

Prepared Statement of Wilson Groen, President & Chief Executive Officer

Navajo Nation Oil and Gas Company

To the United States Senate Committee on Indian Affairs

Legislative Hearing on

“The Indian Tribal Energy Development and Self Determination Act Amendments”

April 19, 2012

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### **INTRODUCTION**

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and members of this distinguished Committee. My name is Wilson Groen and I am the President and Chief Executive Officer of the Navajo Nation Oil and Gas Company (NNOGC), a company wholly-owned by the Navajo Nation. NNOGC is active in oil and gas exploration and production on and off Navajo lands, owns and operates a crude oil pipeline, and is a retail and wholesale distributor of refined petroleum products.

I want to thank you for the opportunity to discuss energy development on Indian lands. I also want to thank you for your leadership in identifying barriers to energy development on Indian lands, and for introducing legislation to address and remedy those barriers.

### **HISTORY OF THE NNOGC**

In 1992, the Navajo Nation Energy Policy (Energy Policy) was issued by the Navajo Nation (the Nation) after much discussion and input from energy experts, environmentalists, economic development specialists, lawyers, and political leaders of the Nation. The Energy Policy observed that the Navajo Nation was resource rich, but that it was neither obtaining proper value for its minerals nor, more importantly, participating in the energy industry as a business owner. For example, the standard oil and gas leases issued by the Bureau of Indian Affairs (BIA) relegated the Nation to the role as passive lessor, and that needed to be changed.

NNOGC was established in 1993 and is a direct outgrowth of the Energy Policy. The Nation’s objective was to launch a tribal corporation to engage in oil and gas production as an integrated, for-profit business entity to maximize the value of the Nation’s energy resources for

the benefit of the Navajo people.

NNOGC has acquired and now operates an 87-mile crude oil pipeline, acquired and is continuing to acquire significant oil and gas working interests in the Greater Aneth, Utah, oil fields, and expanded its retail and wholesale business. Just last week, NNOGC entered an option to purchase 10 percent of Resolute Energy Corporation's interest in the Aneth Field, the largest oil producer in the State of Utah.

While NNOGC is still in a robust growth mode, it has returned significant royalty payments, taxes, right-of-way payments, lease payments, scholarships and other contributions to the Nation and host communities. Much of the Nation's resources used to provide employment and services to the Navajo people derives from NNOGC's operations.

#### **NNOGC'S OIL AND GAS PRODUCTION**

Since 2005, oil and gas production on Navajo lands in southeastern Utah has increased and the Nation is consequently witnessing an increase in oil and gas royalty revenues. It is critical to the continued growth of the Nation's economy to continue oil and gas resource development on Navajo lands.

NNOGC, often with industry partners, is also leasing and developing tracts of land on and near the Navajo Reservation. NNOGC has obtained rights to 150,000 acres of land within the Nation to develop coal bed methane, oil and conventional gas resources. NNOGC is also exploring the feasibility of developing helium reserves on the Navajo Reservation. NNOGC has recently partnered with another company to develop oil and gas reserves in Montana.

As the Committee will surely appreciate, these activities contribute not only to the Nation's self-sufficiency, but also to the energy security of the United States.

#### **NNOGC COMMENTS ON S.1684**

NNOGC supports the objectives of the bill, namely, to eliminate or reduce undue Federal interference in tribal energy resource development, strengthen tribal self determination, and boost energy resource production on Indian lands. In particular, we believe the following provisions contained in section 103 of the bill are key to achieving these objectives.

Section 103 authorizes an Indian tribe to negotiate and enter energy-related business agreements, rights of way, and leases without the review or approval of the Secretary of the Interior (Secretary) if the lease or agreement was executed

(1) pursuant to a secretarially-approved "tribal energy resource agreement," or

(2) by the Indian tribe and a tribal energy development organization, certified by the Secretary as majority-owned by the tribe; and

(3) has a term not more than 30 years, or if the lease is for the production of oil, gas or both, 10 years and as long thereafter as oil or gas is produced in paying quantities.

Section 103 would also expedite the review and approval of tribal energy resource agreements (TERAs) submitted to the Secretary by providing that a TERA is effective 271 days after receipt by the Secretary, unless the Secretary disapproves the agreement. With regard to revised TERAs, section 103 renders them effective 91 days after receipt by the Secretary, unless the Secretary disapproves the agreement.

Importantly, section 103 also amends existing law to provide that the Secretary may disapprove a TERA only if the Secretary determines

(1) the Indian tribe has failed to demonstrate sufficient capacity to regulate the development of 1 or more energy resources identified for development in the agreement

(2) a provision of the tribal energy resource agreement would violate applicable Federal law, regulations, or a treaty applicable to the Indian tribe; or

(3) the tribal energy resource agreement fails to include all prescribed provisions.

This section also adds language providing that an Indian tribe shall be considered to have demonstrated capacity if the Secretary determines the tribe has for 3 years successfully carried out a contract or compact under the *Indian Self Determination and Education Assistance Act* that is related to the management of tribal land, or the Secretary has failed to make a capacity determination within 120 days.

Section 103 also carefully, and properly in our view, circumscribes who may be considered to be “an interested party” for purposes of challenges to tribal energy activities pursuant to a TERA.

Section 103 also directs the Secretary to transfer any amounts the secretary would otherwise expend to operate any program, function, service or activity of the department as a result of the tribe carrying out those activities pursuant to a TERA, and directs the Secretary to make these amounts available through negotiated, annual funding agreements separate from the TERA.

#### **NAVAJO NATION AND NNOGC-PROPOSED AMENDMENTS TO 25 U.S.C. §415(e)**

NNOGC’s continued growth is critical to the continued growth of the Nation’s economy.

While NNOGC sees the need for and supports the refinements to the TERA process contained in S.1684, for the Navajo Nation, which is unique in many relevant respects, a more appropriate path is to amend 25 U.S.C. §415(e) to authorize the Nation to engage in subsurface mineral leasing and development without the involvement of the secretary. Should these amendments come to pass, they will facilitate the Nation's economic growth and encourage self-determination by removing Federal delays and unnecessary obstacles from the process.

Some background is in order. In 2000, the Navajo Nation requested Congress to amend the *Long Term Leasing Act of 1955* (25 U.S.C. §415) to authorize the Nation to develop and execute its own business, home-site, agricultural and other surface leases without the approval of the Secretary. The Nation made this request because member-owned businesses were not flourishing on tribal lands due to the overlay of tribal and Federal authority in granting business leases and other barriers such as bonding requirements, requirements for appraisals, and delays in lease processing and obtaining financing.

The Congress responded by adopting 25 U.S.C. section 415(e) – the *Navajo Nation Surface Leasing Act* - which authorizes the Nation to execute its own leases without Federal approval, provided that the leases are issued pursuant to regulations approved by the Secretary and leases are limited to 25 years, subject to a right of renewal.

The Nation's leasing regulations were approved by the Secretary, and the Nation has been operating its own surface leasing regime without event for approximately seven years. All business site leases require surveys, geo-tech studies, archaeological clearances, and environmental assessment taking into account the impacts on the natural and human environment pursuant to the Nation's business leasing and environmental laws. The various agencies and offices of the Nation, which are the most advanced in Indian Country, have more than ten years experience in performing these studies and assuring regulatory compliance.

The Nation successfully manages the Navajo Nation Environmental Protection Agency, Department of Historic Preservation, Fish and Wildlife Department, the Minerals Department, and the Navajo Land Department.

Amending 25 U.S.C. §415(e) as the Nation and NNOGC are suggesting would continue to advance the Nation's self-determination and self-sufficiency by amending the Nation's leasing authority to permit business and agricultural and other surface leases for terms up to 99 years, and by further amending the statute to authorize the Nation to execute mineral leases, again,

under the regulations approved by the Secretary, for a term of 25 years, and potential renewal for an additional term of 25 years --- the customary term of minerals agreements approved by the Navajo Nation Council since approximately 1985.

I note for the Committee's consideration, these proposed amendments are currently contained in Chairman Don Young's "Native American Energy Act" (H.R.3973), which is pending in the House Committee on Natural Resources.

### **CONCLUSION**

In conclusion, I want to thank the bill's sponsors --- Vice Chairman Barrasso, Chairman Akaka, and Senator McCain --- for their leadership in crafting and introducing S.1684, and for your support for the amendments to 25 U.S.C. §415(e) that the Nation and NNOGC are jointly proposing.

It is our hope that the Committee will quickly and favorably report S.1684, together with our proposed language, to the Senate Floor for its consideration.

At this juncture, I would be happy to answer any questions you have.