Statement of Cameron Cuch
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Before United States Senate Committee on Indian Affairs
Chairman Senator John Barrasso

Oversight Hearing the GAO Report on "Indian Energy Development: Poor Management by BIA has Hindered Development on Indian Lands"

October 21, 2015

Good afternoon Chairman Barrasso, Vice-Chairman Tester and Members of the Committee on Indian Affairs. My name is Cameron Cuch and I am Vice President of Governmental Affairs at Crescent Point Energy U.S. Corporation ("Crescent Point").

I. Executive Summary

Crescent Point has made a significant investment in exploring for and developing oil and gas resources owned by the Ute Tribe of the Uintah and Ouray Reservation in Eastern Utah. However, the regulatory uncertainty associated with an inability to predict project permitting times and a shifting landscape of regulatory requirements is frustrating Crescent Point's ability to cost-effectively develop Tribal oil and gas resources. From our perspective, the incentives for oil and gas operators to make long term investments in the development of Tribal oil and gas resources would be significantly improved if operators were able to work directly with individual Tribes in the permitting and development of these projects, rather than having to work through BIA as a federal intermediary.

We believe that Tribes are in the best position to manage and make decisions about development of their resources and that BIA should be a strong advocate for Tribal self-governance. However, we have often seen BIA defer to other federal agencies' views on resource development issues that, at times, have been contrary to Tribal goals, management plans and regulations. We believe that Tribes should be empowered to take over management of certain aspects of energy development that will allow the Tribe to achieve its own internally-determined goals and objectives while still providing for robust environmental review and protections.

II. Development Opportunities - Corporate Approach

Crescent Point is one of Canada's largest light to medium oil producers. We are publicly traded (New York and Toronto Stock Exchanges) and are headquartered in Calgary, Alberta with a U.S. headquarters in Denver, Colorado. We entered the U.S. in 2011 with a significant acquisition in

North Dakota and followed in 2012 with a large acquisition in the Uinta Basin of Eastern Utah, which included contractual interests in a number of properties on the Uintah and Ouray Reservation. Our primary operations are currently located in Saskatchewan, Alberta, North Dakota and Utah. Our average production in 2015 has been 165,500 barrels per day, with approximately 20,000 coming from the United States, 15,000 of which are produced in the Uinta Basin.

Crescent Point has a three-part business strategy that we have implemented for the purpose of ensuring consistent returns to our shareholders: (1) acquisition of high-quality, large resource-in-place pools with the potential for upside in production, reserves, technology and value; (2) management of risk by maintaining a conservative balance sheet with significant underutilized lines of credit and a 3.5 year hedging program; and (3) development of our large, low risk drilling inventory to maintain production, reserves and dividends. A primary component of Crescent Point operations is our commitment to environmental responsibility and conducting our business in a manner that minimizes our impact on the air, land and water surrounding our operations.

We generally fund our acquisitions internally and strive to maximize shareholder return with long-term growth, dividend income and cost-effective field development. One of the primary components of achieving cost-effective development is regulatory certainty and the ability to predict permitting times and requirements.

a) Considerations for Corporate Investment – Partnership with the Ute Tribe

In 2012, Crescent Point acquired Ute Energy Upstream Holdings, LLC ("Ute Energy"), majority-owned by the Ute Tribe of the Uintah and Ouray Reservation ("Ute Tribe") and a private equity partner based in Houston, Texas. Ute Energy was formed in 2005 in order to provide a vehicle to efficiently develop Tribal oil and gas resources to generate revenue for the Tribe. **Exhibit 1** shows an overview of the Uintah and Ouray Reservation. In 2010, Ute Energy and the Tribe entered into the Randlett Exploration and Development Agreement ("EDA"), which gave Ute Energy the right to explore for and develop Tribal oil and gas resources within a geographically defined area around the small town of Randlett, Utah. The Tribe executed the EDA under the authority granted by the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108, which specifically authorizes Tribes to enter into agreements with private industry to develop their natural resources for the purpose of achieving economic independence. As required by the Indian Mineral Development Act, the EDA was approved by BIA. The EDA area can be seen on **Exhibit 2. Exhibit 3** shows Indian Country and the external boundaries of the Uintah and Ouray Reservation.

When Crescent Point acquired Ute Energy, one of the primary assets of interest was the Randlett area and the exploration and production opportunities created under the EDA. We believed that the BIA-approved EDA would enable us to explore and develop the Randlett area in a phased and predictable manner under which we would operate existing wells while at the same time exploring the area in anticipation of full-field development. Crescent Point has had a number of positive experiences working with First Nations in Canada, and believed the opportunity to partner with the Ute Tribe would be a substantial benefit to Crescent Point. Because of these considerations, Crescent Point paid a total of $861 million to acquire Ute Energy. Crescent Point also operates one township in the Rocky Point Exploration and Development Agreement area, which lies directly west of the Randlett EDA area.

To date, Crescent Point has made a total investment of $1.658 billion in the Uinta Basin, including a $689 million investment in development capital. We currently operate 349 wells in the Uinta Basin, 64 of which are Tribal wells, and the remainder of which are located on private and federal lands. We have also paid over $5 million to Tribal companies for support services, including water hauling, road and well pad construction and roustabout services. In addition, we employ a number of Tribal members and roughly 30% of our Uinta Basin field staff are American Indians, Alaska Natives and Hawaiian Islanders.

We currently have applications pending for 203 drilling permits in the Uinta Basin, 95 of which are Tribal. Additionally, BIA is finalizing a Programmatic Environmental Assessment that will enable the drilling of up to 300 additional Tribal wells and we recently initiated an Environmental Impact Statement for all of our Uinta Basin assets, which will analyze the impacts of developing 725 Tribal wells.

Crescent Point has made a significant investment to develop oil from Ute Tribal lands and is committed to being a responsible and cost-effective partner with the Tribe. However, the delay and uncertainties that we have experienced in obtaining permitting approvals and authorizations from the BIA has had a substantial negative impact on our ability to develop Tribal oil and gas resources and, thereby, generate income for the Tribe.

III. Permit Challenges, Economic Impacts and Project Viability

As Crescent Point began to undertake exploration and development within the Randlett EDA area, we encountered a number of challenges to obtaining permits, largely related a lack of inter- and intra- agency coordination, duplicative review processes, and long review periods. This is particularly true in the context of drilling permits, which requires that BIA manage and coordinate consultations between several federal agencies.

a) The Permitting Process

Under federal statutes and regulations, and unless a Tribal Energy Resource Development Agreement ("TERA") has been entered into pursuant to the Energy Policy Act of 2005, in order to permit a well on Tribal lands, an operator must receive a federal drilling permit. To initiate the process, the operator must request drilling permit approval from BIA. Because this constitutes "federal action," BIA must comply with NEPA, even in cases where BIA has already approved of the development in general by, among other things, authorizing an EDA. BIA will then require that an appropriate NEPA analysis be performed, usually an Environmental Assessment, the costs of which are paid by the operator. During the NEPA process, a number of other federal agencies may become involved in review of the document. For operations on the Uintah and Ouray Reservation, the United States Fish and Wildlife Service will consult on the document under Endangered Species Act Section 7 authority and the Environmental Protection Agency will often consult on air and water quality issues.

Once the Environmental Assessment is completed, a process that, in the best of situations, takes roughly 8 months, BIA will issue a decision record. Once BIA issues the decision record, permitting is handed over to BLM because federal regulations require that BLM perform all downhole analyses and is the agency that ultimately issues the drilling permit. BLM must then provide a NEPA concurrence and process the permit application. Thus, in order to receive a drilling permit, at least two federal agencies, and often four or more, will have had the opportunity to weigh in on the proposal.

Because of the numerous agencies involved, the wait times associated with obtaining permits is often substantial and in almost all instances impossible to predict. Further, because of the multiple opportunities for inter-agency comments, BIA often receives comments from these other agencies proposing numerous project modifications and mitigation measures that were not contained in the initial proposed action. All of this adds substantial time and cost to the permitting process.

b) Permit Approval Timing

During 2015, it has taken an average of 405 days for Crescent Point to receive a drilling permit from BLM and BIA for Tribal wells. This is down slightly from 2014, when it took an average of 427 days. In contrast, the State of Utah averaged 73 days to issue Crescent Point a drilling permit to drill on private or State-managed lands during the same time period. In 2014, it took an average of 121 days for the State of Utah to issue a drilling permit. *See* **Exhibit 4.**

c) BIA Concurrence to BLM Issuance

Even after BIA has approved the NEPA documentation required to authorize a drilling permit, BLM concurrence times take an average of 135 days, and have taken as long as 203 days. **Exhibit 5** shows the additive delays associated BLM concurrence times.

By comparison, Crescent Point estimates that it takes a total of 4-6 months to receive all authorizations necessary, including performing environmental analyses, to develop oil and gas projects with First Nations. Similarly, we estimate that it takes, on average, one day for the provincial government to approve drilling permits that have been authorized by First Nations. These projects require concurrence and approval from just one Canadian governmental agency.

d) NEPA–Timing delays lead to either delayed or lost revenue to the Tribe

The considerable amount of time it takes BIA and BLM to complete NEPA analyses and issue permits has resulted in, at best, delay of projects and income to the Tribe and, at worst, project scale-back and cancellation. Given the precipitous drop in crude prices between 2014-2015, many of the wells that we would have drilled in 2014 had we been able to obtain permits are uneconomic in today's price environment.

For example, we submitted an application for a permit to drill the Ute Tribal 9-30-3-2E well on May 22, 2013. BIA issued a decision record on the NEPA Environmental Assessment on February 21, 2014. Building in a generous amount of time for approval, Crescent Point estimated that we would receive the permit in April of 2014 and would drill and complete the well during May and June, with first production coming on line in July. However, we did not receive an approved permit until September 12, 2014, which would have put us on track to receive first production from the well in January 2015. Unfortunately, between June and October of 2014, oil prices plunged, taking our rate of return on the well from 37% with a payout in just 2.2 years to 13.7% with a payout in 5.9 years. With the precipitous drop in oil prices, Crescent Point elected to postpone drilling the 9-30-3-2E, something that we would have done had we received the permit as anticipated in April 2014. *See* **Exhibit 6.**

Crescent Point also experienced considerable delay and extra costs associated with obtaining permits to conduct a seismic data acquisition in the Randlett EDA area. In June of 2013, Crescent Point submitted an application to conduct the seismic operation, completion of which would be of substantial benefit to the Tribe because it would allow Crescent Point to drill more profitable wells and because Crescent Point agreed to share the data directly with the Tribe. Department of Interior policies provide for a NEPA categorical exclusion for seismic operations,[1] under which NEPA review is not required unless "extraordinary circumstances" are identified by the lead agency.

[1] 516 DM 10 § 10.5(G):

Although BIA initially indicated that the project would be permitted under a categorical exclusion, after four months of inaction and under significant pressure from the U.S. Fish and Wildlife Service and the Bureau of Reclamation (who had surface management authority over a very small portion of the project area), BIA informed Crescent Point that it would be required to complete an Environmental Assessment based on the potential impacts the data acquisition could have on plant and animal species. One of the primary issues the Fish and Wildlife Service was concerned with was potential impacts to the Uinta Basin Hookless Cactus, a small cactus listed under the Endangered Species Act, but with prolific populations in the Uinta Basin. Although the Ute Tribe has adopted a regulation concerning the cactus, which requires setbacks from cactus populations and the payment of funds directly to a Tribal cactus mitigation fund administered by the Tribe, the Fish and Wildlife Service pushed for adoption of the federal guidelines concerning cactus setbacks and insisted that payments be made to the nationally-administered conservation fund.[2] Ultimately, after significant push-back from Crescent Point, it was agreed that mitigation funds would be split between the Tribe and the federal conservation fund.

Crescent Point had initially planned to conduct the seismic acquisition during the fall and winter of 2013-2014; however, the Environmental Assessment was not completed until the summer of 2014 and we did not receive permits until the end of September 2014. Although the Environmental Assessment ultimately concluded that the data acquisition would not have a significant impact on the human environment and Crescent Point won an award for its environmental stewardship on the project from the State of Utah, a permitting process that should have taken several months under a categorical exclusion took over 15 months to complete, delaying our seismic acquisition by one year. Had we been able to conduct the seismic acquisition as planned, we would have had usable data during the 2014 drilling season, which would have enabled us to drill more accurate and profitable wells with a smaller surface impact.

d) Regulatory Uncertainty Jeopardizes the Viability of Projects

The Randlett EDA area is bisected by the Duchesne River and several tributaries. Although BIA approved the EDA, which provides for development of all areas within the EDA boundaries, BIA has become increasingly less willing to allow surface disturbance within the 100-year floodplain. As demonstrated on **Exhibit 2**, roughly 30% of the Randlett EDA area is within the 100-year floodplain and 7,404.7 acres of floodplain within the EDA area are located on Ute Tribal and allotted lands.

We note that it is common to develop oil and gas resources within 100-year floodplains and there are no federal regulations addressing floodplain development. In cases where floodplain development occurs, Crescent Point has implemented a robust system of protocols to protect

[2] The Ute Tribe can obtain access to the national funds, but must apply to the federal government in order to receive them.

against damages in the case of a flood event. Nonetheless, during the development of the Randlett Programmatic Environmental Assessment, which analyzes the impacts of drilling up to 300 Tribal wells, in response to comments BIA received from the Environmental Protection Agency and the Fish and Wildlife Service, BIA developed a so-called "Resource Protection Alternative" under which no wells could be developed within the floodplain. This is in spite of the fact that the Ute Tribe has adopted a regulation governing oil and gas development within floodplains that expressly authorizes such development and has publicly supported development of all locations in the Randlett EDA area. Under the Resource Protection Alternative, 29 wells were removed from analysis because of their proximity to the floodplain. **The removal of these 29 wells will result in a loss of $66.5 million in royalties to the Tribe and $23 million in Tribal severance tax.** We anticipate that the Resource Protection Alternative will be the selected alternative when the decision record is issued later this year.

If Crescent Point continues to full field development of the Randlett area and BIA does not approve development of resources within the floodplain, **we estimate that the Tribe will lose $571.14 million in royalties and $148.38 million in lost severance taxes.**

e. Shifting Federal Regulation and Executive Action

In addition to the regulatory uncertainty created by unpredictable project permitting timelines, the relentless pace of executive branch rulemaking affecting Tribal lands has substantially impacted our ability to develop economic Tribal wells. These changes have included new Secretarial Onshore Orders 3, 4, and 5, new Secretarial Orders regarding Tribal consultation at FWS, the BLM's hydraulic fracturing rule, and the Environmental Protection Agency's rule defining waters within Clean Water Act jurisdiction.

V. Nature of the Mineral Estate

As shown on **Exhibit 7**, much of the land within the Randlett area, as with the rest of the Uintah and Ouray Reservation, is made up of a checkerboard of parcel ownership, with parcels owned by the Tribe, private owners, the federal government, the State of Utah and individual Tribal allottees. In addition, there is a substantial amount of split estate, particularly areas with Tribal surface overlying federal minerals.

Presently, there is very little development of Ute Tribal oil and gas resources. There is, however, currently substantial development of federal oil and gas resources underlying Tribal surface. In these cases, the Tribe bears the burdens associated with oil and gas development, but does not share in the benefits. In contrast, the development proposed by Crescent Point will directly benefit the Tribe by developing Tribal minerals from Tribal surface. We believe that the BIA does not appropriately consider the financial benefits that development of oil and gas resources

will provide for the Ute Tribe when reviewing permit applications and NEPA documents, and instead focusses only on potential negative environmental consequences. BIA should distinguish between projects involving development of Tribal minerals, from which the Tribe will benefit greatly, and projects on Tribal surface that develop federal minerals, from which the Tribe will experience the negative consequences associated with oil and gas development without any of the benefits.

Because of the large amount of time and lack of certainty associated with obtaining permits to drill Ute Tribal wells, in certain instances Crescent Point has been forced to drill wells on private lands within the Randlett area rather than on nearby Tribal parcels. In a large number of cases, this is simply a function of our inability to obtain permits to drill Tribal wells within a reasonable timeframe and our need to develop wells for the benefit of our shareholders and keep a drilling rig in operation. If there were assurances in place that we could obtain drilling permits within specified timeframes, our incentive to drill wells on Tribal rather than private parcels would increase substantially.

Finally, and while this is not the primary factor for Crescent Point, we note that it is substantially less expensive to obtain permits to drill wells on private minerals than Tribal minerals. We estimate that the average hard costs of permitting a well on Tribal surface to Tribal minerals are approximately $41,000. In contrast, the average hard costs of permitting a well on private surface to private minerals are $20,500. The primary differentials are the federal permit fee and the costs of performing the NEPA analysis. The breakdown of these costs is shown on **Exhibit 8**.

VI. Agency Failures and Proposed Solutions

Many of the permitting delays Crescent Point has experienced relate to strained BIA budgets and agency inability to appropriately staff projects and commit the resources necessary to ensure that economic development projects can be approved within reasonable timeframes. We believe that much of the delay associated with permitting is a result of poor coordination among the BIA and the other federal agencies with which it must consult on project approvals. We are further concerned that because of limited budgets, BIA is unable to appropriately staff offices with enough personnel knowledgeable about energy development. Because of this, we believe that overworked BIA personnel are often overly deferential to other, more powerful and better funded agencies, sometimes to the detriment of Tribal interests.

On several permitting projects we have observed that, in spite of decades of federal agency guidance outlining agencies' obligations to consult with Tribes, there is a fundamental failure on the part of other federal agencies to engage in meaningful consultation with Tribes. BIA should be the agency tasked with ensuring that consultation is occurring and that Tribal sovereignty is being respected. And, we note that several agencies within the Department of the Interior have

recently faced significant criticism for their failure to take their consultation obligations seriously and, indeed, a federal court recently enjoined BLM's hydraulic fracturing rule in part because of a failure to substantively engage in Tribal consultation. Nonetheless, we have observed BIA receive and concede to pressure from other federal agencies on several occasions, the result of which has been increased permitting times and costly project modifications that have neither been requested nor approved of by the Tribe. We believe this is related to understaffing at BIA agency offices and a lack of direction from BIA leadership empowering BIA personnel to stand up to these other federal agencies and decline proposed project modification when they do not correlate to Tribally-set policies and regulations.

a) Tribal Lands treated as Public Lands

We have observed a failure on the part of many of the federal agencies with which BIA must interact on permitting approvals to understand the distinction between Tribal lands and federal public lands. We have routinely observed these agencies attempt to inappropriately impose federal land use restrictions and policies on Tribal lands. For example, although U.S. Fish and Wildlife Service regulations and policies are clear that Tribal lands are not federal public lands and that Tribes should not be forced to bear a disproportionate burden for species conservation, the Fish and Wildlife Service regularly proposes permit restrictions for Tribal projects that are identical to the restrictions proposed for projects on federal lands. Rather than refuse to adopt these proposals, BIA often agrees and includes them as additional permitting requirements or conditions of approval.

This occurred recently on an Environmental Assessment prepared by BIA for 11 wells in the Randlett area. Following consultation with the Fish and Wildlife Service, BIA attached a number of conditions of approval to the permits requiring onerous setbacks and mitigation requirements applicable to operations in the vicinity of Uinta Basin Hookless Cactus populations and in areas that could serve as potential Yellow-billed cuckoo habitat. These additional requirements, which are neither mandated by federal law or regulation, were facially inconsistent with Tribal regulations and substantially increased the costs of the project. In addition, BIA has recently sought public comment on several Environmental Assessments analyzing development of purely Tribal resources. Federal regulations do not require public comment on Environmental Assessments, and BIA generally has a policy not to solicit input from the public at large on Tribal projects. This policy makes sense from a Tribal sovereignty perspective, as members of the public who are not Tribal members should have not say over Tribal development projects. However, in response to comments BIA received from the Environmental Protection Agency, BIA has decided to seek public comment on the last 3 Environmental Assessments it has prepared.

c) Proposed Solutions

We believe that Tribes are in a much better position to perform environmental analyses, require project modifications and craft best management practices and resource conservation plans than the BIA and that, in many cases, Tribes are already performing many of these functions informally.

While the GAO report pointed out that some BIA offices do not have staff with the skills needed to effectively manage Indian mineral development, many Tribes have staffs that possess these qualifications. The Ute Tribe has numerous highly trained employees who can perform many of these tasks in a manner that is consistent with Tribal management policies and goals. For example, the Tribe's Fish and Wildlife Department has 5 biologists on staff, compared to BIA's Uintah and Ouray Agency, which employs none. We believe that the Tribe's Fish and Wildlife Department can perform many of the plant and wildlife consultations the U.S. Fish and Wildlife Service currently performs in a more efficient manner. Similarly, the Ute Tribe's Energy and Minerals Department had a budget of $2.3 million in 2014 and has 25 employees working on energy development reviews, royalty issues, land work and regulatory compliance. Further, as pointed out by the GAO report, BIA lacks GIS systems and other data identifying ownership of resources and resource uses and authorizations. However, the Ute Tribe has this information as well as a GIS database system for the vast majority of Reservation lands.

We believe that the resources the Ute Tribe already possesses should be put to greater use by allowing the Tribe increased authority over energy-related decision making. In particular, we think that a mechanism should be developed that would allow for the following:

- Automatic deference to Tribal resource management and conservation plans. At present, Tribal resource management and conservation plans are considered, if at all, only during the NEPA process and we have found that BIA is often unaware of the existence of Tribal resource management and conservation plans that directly address matters under review.

- Replace Endangered Species Act Section 7 consultation, which requires BIA to consult with the Fish and Wildlife Service any time a proposed action might affect a listed or candidate species or its habitat, with Tribal consultation and issuance of a Tribal resource permit.

- Tribal facilitation of right-of-way preparation. Presently, all right-of-way applications must go through BIA, which does not have the personnel or data necessary to efficiently process such applications. In contrast, the Ute Tribe has adequate personnel and data systems in place to process these applications within a much shorter timeframe.

VII. TERAS

a) Operators working directly with Tribes can provide greater regulatory certainty

As an operator, Crescent Point questions whether TERAs, as provided for under the Energy Policy Act of 2005, can realistically improve the efficiencies associated with development of Tribal oil and gas resources. From our perspective, we believe that TERAs are overly complex and that time has shown that they are not a useful tool to improve BIA efficiencies related to energy development. Nonetheless, for operators, there is a substantial benefit to being able to work directly with Tribes without numerous federal agency intermediaries. We would very much like to see a mechanism in place that would allow for direct Tribal approval and decision-making authority on Tribal oil and gas projects. We believe that the regulatory certainty this would provide would create a substantial incentive to invest in oil and gas development on Tribal lands.

We suggest that the Committee consider development of a program under which individual Tribes can assume responsibility for certain aspects of energy development without needing to enter into a TERA. As previously suggested, we think that, for example, the Ute Tribe is in a very good position to assume responsibility for management of plant and wildlife considerations associated with energy development. Under this approach, individual Tribes could decide which aspects of energy development they would like to assume, without having to take on the onerous task of entering into a TERA. We also suggest that the Committee also consider a mechanism under which Tribes could enter into TERAs for specific geographic locations, such as locations where they own both the surface and the mineral estate. This would allow Tribes to concentrate resources on areas in which they receive the benefit of oil and gas development and not on areas where there interest is limited to the surface.

We also believe that determinations about whether a Tribe has the capacity to regulate all or certain aspects of energy development should be made at the individual BIA agency office, rather than at the Region or the Office of Indian Energy and Economic Development. BIA agency offices regularly work with Tribes and know whether individual Tribes are ready to take over management of energy development.

b) Coordination between Tribes and Operators can more effectively & efficiently develop appropriate mitigation measures to address Tribal resource concerns

In addition to the efficiencies and regulatory certainty that would accompany a direct working relationship between operators and Tribes, we also believe that there would be a substantial benefit to consolidating project decision-making authority within the individually affected Tribe. Not only would this significantly decrease the overlap and inefficiencies associated with the need

to obtain BIA approval for permits, but we believe that Tribes are often in a better position than the federal government to make decisions about management of their resources. From an operator's perspective, this will increase the incentive to invest in Tribal projects by allowing us to work collaboratively with our Tribal partners to tailor project components to meet Tribal objectives and to react quickly to changing circumstances without a federal intermediary.

In closing, I would like to thank Chairman Barrasso and Vice Chairman Tester and the Members of the Committee for the opportunity to present these issues on behalf of Crescent Point. I firmly believe that there are numerous opportunities for Tribes and private industry to work together to develop Tribal energy resources in an environmentally responsible manner and according to Tribally-set objectives and policies. All operators and Tribes need from the federal government to accomplish this goal is less federal oversight of Tribal decision-making and more opportunities for direct management by Tribes.