

Prepared Statement of Honorable Marcus Levings, Chairman
Three Affiliated Tribes of the Fort Berthold Reservation
On behalf of the Council of Energy Resource Tribes
To the United States Senate Committee on Indian Affairs
Hearing on Indian Energy and Energy Efficiency

October 22, 2009

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee on Indian Affairs. Before addressing the issues of Indian Energy and Energy Efficiency, I want to thank you for your strong leadership in helping Indian tribes and their members meet the many challenges they face including health care, law enforcement, unemployment, and others.

BACKGROUND ON THE COUNCIL OF ENERGY RESOURCE TRIBES

I am Marcus Levings, Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. In June 2009 I was elected Secretary of the Council of Energy Resource Tribes (“CERT”). On behalf of the 57 member Indian tribes of CERT, I am pleased to submit for the Committee’s consideration the following statement regarding energy development, environmental stewardship, and job creation in Indian Country.

CERT was founded in 1975 by tribal leaders when our country was in the midst of what was then known as the “Arab Oil Embargo,” put in place by the Organization of Petroleum Exporting Countries in response to America’s support for Israel in the 1973 Arab-Israeli War. The embargo caused higher prices for heating oil and gas and contributed to the economic recession that lasted for the ensuing 7 years.

Back then, our national leaders promised that we would “end our dependence on foreign oil” and return America to a position of unquestioned strength in the world. Nearly, 35 years later our dependence on foreign sources of energy has never been greater.

The core mission of CERT is to support member tribes enhance their management capabilities and prudent development of their energy resources to build sustainable economies and strong political institutions.

THE HISTORIC ROLE OF THE COMMITTEE IN ENERGY LEGISLATION

For many years, the Committee on Indian Affairs has recognized the important economic role of renewable and non-renewable energy resource development in Indian country.

Beginning in 1999, the Committee worked with the Indian Tribal Energy Network in conceptualizing and drafting what became *the Indian Tribal Energy Development and Self Determination Act of 2005*. This comprehensive Indian energy law was included in the massive *Energy Policy Act of 2005*.

This was followed by the Committee’s key role in fashioning Indian provisions in the *Energy Independence and Security Act of 2007*, as well as important Indian amendments that were included in energy legislation considered earlier this year by the Senate Energy and Natural Resources Committee.¹

Today’s hearing follows the May 2008 hearing entitled “Indian Energy Development,” and no fewer than 8 Indian Energy Roundtables to solicit the views and comments of Indian tribes on the Committee’s Indian Energy Concepts Paper formally issued in September.

THE ECONOMIC IMPORTANCE OF INDIAN ENERGY DEVELOPMENT

¹ The *EPA Act of 2005* (Pub.L. 109-58) and the *EISA 2007* (Pub.L. 110-240) both contain provisions favorable to Indian tribal energy development and environmental management.

American Indian energy resources hold enormous potential to create tens of thousands of good-paying jobs, generate substantial revenue for the tribal owners, and aid in the development of tribal economies. An often-overlooked aspect of Indian energy is that it helps satisfy the American economy's need for a reliable energy supply. The Southern Ute Indian Tribe in southwest Colorado, for instance, produces 1% of the natural gas that is used by the American people and American business. In less than 20 years, the tribe's gas operations have evolved to be among the most sophisticated in the country and are managed by the various tribally-owned energy companies.

Based on information provided by the U.S. Department of the Interior's Office of Indian Energy and Economic Development ("OIEED"), in 2007 energy and mineral resources generated over \$574 million in royalty revenue paid to individual Indians and tribes. Moreover, income from energy and minerals has increased 260% since 2002. The OIEED expects these trends to continue and so does CERT.

There are good reasons to be optimistic that Indian tribal energy development will continue to expand in other tribal communities. These reasons include the following:

1. Enormous tribal reserves of oil, gas, coal, wind, solar, geothermal and other resources;
2. The likely long-term pricing environment for energy products; and
3. The enactment by Congress pro-production energy policies.

The OIEED estimates that an additional 15 million acres of undeveloped traditional energy mineral resources and over 22 million acres of undeveloped renewable energy resources exist on individual Indian and tribal lands. If these estimates are correct, additional billions of dollars in revenue would likely be generated to the individual and tribal owners.

More specifically, the OIEED’s analysis finds that the potential remaining resources to be realized through new development on Indian lands reveals the following:

<u>Commodity</u>	<u>Potential Resource</u>
Oil	5.3 billion bbls
Gas	25 billion mcf
Coal	53.7 billion tons
Coalbed Methane	12.7 million mcf
Wind energy	535 billion kWh/year
Solar energy	17,600 billion kWh/year
Woody biomass	3 billion kWh/year
Hydroelectric	5.7 million kWh/year
Geothermal	21 million kWh/year

One merely witness the phenomenal success of the Southern Ute Indian Tribe, the Ute Tribe of the Uintah and Ouray Reservation in northeast Utah, and the Osage Nation in eastern Oklahoma to understand that American Indian energy resources, developed properly, can transform Indian economies and assist tribes in achieving real and lasting self determination.

Tribal Energy Resources and the Pricing Environment

American Indian tribes in the lower 48 states --- especially those in the Rocky Mountain West --- own an enormous amount of energy resources. With the current Federal restrictions on exploring for energy in the Great Lakes, the eastern portion of the Gulf of Mexico, the California coastline, and the Alaska National Wildlife Refuge (“ANWR”), Indian tribal resources and lands in the Rocky Mountain West present one of the most significant opportunities for domestic production in the United States.

In what is now a dated analysis, in 2001 the U.S. Department of the Interior (“DoI”) estimated the total dollar value of energy produced from Indian tribal lands for the period 1934-2001 to be \$34 billion. These revenues derived from 743 million tons of coal, 6.5 billion cubic feet of natural gas, and 1.6 million barrels of oil. In terms of undeveloped reserves and undiscovered resources, the DoI projected that Indian tribal lands could prospectively generate **\$875 billion**, derived from 53 billion tons of coal, 37 billion cubic feet of natural gas, and 5.3 million barrels of oil.

These projections were made in 2001 and in the intervening 8 years, the price of energy products has increased significantly. Present-day revenue projections would be nearly **\$1.5 trillion**.

Enactment of New Energy Laws in 2005 and 2007

On August 8, 2005, President Bush signed into law the *Energy Policy Act of 2005* (Pub.L. 109-58) which included as title V the *Indian Tribal Energy Development and Self Determination Act*. The new law authorizes a variety of Federal technical and financial assistance to participating Indian tribes and seeks to reduce administrative obstacles at the Federal level to encourage greater levels of energy development on tribal lands.

This tribal energy law does not discriminate in terms of favoring renewable over non-renewable resources or vice versa. Instead, the law leaves the development decisions to the tribal owner and the market.

Similarly, in 2007, Congress enacted and the President signed the *Energy Independence and Security Act* (“EISA”, Pub.L. 110-140) which contains significant opportunities for Indian tribes and tribal colleges to receive research, development, and production grants related to

renewable and alternative energy development. The Act authorizes tens of billions of dollars for these purposes and represents the most significant energy research law to be enacted in years.

The American Recovery and Reinvestment Act of 2009

In February 2009, President Obama signed into law the *American Recovery and Reinvestment Act* (“ARRA”). The ARRA included \$16.8 billion for “Energy Efficiency and Renewable Energy,” a broad category that includes \$3.2 billion for Energy Efficiency and Conservation Block Grants. The ARRA also provided \$5 billion for the Weatherization Assistance Program, and \$4.5 billion for Electricity Delivery and Energy Reliability. This latter program is related to expenses necessary to electricity delivery and energy reliability of the energy infrastructure energy storage research and development, demonstration and deployment, and facility recovery. In addition, \$100 million is allocated for “worker training.”

The ARRA also provided \$6 billion for the Innovative Technology Loan Guarantee Program.

These funds are crucial because, in addition to enormous amounts of non-renewable resources, primarily oil, natural gas, coal, and coal bed methane, Indian tribes have significant development potential in renewable sources of energy such as wind, solar, hydro, biomass, geothermal, and others.

Reliable information suggests that the vast majority of potential renewable energy projects in Native communities are modest in size and more akin to the community development scale than the commercial utility scale. As a result, most of these projects might only require an environmental assessment and not a full-blown environmental impact statement under the National Environmental Policy Act (“NEPA”). More often than not, these projects require Federal support to fund the construction costs in order for them to proceed to construction.

Proposal for a “National Tribal Energy Efficiency Initiative”

With the support of this Committee and the congressional appropriators, a “National Tribal Energy Efficiency Initiative” would (1) generate an enormous number jobs in the short-run and long-run; (2) be reasonable in terms of cost; (3) have superior environmental impacts in Indian country; and (4) produce greater economic benefits for virtually every Indian tribe and have the greatest impact on the tribes with the largest number of poor and working poor families.

The initiative CERT has in mind would be something along the lines of a “National Tribal Energy Efficiency Initiative” that could fund virtually every Indian tribe. The initiative would be massive but, if properly structured, would maximize the use of local labor and local Indian contractors.

In addition to home weatherization, the initiative could include all tribal government buildings and Federal facilities located on tribal lands. The high cost of heating and cooling because of poorly-constructed and poorly-insulated buildings equipped with highly inefficient lighting and H-VAC systems erodes program budgets, reduces services and produces environments that are not healthy for workers or for people who use access the facilities. It would dramatically reduce the operating and maintenance costs for health clinics, hospitals, schools and tribal colleges, tribal administrative buildings, and other structures on tribal lands.

The initiative would also have an immediate impact on the utility bills for heating for the most vulnerable Indian populations in the Northern tier of the country from the Pacific Northwest to Maine, the Tribes of the Four Corners Area, and the poor families of the Oklahoma Indian Tribes. And for the desert southwest Tribes, their weather related issues come in the summer months. Regardless of their geography, all of the Tribes have vulnerable populations: the elderly, infants and the disabled.

In a relatively short period of years, the initiative would transform Indian Country from among the most energy *inefficient* to among the more energy *efficient* and would lead to better health, more efficient programs and more competitive tribal economies. The energy savings could be measured in real dollars because the good thing about energy efficiency is that the savings are not one-time occurrences but accrue year after year. Even a massive Federal expenditure in an initiative of this type would be repaid in savings in 3 to 5 years, and would continue for another 10 to 20 years, depending on building maintenance.

For this initiative to succeed, the funding would need to be administered through an agency that is able to direct the money very quickly to each interested Indian Tribe. One way to expedite the funding process would be to convene regional "pre-application workshops" so interested and eligible Indian tribes could respond appropriately to the agency distributing the funding. If the funds were routed through the Administration for Native Americans ("ANA") in the Department of Health and Human Services, that agency would do a superb job of fund distribution with minimal red-tape because it has a demonstrated ability to move money very quickly into tribal programs. The ANA has a network of regional and national technical assistance contractors already in place to provide the workshops and hands-on technical assistance to ensure every interested and eligible Indian Tribe has the best chance to access the program.

In addition to CERT, there are other national Indian organizations that could be of assistance in mobilizing Indian contractors and the local pool of Indian labor such as the National Council on Tribal Employment Rights ("NCTERO") which has a national network of local TERO offices that have data on the local workforce and the relationship with labor unions for training and apprenticeship programs, as well as data on local, Indian-owned companies. The

National Center for American Indian Enterprise Development (“NCAIED”) has an excellent network of larger Indian and tribal construction companies as well as a network of major private sector companies, such as Home Depot, that might be included in such an initiative to supply the material needed for these activities.

Indian Energy Project Development

The new energy laws were signed into law in 2005 and 2007 and the regulations to implement them are now in effect. For the past five fiscal years, the Congress has appropriated funds for the Department of Interior’s Office of Indian Energy and Economic Development and the Department of Energy’s Office of Indian Policy and Programs, both of which are charged with administering the new laws.

Nonetheless, and as the Committee has identified in its Indian Energy Concepts Paper, many challenges to more vigorous energy development remain.

RESPONSES TO THE COMMITTEE’S INDIAN ENERGY CONCEPTS PAPER

In September 2009, CERT submitted to the Committee its views and analysis of the May 2009 Indian Energy Concepts Paper. Attached to this statement is a copy of those views and analysis.

CONCLUSION

Mr. Chairman, that concludes my prepared statement and I again thank you for the opportunity to present the views of CERT. I would be happy to answer any questions you may have.