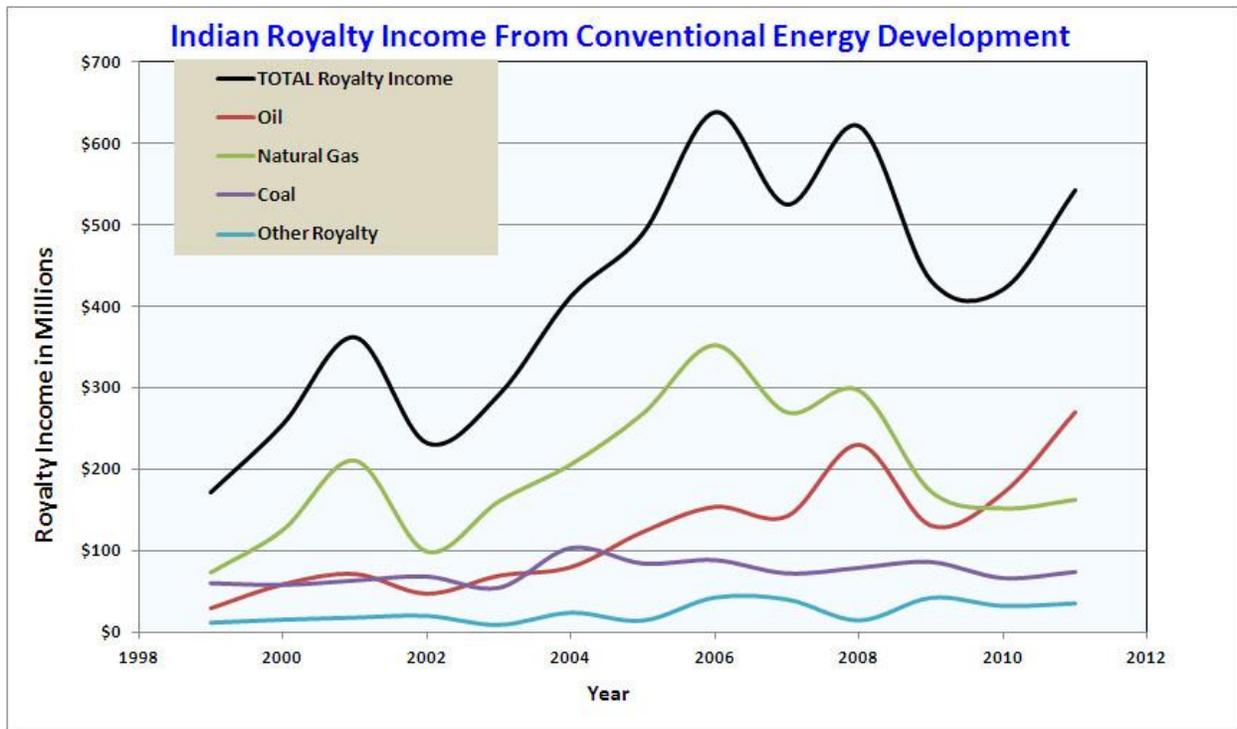
provided an informed decision-making process for their resources that provides a springboard to the development and realization of the potential economic benefits.

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

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

IEED also has accumulated a significant repository of industry-confidential exploration data (e.g., seismic data, well data). We have been actively providing technical assistance to various tribes by purchasing, reprocessing and interpreting thousands of miles of 2D seismic data as well as hundreds of square miles of 3D data. These studies have identified numerous prospects, some of which are essentially ready to drill. Some of the prospects still require additional data collection and evaluation to more accurately identify exploratory and development targets. These evaluations yield prospects that enhance the marketability of Indian lands and results in better economic terms of an agreement.

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



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

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

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

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

Since 2008 IEED has assisted Indian mineral owners in the negotiation of 48 IMDA leases for oil, gas, renewable energy, and aggregate totaling approximately 2,750,000 acres and about \$45

million in bonuses (upfront payments). These leases have the potential to produce over \$20 billion in revenue to the Indian mineral owner over the life of the leases through royalties and working interests.

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

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

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

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

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

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

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

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

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

- promoting projects at industry conferences and to prospective partners.

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

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

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

Renewable Resource Development

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

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

energy development. We are working with several tribes to identify available renewable energy resources.

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

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

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

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

Additionally, in order to encourage careers in green and renewable energy for students at BIE high schools and colleges, IEED co-sponsors the Indian Education Renewable Energy Challenge with the BIE and Argonne National Laboratory. The 2011 project challenge focused on the practical use of renewable energy resources and involved preparing bio-diesel fuel and establishing purity and performance characteristics. Southwestern Indian Polytechnic Institute college students and Oneida Nation High School students submitted the winning entries. Each

team submitted a video of their projects along with samples of their bio-diesel fuels to Argonne National Laboratory. Representatives of the schools were invited to two days of meeting with Argonne scientists and an award ceremony.

Alaska Energy

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

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

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

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

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

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

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

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

Fort Berthold

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

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

On June 15, 2011, IEED hosted an Oil and Gas Lease Seminar at Fort Berthold attended by 47 Mandan, Hidatsa and Arikara Nation members and oil leaseholders. The seminar taught attendees how to protect their lease holdings and investments, giving them an understanding of fundamental mineral legal issues; relevant lease clauses; how to negotiate leases; joining, pooling, communalization, and unitization of leases; and, revenue and royalty distribution. IEED

also sponsored an Entrepreneurial Training session at Fort Berthold conducted by Jeffrey Stamp, a professor at North Dakota University. This capacity-building session, which was attended by 37 Mandan, Hidatsa and Arikara Nation members, focused on the core skills needed by entrepreneurs and helped attendees identify emerging economic opportunities, guiding them through the process of converting product or service ideas into a successful business. In September 2011, IEED awarded the Mandan, Hidatsa and Arikara Nation a \$100,000 grant to study the economic opportunities resulting from the Bakken oil boom and to develop a reservation-wide, long-term economic development plan.

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

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