

**WRITTEN TESTIMONY
OF
Tara Mac Lean Sweeney
Assistant Secretary – Indian Affairs
U.S. Department of the Interior
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON WEDNESDAY, APRIL 10TH AT 2:30PM
“BUILDING OUT INDIAN COUNTRY: TOOLS FOR COMMUNITY DEVELOPMENT”
APRIL 10, 2019**

Chairman Hoeven, Vice-Chairman Udall, and Members of the Committee, my name is Tara Mac Lean Sweeney and I am the Assistant Secretary of Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for this opportunity to testify on *“Building out Indian Country: Tools for Community Development.”*

Economic growth is an impactful antidote to the social and financial challenges facing Native communities, and I am proud that it is a priority for the Trump Administration. A strong economy presents opportunities for employment, commerce and the tools necessary to empower communities to create healthier and safer living conditions for its members.

We believe the best vehicle for sustainable community development is economic growth and the influx of employment opportunities it brings. My experience in the private sector, working to develop Native economies, and create job opportunities for Indian Country has provided me with invaluable experience. As Assistant Secretary I have made it a priority to implement a robust economic development agenda.

For our part, Indian Affairs provides direct and indirect support for economic growth in Indian Country. Our economic development focal points are: (1) the development of energy and mineral resources; (2) increasing access to capital; (3) assisting business development; and (4) encouraging development of transactional capacity in tribal communities.

I am proud to appear before the Committee today as your partner and as an advocate for community development and economic growth in Indian Country.

ENERGY AND MINERAL RESOURCE DEVELOPMENT IN INDIAN COUNTRY

Thanks to President Trump’s initiative to achieve U.S. energy dominance, the U.S. is now a leading exporter of crude oil and liquefied natural gas (LNG). It was reported last month that the U.S. now exports more crude oil and petroleum products than it imports and some analysts project that we will soon pass Saudi Arabia as an exporter of crude oil and other petroleum-based liquid

fuels.¹ U.S. exports of LNG quadrupled in 2017 and continue to increase with the construction of new LNG export facilities.²

Indian Country directly benefits from the Administration's energy dominance initiative. Energy royalties paid last year to Indian tribes and allottees' totaled over \$1 billion.³ Energy production in Indian Country, as a source of revenue is now only second to gaming.

Energy Royalties to Indian Country

2018: \$1,022,539,457 (As of October 1st 2018)

2017: \$561,409,816

2016: \$476,207,228

2015: \$736, 839, 260

Our Department's Division of Energy and Mineral Development (DEMD), which is part of our Office of Indian Energy and Economic Development (IEED), currently provides technical assistance on 37 gas and oil projects, 83 renewable energy projects, and 61 mineral projects.

These projects have the potential to generate even more energy and mineral derived benefits for Tribes. OIEED using its internal engineers, geologists and geophysicists have completed internal scientific and engineer studies to determine the following resource potential. Among them are:

- A geologic study of the Pilot Butte and Steamboat Butte oil fields at the Wind River Reservation in Wyoming whose value DEMD estimates could exceed \$50 million;
- A DEMD funded, 16-mile, 3-D seismic survey at the Rocky Boys Reservation in Montana that could be a source of tribal revenues if the land proves productive;
- An analysis of the Gallup and Fractured Mancos plays at the Jicarilla Apache Reservation in New Mexico that could lead to substantial revenues to the Tribe when all of its oil-bearing lands are developed;
- An examination of helium sources at the Navajo Nation in Arizona whose development DEMD estimates could bring significant royalties to the Navajo Nation and other Tribes in the area;
- Assistance with enhanced oil recovery methods at the Osage Reservation in Oklahoma aimed at development of potential reserves;
- Assistance to the Metlakatla Indian Community on Annette Island Reserve, Alaska with engineering design and construction of its Chester Lake Penstock Extension Project to improve hydropower and water security during drought years;

¹ <https://oilprice.com/Energy/Crude-Oil/US-Will-Soon-Export-More-Oil-Liquids-Than-Saudi-Arabia.html>

² <https://www.eia.gov/todayinenergy/detail.php?id=35512>

³ <https://revenuedata.doi.gov/explore/#federal-disbursements>

- Work at the Fond du Lac Band of Chippewa Indians in Minnesota to use woody biomass to displace propane use at the Tribe's community center, which is saving \$21,000 per year. Engineering and planning assistance for the Tribe's development of a 1MW solar array is saving another \$80,000 per year;
- Technical assistance to the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana which enabled them to acquire the 188 MW Kerr Dam Hydroelectric Project. Operated under the tribal owned company, Energy Keepers, Inc., this project is generating more than \$9 million a year for the Tribes;
- Commissioning of a 1 MW solar array at the Picuris Pueblo in New Mexico, which is offsetting 100 percent of the energy costs for 50 homes and 12 tribal buildings;
- Completion of feasibility and planning studies to develop a 1.5 MW wind turbine at the Spirit Lake Reservation of North Dakota that DEMD forecasts will save over \$600,000 in annual energy costs;
- Identification of a natural gas service expansion at the Mississippi Choctaw Reservation that, by displacing propane use, will achieve \$1 million in savings per year;
- Completion of engineering and planning studies at the Blue Lake Rancheria in California for a solar-battery micro-grid system that will save the Tribe \$200,000 annually;
- Completion of engineering and planning studies for a 6 MW solar development at the Twenty-Nine Palms Reservation in California, which DEMD believes will generate \$1 million in annual revenue;
- Identification of sand and clay material at the Jemez Pueblo in New Mexico that the Tribe will use to construct 85 durable, energy-efficient, custom-designed homes; and
- Identification of a 50-year supply of cement-grade limestone at the Moapa Reservation of Nevada.

As we've observed the surge in energy development, we have concurrently determined to take a close look at the Department's right-of-way regulations as they pertain to energy and mineral resource development in Indian Country. We've put a call out to tribal leaders, as well as our internal institutional knowledge resources, to share how these regulations may be improved.

Our goal is to reduce the regulatory burden for right-of-way approval processes and better enable tribes to *sustainably* develop their natural resources. Sustainable development is our intent and Indian Affairs as a whole is working to improve service delivery and efficiency to tribal enterprises interested in developing their minerals, oil, gas, and other natural resources.

S. 245 THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT AMENDMENTS OF 2017

Tribal Energy Resource Agreements (TERA)

Mr. Chairman, we are pleased to note the enactment of your bill, S. 245, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017. This bill streamlines our Department's approval of Tribal Energy Resource Agreements (TERAs), thereby encouraging tribal self-determination in the development of energy on Indian trust lands. TERAs authorize tribal energy contracts, leases, and rights-of-way without unnecessary federal oversight.

On the same topic, a Department working group, under the direction of the Acting Secretary, has been examining the issue of inherent federal functions, which this Committee and tribes have said is an obstacle to seeking TERAs. We hope that modifications proposed by the working group, combined with revisions to the TERA regulations implementing provisions of your bill, will encourage tribes to apply to our Department for TERAs.

Tribal Biomass Demonstration Project

Your bill also authorizes biomass demonstration projects for tribes and Alaska Native corporations. Our BIA foresters are working diligently to implement the tribal biomass demonstration projects authorized by the bill. Discussions are ongoing with key federal partners as well as with tribal groups, such as the Intertribal Timber Council, to cultivate awareness of the bill's provisions and encourage thinking about the possibilities it presents for Indian Country, and to identify projects that have been proposed by tribes that may be suitable for meeting the bill's objectives.

Given the expedited statutory timeline, we will be hosting a Tribal Consultation by telephone (ensuring maximum tribal participation) on Friday, April 12, at 1:00pm Eastern Time.

Our goal is to support projects that are portable and scalable, so that the successes and lessons learned in one project can be expanded for the benefit of other tribes throughout the country. Thus smaller-sized projects may serve as test cases to be applied at a larger scale with processes and methods that are proven and practical. We see the heart of these demonstration projects as utilizing biomass development to foster land management activities that expand the active forest management, as practiced in Indian Country, to other federal lands, with outcomes including the reduction of wildfire risks, improvement of forest health, and the creation of much needed energy from an abundant source of renewable forest biomass.

INCREASING ACCESS TO CAPITAL IN INDIAN COUNTRY

As the Assistant Secretary, I am looking forward to creating greater access to capital in Indian Country. This means building partnerships, stepping outside of our traditional comfort zones, and expanding our networks. I am excited to convene government agencies, tribes, Alaska Native Corporations, and other investment officials to form strategic partnerships and develop a roadmap to positive investment environments in Indian Country.

Opportunity Zones

There is a groundswell of interest in Indian Country around Opportunity Zones. Indian Affairs is grateful for the provisions included in the Tax Cuts and Jobs Act of 2017. Congress added Opportunity Zones to the tax code when it passed the Tax Cuts and Jobs Act on December 22, 2017, 26 U.S.C., 1400Z-1 and 1400Z-2. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. We believe that there are millions of dollars in investment funds waiting on the sidelines that this new incentive can attract to projects and locations within Indian Country. However, we are working to ensure that tribal voices are heard as the regulations supporting the Opportunity Zone program are built out. As these rules are developed, we want to ensure they are considerate of the unique situations and circumstances surrounding trust land and resources in Indian Country.

Tribes deserve equal footing and access to Opportunity Zones and I am committed to working with the Committee, Treasury, and tribal leaders to ensure that appropriate measures are taken to ensure tribes have the opportunity to develop their local economies and investors have the opportunity to choose Indian Country for their portfolios.

Native American Business Development Institute Grants

Indian Affairs is also pushing out on-the-ground support for tribes and tribal businesses to take advantage of Opportunity Zones through the IEED – Division of Economic Development Native American Business Development Institute (NABDI) Grants. The IEED has funded tribes to conduct feasibility studies on business endeavors since 2007.

These studies have made possible the Wells Band of the Te-Moak Tribe of Western Shoshone of Nevada's business incubator; the first tribal grocery store to be sourced with locally grown vegetables at the Ft. Belknap Reservation in Montana; and the burgeoning tourist industry of Alaska's Chilkat Indian Village, among other examples.

For the FY 2019 feasibility study grant cycle, we have created a preference for tribal applicants focused on businesses or projects to be located in Opportunity Zones. This powerful new tax law will be a force multiplier for our economic development feasibility grants.

We are convinced that a new tribal business or development project has the best chance of success when it is based on a feasibility study conducted by an impartial, expert third-party. Such studies identify technically implausible project proposals and logistical, financial and market challenges. Access to capital is an important component of economic development. Another is a credible feasibility study.

BUSINESS DEVELOPMENT IN INDIAN COUNTRY

Small business is the lifeblood of community development. Small businesses are necessary to achieve the multiplier effect we strive for in Indian Country – where a dollar turns over 5, 6, or 7 times among community members before it leaves the local economy. Big deals with large

corporations are great, but small business development often plays the most pivotal role in changing the lives of local citizens.

We want healthy economic environments in Indian Country that support small business – which means a number of the items we have already discussed: access to capital, feasibility determinations, but it also requires a legal and regulatory regime that supports and protects secured transactions in Indian Country.

BUILDING TRANSACTIONAL CAPACITY IN TRIBAL COMMUNITIES

Uniform Commercial Code and Model Codes

Finally, we are helping Tribes develop legal infrastructure that is indispensable to economic progress. According to John Koppisch, writing in *Forbes Magazine*.

*“Companies and investors are often reluctant to do business on reservations – everything from signing up fast food franchisees to lending to casino projects – because . . . commercial codes aren’t well developed . . .”*⁴

Most Tribes lack commercial codes to secure collateral and assure access to credit. Without such codes, Native business persons are unable to finance the purchase of business-related equipment from sellers located outside tribal jurisdictions. Tribal members are often unable to obtain credit for the purchase of equipment and business goods off the reservation because a dealer cannot enforce his or her lien (or security interest) in the purchased item once it has been transported to the reservation. Without these codes and an accurate, accessible system for filing claims, creditors may increase borrowing costs to offset risks or refuse to lend altogether.

To address this challenge, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and a working group of tribal officials drafted the Model Tribal Secured Transaction Act (MTSTA) as a template for legislation by tribes to facilitate transactions with outside lenders and businesses.⁵

The MTSTA provides a set of rules that specify how security interests may be created, perfected, and enforced, and who has first rights when two or more competing creditors have legally enforceable interests in the same collateral. Under this system, a creditor files a financing statement at a public filing office that constitutes notice to other interested parties about security interests in the personal property of the debtor. This financing statement perfects (or makes good against third parties) a creditor’s security interest in most kinds of personal property.

Once filed, a financing statement notifies the public that the secured party may have a lien on specified personal property of a particular debtor. Most states use the Secretary of State’s office to administer these filings. Interested parties may search filing records there or online to determine

⁴ John Koppisch, “Why Are Indian Reservations So Poor? A Look at the Bottom 1%,” *Forbes Magazine*, December 13, 2011.

⁵ NCCUSL joined with the American Law Institute to create the Uniform Commercial Code in 1940, providing a comprehensive solution to conflicting state commercial codes.

whether certain personal property of a debtor may be subject to a prior lien or liens.

Tribal adoption of the MTSTA has long been a priority for IEED and it has funded tribes to explore adoption of commercial law codes modeled on the MTSTA. It has also prepared and placed on its website a detailed primer, “Why Tribes Should Adopt a Secured Transactions Code.”⁶

CONCLUSION

Indian Affairs is committed to moving the needle in Indian Country on many fronts, and economic development and growth is a top priority for me and my team. While we continue to make strides with our programs, more can be done to promote sustainable economies in Indian Country. I am also committed to working with this committee, members of Congress and across the Administration to develop an economic roadmap for Indian Country development and growth.

Thank you for the opportunity to provide testimony, and I’m happy to answer the committee’s questions.

⁶ <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/pdf/Why%20Tribes%20Should%20Adopt%20a%20Secured%20Transactions%20Code%2011.30.18.pdf>