

**WRITTEN TESTIMONY
OF
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PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE REPORT,
“INDIAN ENERGY DEVELOPMENT – POOR MANAGEMENT BY BIA HAS HINDERED ENERGY
DEVELOPMENT ON INDIAN LANDS,” JUNE 2015**

OCTOBER 21, 2015

Chairman Barrasso, Vice-Chairman Tester, and Members of the Committee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary of Indian Affairs at the Department of the Interior (Department). Thank you for this opportunity to testify on the June 2015, GAO Report “Indian Energy Development, Poor Management by BIA Has Hindered Energy Development on Indian Lands.”

Energy is critically important to tribes. Commercial and community scale tribal energy development is a priority for this Administration because it provides significant economic and social benefits to tribes, and individual Indians. The Administration has worked very hard to help tribes assess, develop and market conventional energy resources, while also assisting supporting tribes as they explore development of renewable energy resources, such as wind and solar energy. Working closely with tribes, we have seen revenues from tribal energy development grow from just under \$400 million when President Obama took office in 2009 to over \$1.1 billion in 2014. While most of the increase in revenue has been in the area of conventional energy, several tribes are also now well-situated to develop substantial renewable energy resources, including solar and wind energy. We will continue to support tribes in both areas, conventional and renewable, to ensure that tribes play a crucial role in America’s energy future.

Yet, as the GAO report shows, the Department and Congress, working together, can do much more to promote tribal energy development. As discussed in more detail below, the Department largely agrees with GAO’s recommendations and, despite fiscal challenges, we are working to implement widespread improvements. We have been working hard to address each of the subjects raised by the GAO report and have substantial progress to report. For example, the GAO report underscores the lengthy review times and the need to improve efficiency and transparency. We have sought to address this problem by breaking down the silos that create obstacles to close coordination in the federal bureaucracy. As detailed in the President’s 2016 Budget, the Department proposes to establish an Indian Energy Service Center (Service Center) centrally located in Denver, Colorado, to address this need. The Service Center will include personnel from the various Interior Agencies that must coordinate energy development in Indian Country including the Bureau of Indian Affairs (BIA), the Office of Indian Energy and Economic

Development (IEED), the Office of Natural Resource Revenue (ONRR), the Office of the Special Trustee for American Indians (OST), and the Bureau of Land Management (BLM). The Service Center would provide expertise, policy guidance, standardized procedures, and technical assistance across a broad spectrum of services. The idea has been well-received by energy-producing tribes because it would provide a centralized, one-stop shop for energy services.

The GAO Report provides seven (7) recommendation areas. My testimony today will summarize how we are working to implement solutions in those areas and conclude with further detail about the Indian Energy Service Center

Recommendation 1: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should take steps to complete its GIS mapping module in TAAMS.

The GAO report recommended that the Geographic Information System (GIS) mapping module be added to the Trust Asset and Accounting Management System (TAAMS). TAAMS represents a significant, long-term investment in the Department's efforts to meet its trust responsibility. As we explained in our discussions with GAO, TAAMS was not designed as a geospatial mapping system, but simply to reflect legal descriptions as they appear on documents recorded as required by federal law.

We agree, however, that GIS mapping of Indian lands is exceedingly important. As we discussed with GAO, the Department has developed the National Indian Oil and Gas Evaluation Management System (NIOGEMS), which is a map-oriented GIS computer application, for managing reservation lease, well, and production data for oil and gas and other energy/mineral resources. NIOGEMS assists energy producing Indian tribes by allowing tribal, BIA and other Interior resource managers to gain ready access to financial, realty, geo-technical information and complex resource data aggregated from other data systems/sources, for tracking and making decisions on leasing, developing, and managing energy/mineral resources.

NIOGEMS incorporates aggregated data and presents information in concise user-friendly data view and map-based forms, and allows generation of reports, sharable maps, and data extractions for use in other analytical software. While no system is perfect, NIOGEMS has helped us improve our performance of our responsibilities to Tribes and individual trust owners. As the DOI's Inspector General's Report No.: CR-EV-BIA-0001-2011 stated in its list of promising technologies and practices for oil and gas in Indian country:

“[T]he National Indian Oil and Gas Evaluation Management System (NIOGEMS) . . . represents a significant improvement over the current Trust Asset and Accounting Management System database for managing oil and gas activities, including leasing and production data, by incorporating geospatial information as well as a digital mapping capability. The Wind River Agency in Wyoming reported a tenfold improvement in productivity for certain realty activities after implementing NIOGEMS.”

NIOGEMS can provide regularly updated mapped ownership tracts, energy Leases, as well as BLM agreements data for Tribes, BIA agencies, and supporting federal agencies for a large set

of reservations. Staff also develops and gathers an array of Indian energy resource data, for regional areas and in detail on a reservation project area basis. For the reservations supported in NIOGEMS, this data is combined in the NIOGEMS database to meet the need for comprehensive data to identify ownership and resources available for energy development, particularly oil and gas. Though it began with oil and gas related information, NIOGEMS is expanding to include additional energy/mineral resource data and supporting functionality. We will begin visiting reservation sites to train staff on how to log onto NIOGEMS from the Albuquerque server.

We are also taking steps to develop a land boundary and ownership repository that will be incorporated into TAAMS for all tribal lands. Our goal is that legal land descriptions entered in TAAMS from these conveyance documents will be regularly extracted and aligned with BLM survey data to produce GIS products that illustrate current Indian land ownership. In sum, we are continuing to invest heavily in TAAMS and related systems that have improved our ability to meet our various responsibilities. We are committed to avoiding past mistakes and having the technical resources that we need to manage vast tribal resources successfully.

Recommendation 2: To ensure it can verify ownership in a timely manner and identify resources available for development, BIA should work with BLM to identify cadastral survey needs.

In more than a century since the establishment of Indian reservations, the federal government has not yet fully surveyed all Indian reservation lands. For example, in the nearly 150 years since establishment of the Navajo Reservation, portions of that reservation have never been fully surveyed. A survey is an important step in developing a full inventory of trust resources. The GAO report recommended that the BIA and BLM work together to identify cadastral survey needs. As in years past, the BIA and the BLM, in a coordinated and focused effort, have prepared a Reimbursable Service Agreement (RSA) between the two agencies to identify and deliver survey-related products and services needed to identify and address the realty and boundary issues, in terms of asset/resource protection, of American Indian and Alaska Native Trust beneficiaries. Moreover, in February of 2015, the President asked Congress for \$2.791 million for Fiscal Year (FY) 2016 to fund this effort. Absent a budget, it is unclear when the funding will be available. However, the Department agrees that this is an urgent need in the BIA, particularly where reservations and trust lands lay along a river or where the river created the border. Such landmarks tend to move creating uncertainty as to ownership. During FY 2015, the BIA and BLM held quarterly meetings to discuss the cadastral survey needs, along with specific requests and the development of a mechanism to collect survey requests from the field. The BLM continues to provide boundary solutions by utilizing innovations in survey technology. Planning meetings between the BIA and the BLM will continue in FY 2016. A methodology to collect survey needs has been established and further refinement of the data collection will be completed by the end of FY 2016.

Recommendation 3: To improve the efficiency and transparency of its review process, BIA should develop a documented process to track its review and response times.

The GAO report recommended the BIA should develop a process to track BIA review and response times. As the recommendation applies to oil and gas leasing, the BIA will make a concerted effort to implement a tracking and monitoring effort in compliance with regulatory requirements to demonstrate timely reviews and approvals within the system of record, TAAMS. This will assist the BIA's field offices with maintaining a single current and accurate system. The goal is to have tracking mechanisms in TAAMS by the end of FY 2017. Additionally, IEED uses a formal Internal Control Review process for ensuring timely review of Indian Minerals Development Act of 1982 (IMDA) agreements for oil, gas, and other minerals. Under these procedures, IEED must identify all major risks that would prevent the review of agreements from meeting a deadline, and then to establish procedures (controls) to eliminate identified risks. The IEED's time line for reviewing agreements and providing technical comments (including economic analysis of negotiated agreement terms) is 30 days.

Recommendation 4: To improve the efficiency and transparency of its review process, BIA should enhance data collection efforts to ensure it has data needed to track its review and response times.

The GAO report recommended that the BIA enhance data collection for its tracking of BIA review and response times. We are working hard and investing heavily to improve tracking. In addition to the TAAMS enhancements, NIOGEMS currently tracks permits, rights of way, and environmental studies associated with energy development. The next version of NIOGEMS, scheduled for implementation in the next few months, will provide the user with the ability to develop ad hoc tracking.

Recommendation 5: Provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear.

The Department agrees with the report's recommendation that it provide additional energy development-specific guidance on provisions of TERA regulations that tribes have identified to the Department as unclear. IEED and our Office of the Solicitor believe that this clarity can be best achieved by amending the IMDA to insert tribal self-determination language similar to that found in the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012. The HEARTH Act permits tribes to lease surface trust lands for renewable energy purposes absent approval by the Department, by implementing their own leasing regulations. The Department respectfully asks Congress to make this possible in the conventional energy arena by amending the law to match the HEARTH Act provisions. We would be happy to work with your staff on such an amendment.

The GAO report highlights the need to track the benefits of its Tribal Energy Development Capacity (TEDC) grant program and to determine whether these grants have enabled tribes to develop the administrative and technical capacity to enter into Tribal Energy Resource Agreements (TERAs). To address the deficiencies identified in the GAO report, the Department modified this grant program to complement the HEARTH Act. In recognition of the growing

need for tribal regulatory infrastructure since passage of the HEARTH Act, the Department reformed the program to encourage tribes to establish the legal infrastructure to regulate energy-related activities, including the adoption of commercial codes, establishment of electrical utility authorities, and enactment of energy-related regulations. For example, of the ten TEDC grants that the Department disbursed at the close of FY 2015, half were awarded to equip Tribes to establish tribal utility authorities, a substantial step in assuming sovereign control of electrical resources.

Recommendation 6: To ensure the TEDC grant program is effective in moving tribes closer to developing the capacity needed to pursue TERAs, IEED should take steps to develop a documented process for evaluating the effectiveness of TEDC grants.

The Department will establish an evaluation process involving program staff and other stakeholders to gauge the extent to which TEDC grants have increased tribal capacity to enter into a TERA. We will seek feedback from tribal leaders, project managers, consultants and others on features of the program that are problematic. We will work with them to find ways to cure the deficiencies that they have identified. We will also reevaluate TEDC's efficacy at the close of each fiscal year. Staff will monitor the progress of each grant and furnish technical assistance to each grantee, identifying and addressing any problems while grant projects are still in process. Moreover, the Department will administer an anonymous, follow-up online survey with tribal stakeholders on the effectiveness of each grant, which will include questions related to progress in developing capacity, challenges or concerns, and suggestions for improvement. The information gathered from this survey will assist staff to guide further improvements in the TEDC grants.

Recommendation 7: To ensure the TEDC grant program is effective in moving tribes closer to developing the capacity needed to pursue TERAs, IEED should take steps to identify features of the TEDC grant program that could limit the effectiveness of the program to help tribes eliminate capacity gaps.

In response to the GAO report's Recommendation 7, the IEED staff will establish two methods to help identify features of the TEDC program that could limit the effectiveness of the program in addressing capacity gaps. The first method will be to seek TEDC feedback by reaching out directly to stakeholders such as tribal council members, tribal leadership, consultants and others. The IEED will compile and evaluate responses to establish effective solutions to the deficiencies recognized through the TEDC stakeholder outreach. The second method would be an internal reevaluation of effectiveness of the TEDC program at the end of each closing fiscal year. The IEED staff will be responsible for project monitoring and for providing technical assistance to the TEDC grant recipients. Staff and recipients will possess firsthand knowledge of the deficiencies limiting the grants' effectiveness after the first year of project monitoring. The IEED staff will then evaluate these findings to create solutions and make adjustments to the program.

Sixty (60) days after the 2015 TEDC solicitation closure or at the end of FY 2015, IEED staff plans to begin initial outreach for evaluating the effectiveness of TEDC grants, and for identifying the features of the TEDC grant program that could limit the effectiveness of the

program to help tribes eliminate capacity gaps. At the end of FY 2016, IEED staff will follow up with a second outreach and re-evaluate the effectiveness of TEDC grants.

Moving Forward: Indian Energy Service Center

As noted above, the Department will be implementing the Indian Energy Service Center, if funded, in FY 2016. As identified in the 2015 GAO report, the increased demands of oil and gas development have challenged the existing staff and management structure in providing timely efficient services. To address this demand, an interagency team from the BIA, IEED, ONRR, BLM, and OST have collaborated on solutions. The role of the Indian Energy Service Center would be to maintain a responsive, administrative and technical capacity, that when needed, can bolster local or regional staff faced with surging workload thus avoiding or eliminating backlogs.

The proposal reflects the spirit of the White House Council on Native American Affairs, which seeks to break down barriers between federal agency “silos” and also builds on recent innovations such as the IEED’s detailing of critical personnel to Fort Berthold, the rapid contracting of services by the Federal Indian Minerals Office at Navajo, and the BLM’s “Tiger Team” formed to address backlog Applications for Permit to Drill at Fort Berthold. By adopting some of these short-term innovations, improving protocols, and building up a technical specialist corps that can collaborate across agency lines, we can efficiently institutionalize these types of rapid response efforts to ensure sustainable, scalable and timely, delivery of service, both to Indian country and the nation.

The Indian Energy Service Center would improve performance of federal trust responsibilities in energy development. As proposed, it would provide technical and administrative functions that require minimal field presence. By fulfilling a support role for field offices through regional/state level offices, the field personnel would be able to focus on the local issues and challenges that accompany rapid expansion, making the Department and its many components more responsive to urgent needs in energy development.

The Indian Energy Service Center would support numerous units, including the BIA regional offices; the BLM field and state offices; the OST fiduciary trust officers and regional trust administrators; and ONRR. The Indian Energy Service center would expedite the leasing, permitting, developing, and reporting for oil and gas development on Indian trust lands. Fundamental to this effort is responsiveness to Indian mineral owners (tribal or individual) and coordination between Federal agencies. In support of this mission, the Indian Energy Service Center would serve as a processing center for certain nationwide trust functions where this service is more efficiently provided by an off-site work team in support of agencies and field, regional, or state offices. The Indian Energy Service Center would also dispatch expertise to the impacted agency or field office to evaluate the situation and make a determination how best to address the workload, particularly when the pending workload directly affects income being generated for beneficiaries.

Conclusion

Thank you for providing this opportunity to showcase the myriad efforts being made at the Department to improve energy development on Indian lands. The Department will continue to work with Tribes to promote energy development and will continue to work closely with this Committee as well as our federal and state partners to address energy development issues and solutions.

Thank you also for focusing attention on this important topic. I am available to answer any questions the Committee may have.