



# The Confederated Tribes of the Colville Reservation



## Prepared Statement of the Honorable Michael Finley, Chairman Confederated Tribes of the Colville Reservation

### Senate Committee on Indian Affairs

### Legislative Hearing on S.1684, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011”

April 19, 2012

Good afternoon Chairman Akaka, Vice-Chairman Barrasso, and members of the Committee. On behalf of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “Tribes”), I appreciate the opportunity to testify today on S.1684, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.”

The Colville Tribes strongly supports S.1684, particularly Section 202, which would authorize the Tribal Biomass Demonstration Project (“Demonstration Project”). My testimony today will focus on the Demonstration Project and how it could potentially benefit the Colville Tribes and other Indian tribes that are developing or that have an interest in biomass projects.

#### **Background on the Colville Tribes**

I would like to take this opportunity to provide some brief background on the Colville Tribes. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 aboriginal tribes and bands from all across eastern Washington State. The Colville Reservation encompasses more than 1.4 million acres, of which approximately 66 percent is forest land. The Colville Tribes has traditionally relied on its forest resources as a primary source of revenue for tribal government programs.

The Colville Tribes has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the Colville Tribes’ members live on or near the Colville Reservation.

Utilizing grants and technical assistance from both the Department of the Interior and the Department of Energy, the Colville Tribes is developing a woody biomass facility on the

Colville Reservation in Omak, Washington. Access to a reliable, long-term supply of woody biomass material is a key consideration in obtaining financing for the planned facility. This is one of the structural impediments that the Demonstration Project is intended to address.

### **Overview of Section 202**

Section 202 would add a new section to the Tribal Forest Protection Act of 2004 that would require the Secretary of Agriculture (in the case of Forest Service land) and the Secretary of the Interior (in the case of Bureau of Land Management land) to enter into a collective total of at least four new contracts or agreements with tribes to promote biomass, biofuel, heat, or electricity generation each year of the five-year authorization.

Although Section 202 requires the Secretaries to enter into a minimum number of contracts, the Secretaries would be responsible for jointly developing the eligibility requirements. This would allow the Forest Service and the Bureau of Land Management to control the universe of potential applications. In evaluating applications, the respective Secretaries must consider a variety of factors, including whether a project would improve the forest health or watersheds on the Federal land and whether a project would enhance the economic development of the Indian tribe and the surrounding community.

Section 202 also allows for tribal management land practices to apply to areas included in contracts or agreements entered into under demonstration projects. This would allow, for example, Indian tribes to incorporate cultural resource or sacred site planning considerations into activities conducted on lands included in demonstration projects.

Finally, Section 202 would authorize contracts or agreements entered into under the Act to have maximum terms of 20 years, with the ability to renew for additional 10-year terms. The exact length of contract or agreement terms under a demonstration project would be subject to negotiation between tribes and the federal agencies. The current limit for stewardship contracts under existing law is 10 years.

Section 202 is not specific to any one Indian tribe or region. If it is enacted into law, any Indian tribe that meets the eligibility criteria may apply.

### **The Tribal Biomass Demonstration Project Promotes Forest Health, Tribal Economies, and Renewable Energy**

Since passage of Title V of the Energy Policy Act of 2005, energy development on Indian lands has been a priority for many Indian tribes, including the Colville Tribes. Renewable energy development such as biomass has been of particular interest to the Colville Tribes as it seeks new ways to promote on-reservation economic development

and to diversify its economy. The Demonstration Project will eliminate barriers to these goals and promote the following –

Forest Health: As the Committee is aware, many federal lands that are adjacent to tribal trust lands are in need of thinning and restoration activities to reduce the risk of catastrophic wildland fire and disease. Indian tribes like the Colville Tribes are uniquely situated to carry out these activities because we have a vested interest in ensuring that neighboring federal lands do not pose fire or disease threats that will encroach on our tribal trust lands. Protection of tribal trust land was the primary consideration in the enactment of the Tribal Forest Protection Act of 2004. The Demonstration Project would ensure that forest health considerations are paramount in any stewardship contract or similar agreement that might be entered into under Section 202.

The Colville Tribes recently approved a \$193 million settlement with the United States government that will resolve the Tribes' pending claims of mismanagement of its trust funds, natural resources and other non-monetary trust assets. The Colville Tribes is considering utilizing a portion of the settlement proceeds for thinning of our tribal forests and restoration of the landscapes and watersheds on the Colville Reservation.

Wood Products Industries and Local Economies: Stewardship contracts generally involve no payment by federal agencies. Rather, the contractor is “paid” by retaining and selling the woody materials they remove from federal lands in performing the contract. The use of stewardship contracting has risen dramatically by the Forest Service in recent years largely because these contracts do not require the expenditure of scarce agency resources.

Viable wood products infrastructure is often needed to make stewardship contracts and other forest health activities on federal lands economically viable. Without a market demand for otherwise non-merchantable wood material, the costs of performing the forest health activities are prohibitively expensive. The housing market crash and increased global competition have resulted in the closure of many, if not most, saw mills in the western United States. The Colville Tribes was forced to close both its sawmill and its veneer plant due to market conditions in 2008 and 2009.

Section 202 supports new and existing wood products infrastructure by authorizing contracts for up to 30 years. Longer-term contracts will encourage private sector financing by increasing the likelihood that investors will recoup their initial capital costs through a reliable supply of biomass material for a longer period. The Colville Tribes understands that the Administration is interested in exploring longer-term stewardship contracts in a controlled manner that will allow for study and evaluation. Section 202 provides this type of mechanism.

Tribal Management Practices Can Benefit Federal Lands: Many have praised tribal land management practices as being far more efficient than those of their federal counterparts. In addition, Section 202(b) of the Federal Land Policy and Management Act of 1976 (“FLPMA”) requires the Secretary of Agriculture to coordinate land use plans for National Forest System lands with tribal management activities. Section 202(c)(9) of the FLPMA further directs the Secretary of Agriculture to coordinate land use planning with Indian tribes by, among other things, ensuring that consideration is given to those tribal plans that are germane in the development of land use plans for public lands, assisting in resolving inconsistencies between Federal and tribal plans and providing for meaningful involvement in the development of land use programs, land use regulations, and land use decisions for public lands.

Despite these statutory directives, federal agencies like the Forest Service have been slow to incorporate tribal management principles to even those federal lands that are contiguous to tribal trust lands. Many Indian tribes, including the Colville Tribes, have adopted comprehensive integrated resource management plans (“IRMPs”) that govern management of tribal natural resources.

The Colville Tribes’ IRMP contains detailed prescriptions for ensuring that its forest management activities allow for sustainability of huckleberries and other foods and plants of cultural and spiritual significance to the Tribes and its members. These types of management practices can and should be carried out on federal lands that are adjacent to tribal trust lands or to which tribes have an historic or cultural interest. Section 202 encourages this by allowing tribal management principles to be carried on federal lands that are included in contracts or agreements.

### **Other Provisions of S.1684**

The Colville Tribes also supports the other provisions of S.1684. The amendments in Section 103 relating to Tribal Energy Resource Agreements (“TERAs”) will streamline and provide certainty to the process for Indian tribes to obtain TERAs. Overall, the Colville Tribes believes that S.1684 will remove structural barriers to energy development on tribal lands and we applaud Vice-Chairman Barrasso and Chairman Akaka for developing and introducing this important legislation.

The Colville Tribe appreciates the Committee’s consideration of these important issues and looks forward to working with the Committee to ensure passage of S.1684. At this time I would be happy to answer any questions the members of the Committee may have.

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