

S. HRG. 112-636

**S. 1684, THE INDIAN TRIBAL ENERGY
DEVELOPMENT AND SELF-DETERMINATION ACT
AMENDMENTS OF 2011**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

APRIL 19, 2012

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DEVELOPMENT AND SELF-DETERMINATION
ACT AMENDMENTS OF 2011**

THURSDAY, APRIL 19, 2012

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Vice Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Good afternoon. I am calling this hearing to order.

First, I want to thank the Chairman, Senator Akaka, for scheduling this hearing today and allowing me to act as the Chairman. We will be considering my bill, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.

The Chairman has graciously agreed to co-sponsor the bill with me in the spirit of the Committee's long tradition of bipartisanship. As I have stated in the past, when I meet with leaders of the Eastern Shoshone and the Northern Arapaho Tribes, I am reminded how important energy development is to Indian communities across the Country. On the Wind River Reservation, energy development means jobs.

Energy development on the Wind River Reservation also means income for families. It means paying the heating bill. It means food on the tables. We know that many Indian communities have more than their fair share of challenges, unemployment, crime and drug abuse. Many of these problems are really aspects or features or something much larger: a pervasive lack of opportunity to earn a good living.

Economic development and economic opportunities—those are the keys to a healthy, productive community. Energy development on Tribal lands is critical for employment and economic growth in Indian Country and for America's energy security and our independence.

For years, Indian Tribes have expressed concern about the numerous Federal laws and regulations governing the management of trust and energy resources. These rules often create significant delays and uncertainty in development proposals.

For these reasons, I have introduced S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. I would like to highlight some of the more important provisions.

First, this legislation is intended to make the Tribal Energy Resource Agreement, or TERA, process, easier for Indian Tribes to follow. It will also make TERA more predictable. Since passage of the Indian Energy title of the Energy Policy Act of 2005, it appears that no Tribe has yet availed itself of the authorized TERA process.

Under my legislation, a Tribal energy resource agreement would automatically go into effect after 270 days unless the Secretary determines that its terms do not meet the specific statutory requirements.

Second, S. 1684 would allow Tribal entities to enter into certain energy development leases without approval by the Secretary. These entities could have non-Tribal investors, but the Tribe would have to be the majority equity owner and retain control at all times.

Third, this Act provides the Indian Tribes with some funding to implement the TERA process without increasing the cost of the program. The amount would be equal to any savings that the United States realizes as a result of the Indian Tribe carrying out the TERA.

There are other energy-related issues addressed in this bill apart from the Energy Policy Act of 2005. For example, Tribes also face barriers when seeking approval of hydroelectric projects. There is a provision in my bill that modifies the barrier in the Federal Power Act, making it difficult for Tribes to pursue hydroelectric projects.

This bill would also authorize a biomass demonstration project for biomass energy production from Indian forest range lands and other Federal lands. We will hear more on that project from Michael Finley, from the Colville Tribes.

For far too long, bureaucratic red tape has prevented the pursuit of Tribal economic development opportunities, especially energy development. This legislation will reverse that trend.

Before I conclude, I want to again thank Chairman Akaka for his leadership on the issue. I would also like to thank the Chairman's staff, who have been so very helpful as well.

A final word: I am going to have to leave the hearing just before 3 o'clock. Senator Hoeven from North Dakota will be chairing the hearing from that point on.

With that, I would like to turn to the panel. We have a panel of five witnesses. I am going to introduce them, starting with the Honorable James "Mike" Olguin, the Vice Chairman of the Southern Ute Indian Tribe of Colorado. Next is the Honorable Tex Hall, Chairman of the Mandan, Hidatsa and Arikara Nation, from North Dakota. He will be followed by the Honorable Michael Finley, Chairman of the Confederated Tribes of the Colville Reservation in Washington State. Next is the Honorable Irene Cuch, Chairwoman of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah. And finally, we will hear from Mr. Wilson Groen, the President and CEO of the Navajo Nation Oil and Gas Company in Arizona.

As you see, we do not have a witness from the Administration here today. I continue to work with the Administration to address questions they have and reiterate the importance of this legislation to Indian Country. So I am looking forward to the coming dialogue.

With that, I would like to welcome our witnesses here today and look forward to their testimony, and we can begin.

**STATEMENT OF HON. JAMES M. "MIKE" OLGUIN, VICE
CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL**

Mr. OLGUIN. Good afternoon, Vice Chairman Barrasso. Also good afternoon, witnesses.

My name is Mike Olguin, I am the Vice Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today on behalf of my Tribe, my people and Tribal council to provide testimony on S. 1684, the Indian Tribal Energy and Self-Determination Act Amendments.

We fully support S. 1684, especially its provisions regarding Tribal Energy Resource Agreements, or TERAs, which will be the focus of my comments today.

S. 1684 continues this Committee's commitment to support Tribal energy development. Over the years, you have worked on a number of legislative proposals to help us with our primary and ongoing concern, the delays and impediments to Tribal energy development caused by Federal bureaucracy.

With the price of natural gas at a one-fifth of what it was only four years ago, you can easily understand the impact that multi-year delays and the approval of rights of way and other energy-related transactions have had and continue to have on our Tribal economies. Because we are the largest employer in our region, these impacts are felt in the non-Tribal community as well. Despite our mutual efforts to solve this ongoing problem, these bureaucratic delays and their financial impacts continue. In 2002, we began work with your staff on a possible solution. Back then, our legal counsel wrote to your legal counsel about a possible alternative approach that would allow Tribes to elect to escape the Federal bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing Tribe will act prudently once cut free.

This proposal ultimately came to fruition in the Indian Tribal Energy Development and Self-Determination Act of 2005. That law gave Tribes authority to manage some of their own energy development transactions without Federal oversight, provided the Secretary of the Interior was satisfied that the Tribe had the capacity to do so.

As a precondition, the law required a Tribe and the Secretary of Interior to first establish a master agreement, or TERA. We continue to believe that this alternative approach is the right one. Unfortunately, no Tribe has yet entered a TERA to take advantage of the promise offered by the 2005 law. Each Tribe likely has its own reason for not pursuing a TERA, but we believe many concerns revolve around one, the lack of Federal funding for Tribes to assume additional duties under a TERA; two, the lack of clarity regarding what inherent trust functions would be retained by the Federal Government after entering a TERA; three, public input re-

quirements for Tribal processes; and four, the extensive capacity demonstrations required before a TERA could be entered.

S. 1684 would amend existing law regarding TERAs and while these amendments do not address all of the potential reasons for no TERAs, they expand the use of TERAs and their potential benefit for Indian Tribes. My written statement contains a detailed review of these complex provisions, but I would like to summarize a few of the most important changes S. 1684 would make.

First, S. 1684 would expand the ability of Tribes to demonstrate sufficient capacity to enter a TERA by including successful performance of other Federal 638 contracts as a basis for such demonstration. This expansion provides a straightforward and reasonable capacity requirement, in addition to those already allowed by existing law. S. 1684's amendments would provide a clear standard that we could easily meet.

Second, S. 1684 would broaden the types of activities that could be included in a TERA. For example, the bill includes the addition of transactions related to renewable energy facilities and clarifies that TERAs may extend to pooling and communications agreements affecting Indian energy minerals.

Third, the bill would allow for cost-sharing between the Secretary and a TERA Tribe, where the Tribe's TERA activities have resulted in cost savings to the Secretary. Last, the bill shortens the time frame for secretarial review and approval of a TERA, and would require that if the Secretary does not act upon a proposed TERA in 270 days, the TERA becomes effective on the 271st day.

Each of these amendments, as well as the other changes under S. 1684, would improve the chances that Southern Ute and other Tribes would enter TERAs. We continue to believe that the TERA alternative is the answer to the ongoing delays caused by inefficient and ineffective Federal processes. S. 1684 is another step toward making that alternative a reality, and we urge you to move forward.

Thank you for this opportunity and we are available to answer any questions.

[The prepared statement of Mr. Olguin follows:]

PREPARED STATEMENT OF HON. JAMES M. "MIKE" OLGUIN, VICE CHAIRMAN,
SOUTHERN UTE INDIAN TRIBAL COUNCIL

I. Introduction

Chairman Akaka, Vice Chairman Barrasso and distinguished members of the Committee, I am the Vice Chairman of the Southern Ute Indian Tribal Council, and it is my great honor to appear before you today on behalf of the Southern Ute Indian Tribe in support of S. 1684. Although this legislation was introduced approximately six months ago, we have been working closely with this Committee for more than three years in an effort to obtain legislation further empowering Indian Tribes to address energy needs and energy development opportunities. We were active participants in field hearings and legislative discussions that led former Chairman Dorgan to introduce S. 3752 in the summer of 2010. While that proposed legislation did not become law, it served as a key building block for S. 1684, which is before you today. Throughout the intervening years, Tribal leader after Tribal leader has come before you to express concerns about extreme needs in Indian Country, both for improved access to energy and for economic development for their constituents. Today we hope that members of the Committee will collectively determine that the needs of Indian Country merit passage of S. 1684.

The first purpose of our testimony is to take a step back and re-visit the underlying reasons that led to introduction of both S. 3752 in the 111th Congress and

S. 1684. Second, we believe it is important to review the factors leading to and the potential significance of Tribal Energy Resource Agreements (“TERAs”⁵) as an optional vehicle of Tribal self-determination. Third, we hope to show why suggested changes to Title V of the Energy Policy Act of 2005 are improvements that deserve your positive action.

For decades our leaders have had the privilege of working with this Committee and its staff. Even when differences on other political issues have divided Congress, this Committee has led the way in focusing on the needs of Indian Country and in attempting to craft solutions to those problems. We respectfully urge you to do so once again in passing S. 1684.

II. S. 3752 (111th Congress, 2d Session) and S. 1684

Because the process leading to S. 1684 has spanned such a considerable time and has included the introduction of two separate legislative measures addressing several of the same concerns, we believe it is worthwhile to review those two measures.

Investigative hearings before this Committee leading to introduction of S. 3752 addressed a number of critical problems that continue to exist today in Indian Country. First, the unacceptable, bureaucratic delays in federal approval of Indian mineral leases and drilling permits related to Indian mineral lands captured the attention of former Chairman Dorgan, whose own Tribal constituents watched their non-Indian neighbors get rich from mineral resource development, as Indian lands remained unleased and undrilled month after month while awaiting federal approval and permitting. The punitive effect of those delays on the poorest individuals and communities in the Nation clearly impressed this Committee as unjustifiable. A number of the provisions of S. 3752 attempted to reduce such administrative burdens through such measures as: mandated interagency coordination of planning and decisionmaking; regulatory waiver provisions; relief from land transaction appraisal requirements; and the elimination of fees assessed by Bureau of Land Management for applications for permits to drill on Indian lands.

Other testimony received by this Committee prior to the introduction of S. 3752 reflected frustration regarding barriers to capital, expertise and facilities needed for Tribes to proceed with alternative or renewable energy development. Again, the Committee attempted to address these concerns through a number of provisions including authorization for greater governmental technical assistance, reclassification of certain Tribal agricultural management practices as sustainable management practices under federal laws, treating Indian Tribes like State and municipal governments for preferential consideration of permits and licenses under the Federal Power Act hydroelectric provisions; expansion of the Indian Energy Loan Guaranty Program; and authorization for a Tribal biomass demonstration project.

In response to other evidence demonstrating inadequate access of many Indian communities to energy services and weatherization assistance, S. 3752 authorized the Secretary of Energy to establish at least 10 distributed energy demonstration projects to increase the availability of energy resources to Indian homes and community buildings. Special 638 contract funding provisions were put in place for energy efficiency activities associated with Tribal buildings and facilities. Section 305 of S. 3752 reflected a major revision of the Nation’s weatherization program by authorizing direct grants to Indian Tribes for weatherization activities.

S. 3752 also proposed significant revision of the Indian Land Consolidation Act to address practical problems in that act’s administration and substantial expansion of the durational provisions of the non-mineral, long-term business leasing provisions of 25 U.S.C. § 415(a).

While this brief summary can by no means do justice to the myriad of matters addressed in the specific provisions of S. 3752, it is fair to state that it touched a wide array of Indian-related programs involving Indian energy issues.

In contrast, the scope of S. 1684 is considerably more narrow than S. 3752. Nonetheless, S. 1684 does contain provisions that equate Tribes with States and municipalities for hydropower permits and licensing under the Federal Power Act [Sec. 201]. It also makes provision for biomass Tribal demonstration projects [Sec. 202] and would provide considerably more modest, indirect access to weatherization program funding [Sec. 203] for Indian communities. It also encourages Tribal energy resource development planning in coordination with the Department of Energy [Sec. 101]. It does not, however, address a number of matters contained in S. 3752, such as expansion of the Indian Energy Loan Guaranty Program, establishment of distributed energy demonstration projects, revision of the Indian Land Consolidation Act provisions, or expansion of the durational provisions of the non-mineral, long-term business leasing provisions of 25 U.S.C. § 415(a).

The differences in the two legislative measures in some measure reflect the apparent fiscal reality that increased authorizations for Indian programs will likely be

meaningless due to constrictions in appropriation funding. Perhaps the biggest single difference in the two legislative measures is the emphasis in S. 1684 on amending the TERA provisions initially established in the Title V of the Energy Policy Act of 2005. For reasons discussed in more detail below, those changes merit the Committee's support. We urge those members of the Committee who sponsored S. 3752, which our Tribe fully supported, not to abandon S. 1684 because of its narrower scope. S. 1684 is badly needed in Indian Country.

III. TERAs and the Balancing of Tribal Self-Determination and Secretarial Review

On August 8, 2005, the Energy Policy Act of 2005 became law. Title V of this voluminous legislation, known as the "Indian Tribal Energy Development and Self-Determination Act of 2005," amended Title XXVI of the Energy Policy Act of 1992. One of the key provisions of Title V was Section 2604 [25 U.S.C. § 3504], which created a mechanism pursuant to which electing Tribes might ultimately be allowed to grant energy-related leases, enter into energy-related business agreements, and issue rights-of-way for pipelines and electric transmission facilities without specific approval by the Secretary of the Interior, subject to certain durational limitations. As a pre-condition to such authorization, a Tribe and the Secretary of the Interior were first required to enter into a master agreement, or TERA, addressing the manner in which such a Tribe would process such energy-related agreements or instruments.

Although the TERA concept did not become law until 2005, its genesis before this Committee occurred several years earlier, and our files show that our former Chairman Howard Richards, Sr. formally requested support for similar legislation in 2003. Earlier correspondence confirms that we had the same concerns about federal trust administration then that we have now. A memo from our legal counsel to the Committee's legal counsel dated June 30, 2002 states:

The problems with Secretarial approval of Tribal business activities include an absence of available expertise within the agency to be helpful Some structural alternative is needed. The alternative should be an optional mechanism that allows Tribes to elect to escape the bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing Tribe will act prudently once cut free.

Much like the debates that surrounded passage of the Indian Mineral Development Act of 1982, the potential diminishment of the Secretary's role contemplated under a TERA caused considerable discussion before this Committee. We participated in those debates. Ultimately, with the encouragement of the National Congress of American Indians and the Council of Energy Resource Tribes, compromise was reached among this Nation's leaders on energy and Indian issues. Senator Bingaman and Senator Domenici and Senator Inouye and Senator Campbell reached agreements on a number of matters that paved the way for passage of this legislation in both houses of Congress. These legislative resolutions were reached only because of the overriding recognition that the system of Indian trust administration was broken and was condemning Indian people to an arbitrarily imposed future of impoverishment.

Despite the potential promise extended by Section 2604, no Tribe has yet entered into a TERA. We have spent considerable time asking ourselves why. Clearly, the inadequacies of federal trust supervision persist and show no signs of marked improvement. Given the years that we have invested in pushing for the TERA alternative, it is worth identifying some of the reasons why no Tribe has entered into a TERA. The following is a list of some of the reasons we have considered:

1. The regulations implementing Section 2604 diminished the scope of authority to be obtained by a TERA Tribe by eliminating and reserving "inherent federal functions," an undefined term that potentially rendered the act meaningless.
2. Unlike 93-638 contracting, Section 2604 provided no funding to Indian Tribes even though TERA contracting Tribes would be assuming duties and responsibilities of the United States.
3. One of the statutory conditions for a TERA, the establishment of Tribal environmental review processes requiring public comment, participation, and appellate rights with respect to specific Tribal energy projects, was an unacceptable opening of Tribal decisions to outside input and potential criticism.
4. Individual Tribes lacked the internal capacity to perform the oversight functions potentially contemplated in a TERA or standards for measuring Tribal capacity were vague or unclear.

5. The extensive process of applying for and obtaining a TERA was simply too consuming and distracting to merit disruption of ongoing Tribal governmental challenges.

Clearly, this list is not exhaustive. The tragic consequence of no TERAs and continued reliance upon federal supervision, however, has been the incredible lost opportunity to develop Indian energy resources during the period between 2005 and today. Those development opportunities were extended to non-Indian mineral owners throughout vast regions of the country, where no federal approval was required for leasing or development. If one considers that the price of natural gas in 2008 exceeded \$10 per mcf, and today is only one fifth of that price, those lost opportunities may not return for decades. We estimate that multi-year delays in approval of rights-of-way and drilling permits cost our Tribe more than \$90 million, and those practices are ongoing.

Our Tribe continues to believe that TERAs provide great potential as a vehicle for Tribal self-determination. We remain extremely frustrated with the federal administrative impediments to making simple decisions, such as granting rights-of-way across our lands. The federal system on our Reservation is getting worse, not better, and, increasingly, we are spending more time fighting with the BIA about nonsensical directives and conditions for obtaining federal approvals. This is true even though we are considered one of the most commercially advanced Tribes in the country, with operations in multiple states related to energy exploration and production, commercial real estate acquisition, real estate development, midstream gathering and treating, and private equity investment.

While S. 1684's provisions related to TERAs do not address all of the potential reasons listed above for no TERAs, they do eliminate some of those disincentives and also expand the use of TERAs for the benefit of Indian Tribes.

IV. TERA Provisions of S. 1684

The major proposed revisions to current law affecting TERAs are found in Section 103 of S. 1684. The proposed changes are technical in many cases and cannot be easily understood without a side-by-side comparison of the existing law. We fully support the changes, however, and hope that the Committee considers them favorably. Some key changes include the following:

First, Section 103 expands the scope of TERAs to include leases and business agreements related to facilities that produce electricity from renewable energy resources.

Second, clarifying amendments also confirm that TERAs may extend to pooling and communitization agreements affecting Indian energy minerals.

Third, Section 103 expands on existing law related to direct development of Tribal mineral resources when no third party is involved. Under existing law, because no federal approval for such activity is required, a Tribe may lawfully engage in such activity, but few Tribes have the capacity or internal expertise to do so directly. The expansion contemplated by Section 103 extends such an approval exemption to leases, business agreements and rights-of-way granted by a Tribe to a Tribal energy development organization in which the Tribe maintains a controlling interest. This provision expands the opportunity for access to capital for direct Tribal development without federal approval where the Tribe continues to control the activity.

Fourth, Section 103 would make a proposed TERA effective after 271 days following submittal unless disapproved by the Secretary and would shorten the time-period for review of TERA amendments.

Fifth, Section 103 provides for a favorable Tribal capacity determination based on a Tribe's performance of 93-638 contracts or self governance compacts over a three year period without material audit exceptions.

Sixth, Section 103 allows for TERA funding transfers to be negotiated between the Secretary and the Tribe based on cost savings occasioned by the Secretary as a result of a TERA.

Seventh, Section 103 confirms that TERA provisions are not intended to waive Tribal sovereign immunity.

While Section 103 includes other clarifying provisions, these constitute the major changes to TERA requirements found in Section 2604 of existing law. The changes improve the scope and clarity of current statutory provisions.

Conclusion

Individually and on behalf of the Southern Ute Indian Tribe, I hope that these comments have been instructive as to why we strongly support S. 1684. We respectfully request that you move forward with this legislation on behalf of Indian Country.

Senator BARRASSO. Thank you very much. I have a couple of questions, but perhaps we will go through the rest of the testimony then I will come back.

Mr. Hall, thank you for being here.

**STATEMENT OF HON. TEX "RED TIPPED ARROW" HALL,
CHAIRMAN, MANDAN, HIDATSA AND ARIKARA NATION, FORT
BERTHOLD RESERVATION**

Mr. HALL. Thank you, Mr. Vice Chairman Barrasso.

For the record, I am Tex "Red Tipped Arrow" Hall, the Tribal Chairman of the Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation in North Dakota.

I would like to just summarize my testimony verbally and give a little background about where we are with oil and gas development, and some recommendations on 1684, your bill, to improve the energy development and lessen the Federal obstacles that exist currently.

The fracking and the horizontal drilling is very integral to Fort Berthold. In 2008, we had zero wells. We were just getting into the leasing. We had a huge backlog. We were the guinea pig of the 49 steps of the Bureau of Indian Affairs, taking up to six months to a year to get a lease approved. So nobody has to tell us, no Federal agency has to sit here and tell us what it takes to go through those 49 steps.

I feel like a mouse or a rat in a maze, and when you hit one side you get kicked to the other side. You have to go 49 steps through those.

Then now we have an air permit requirement from EPA. And this was, this occurred, this mandate occurred without consultation in August of 2011. So now our permits were treated like public lands. These lands are set aside by our 1851 treaty, Mr. Chairman Barrasso. That treaty means these lands are set aside for the Indians at Mandan, Hidatsa, Arikara. They are not set aside for EPA or BLM.

So we don't appreciate being categorized into public lands. So when you are categorized into public lands, then our permits get under the Federal Register, so somebody in New York, Pennsylvania, who knows, Puerto Rico, can comment on our wells on Fort Berthold Reservation for me as an allottee to see if maybe I shouldn't get a well on my allottee farm or not. And now on top of that you have BLM trying to impose a fracking, another permit.

So we are used to these bureaucratic delays. We feel this additional requirement, and this has already gone to OMB, we just testified in the House this morning, Mr. Chairman, and the rule has been without consultation, it has already gone to OMB. So something needs to happen. We are not going to sit down and take it. This would cost our reservation \$132,010,000 a day, \$2 million for each well at an 18 percent royalty payout. That is at a minimum, if you own the entire thing, it is a lot more money.

So this is a serious issue that is not going away, because it has been sent to OMB. So we met with Senator Hoeven, Senator Conrad, Secretary Salazar and reiterated what kind of economic harm. We have 950 vendors that do subcontracting for the oil rigs, we have 22 active drilling rights. We have 450 rigs. We are 75 percent of the payout for all Indian Tribes in oil and gas right now at Fort Berthold, Mr. Chairman.

So this has a huge, huge impact on us. I am sure, like everybody else sitting here, it has that kind of impact for them at home.

But gain, for not having any kind of a consultation, and on top of that, that BLM official walked out on us after he gave his testimony this morning. I told Chairman Young he should be reprimanded. It is the first time I have seen BLM at the table, and they are talking about us and causing, we have almost 10,000 employees, 950 small businesses and \$132 million of potential economic and job loss at Fort Berthold. So this is not good for us.

And then in line with your bill, generally we endorse your bill. We would like your bill to go further and do more.

I do have one thing I want to mention, our tax agreement, Mr. Chairman. It is a lopsided tax agreement and I wish that your bill would address Tribes having the authority to impose our own taxation. Cotton Petroleum, the State takes 65 percent, they will take \$100 million from Fort Berthold Oil in 2012 and give us back \$2 million on State roads. I told Senator Akaka in the roads meeting earlier, I wouldn't be back here if we can fix that one item of the tax bill. That is the single most issue facing Fort Berthold today, is having to share a lopsided tax agreement.

And the last thing I will finish on is kind of crazy. But we have truck bombs. That is our latest law enforcement scare. You know what a truck bomb is, Mr. Chairman? Well, the truckers are now making between \$100,000 and \$135,000 at a minimum, a year. So the run 24/7, so they go to the bathroom in a Coke bottle and they throw the Coke bottle in a ditch. So when they come to clean the ditches and cut grass, those bottle explode. Nobody wants to clean the ditches in North Dakota any more.

So that is what our law enforcement has to deal with, the latest, is truck bombs.

It is a funny note to finish on, but again, generally we endorse and support 1684. We just would like it to go further. So I would be happy to answer any questions you may have later.

[The prepared statement of Mr. Hall follows:]

PREPARED STATEMENT OF HON. TEX "RED TIPPED ARROW" HALL, CHAIRMAN,
MANDAN, HIDATSA AND ARIKARA NATION, FORT BERTHOLD RESERVATION

Good afternoon Chairman Akaka, Vice Chairman Barrasso and Members of the Committee. My name is Tex Hall. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation). I am honored to present this testimony.

Introduction

The MHA Nation has long been working with both the Senate Committee on Indian Affairs and the House Subcommittee on Indian and Alaska Native Affairs in an effort to advance Indian energy legislation that would help Tribes unlock the potential of their energy resources and provide additional tools for Tribes to manage their energy resources. In the 110th and 111th Congresses, the MHA Nation was fortunate to participate and present testimony at two Indian energy hearings held by former Senator Dorgan. Senator Dorgan eventually introduced the "Indian En-

ergy Parity Act of 2010” which included a number of proposals supported by the MHA Nation.

In the current 112th Congress, the MHA Nation is again an active participant. In May of 2011, the Committee held a listening session on Senator Barrasso’s draft bill the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.” At that listening session Committee staff requested that Tribes submit proposals to overcome barriers to Indian energy development. On July 18, 2011, the MHA Nation submitted 31 legislative proposals to the Committee. I have attached these proposals to my testimony so that they will be a part of the Committee hearing record.*

The MHA Nation also testified before the House Subcommittee in April of 2011 as a part of an Indian Energy Oversight Hearing, in February 15, 2012, on Chairman Young’s “Native American Energy Act,” H.R. 3973, and again this morning on the Bureau of Land Management’s (BLM) proposed regulation of hydraulic fracturing activities. We also attended this Committee’s oversight hearing on “Energy Development in Indian Country” held in February 2012.

The MHA Nation has a strong interest in these proceedings because our lands are currently in the middle of the most active oil and gas play in the United States. As you know, the Fort Berthold Reservation is located in the heart of the Bakken Formation, which is the largest continuous oil accumulation in the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of oil.

In the last four years, energy development in and around the Reservation has exploded and we have struggled with the federal bureaucracy for every single oil and gas permit. We now have about 250 wells in production on the Reservation and the MHA Nation and Fort Berthold Allottees have earned about \$182 million in oil and gas royalties. In addition, we have 905 vendors providing services directly to the oil and gas industry. Each of those vendors employs between 4 and 24 people. Based on an average employment of 12 jobs per company, that is in excess of 10,000 jobs.

In 2012, we expect more wells to be drilled on the Reservation than were drilled in the first four years combined. In 2013, we expect another 300 wells to be drilled. This energy development will result in hundreds of millions in royalty payments and economic activity and provide the MHA Nation with a substantial opportunity to fund government operations, and ensure that our members can heat their homes and provide for their families.

MHA Nation is actively promoting the development of our energy resources and seeking every opportunity to be an active developer of our resources, not just a passive lessor. However, the MHA Nation continues to work on many of the same barriers to Indian energy development that we started working on four years ago. The agencies and the issues change, but we are still trying overcome outdated laws and regulations, bureaucratic regulatory and permitting processes, and insufficient federal staffing or expertise to implement those processes.

Of all of these challenges, the biggest issue we face is the inequitable division of tax revenues with the State of North Dakota. Under current law, states can tax energy companies on Reservation lands. To avoid double state and Tribal taxation and promote energy development on the Reservation, the MHA Nation was forced into an unfair tax agreement with the State.

About four years later, the State has a \$1 billion budget surplus and created a \$1.2 billion trust fund for infrastructure needs. The MHA Nation has roads that need fixing now. Our tax revenues should not go to a State investment account. State Governor Dalrymple said that infrastructure is his number one priority to promote growth and manage impacts on our communities. Apparently, this does not include Tribal communities. In 2011, the State collected more than \$60 million in taxes from energy development on the Reservation, but spent less than \$2 million for infrastructure on the Reservation. In 2012, projections are that the State will make nearly \$100 million in tax revenues from oil and gas development on the Reservation.

Because of these state taxes, we cannot raise enough of our own tax revenue to provide the infrastructure needed to support and regulate the growing energy industry. Under the tax agreement, the State has been receiving about 60 percent of the revenues and the MHA Nation is receiving about 40 percent. However, about 60 percent of the total tax revenue collected under the agreement comes from lands held in trust for the MHA Nation and its members and only 40 from privately owned land fee lands within the Reservation. This is a windfall for the State! In addition, it is important to note that, 100 percent of the development covered by the tax agreement and the impacts are occurring on the Reservation.

*The information referred to has been retained in the Committee files.

We need Congress to affirm the exclusive authority of Tribes raise tax revenues on the Reservation so that we can rely on the same revenues that state governments use to maintain infrastructure and support economic activity. The MHA Nation needs to maintain roads so that heavy equipment can reach drilling locations, but also so that our Tribal members can safely get to school or work. We also need to provide increased law enforcement to protect Tribal members and the growing population of oil workers. And, we need to develop Tribal codes and employ Tribal staff to regulate activities on the Reservation. Below are two pictures of the tremendous toll energy development is taken on our Reservation roads.





It is with this background that the MHA Nation assesses whether the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011” or S. 1684 will advance the development of Indian energy resources. If Indian Tribes are going to unlock the potential of their energy resources, we need real changes in the law. Changes that affirm Tribal authority, provide Tribes access to funding and financing opportunities, and allow Tribes to participate in federal energy programs that have overlooked Tribes for decades.

MHA Nation Views on S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011

In general, the MHA Nation supports S. 1684, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.” There are only a few problems with some of the provisions in S. 1684. The biggest problem is what is *not* in the bill. S. 1684 barely scratches the surface of outdated laws and regulations, bureaucratic regulatory and permitting processes and insufficient federal staffing or expertise to implement those processes. While we appreciate the effort made to improve these areas of law, much more needs to be done.

In the last two Congresses, former Senator Dorgan spent three years holding hearings and consulting with Indian Tribes in the development of Indian energy legislation. Senator Dorgan’s bill was introduced in August 2010 as the “Indian Energy Parity Act of 2010.” This bill contained a variety of new tools, programs and authorities that were designed to help Tribes at any stage in the energy development process. In addition, Senator Dorgan developed a draft Indian Energy Tax Act to address issues in tax law that can make or break an Indian energy project.

A few of former Senator Dorgan’s proposals found their way into S. 1684, but most are more limited versions. I ask that the Committee go back and reconsider these proposals for inclusion in S. 1684. I also ask that the Committee look across Capitol Hill to Congressman Don Young’s H.R. 3973, the “Native American Energy Act.” Combining all four of these bills, S. 1684, H.R. 3973, the “Indian Energy Parity Act of 2010,” and the draft “Indian Energy Tax Act,” would bring to the table much of what is needed to bring Indian energy law into modern times.

S. 1684 would provide some of what is needed and the MHA Nation supports much of what is in the bill. S. 1684 is focused on making changes to the Tribal Energy Resource Agreement (TERA) program that was authorized by Title V of the Energy Policy Act of 2005. The primary benefit of a TERA is to enable a Tribe to enter into leases and rights-of-way without Secretarial approval. A TERA would allow a

Tribe to gain greater control over the multiple approvals needed for oil and gas development.

The changes in S. 1684 are needed changes as I understand that no Tribe has utilized the TERA program since it was created. S. 1684 would make the TERA application process more certain, allow a new category of Tribes to exercise partial TERA authority, attempt to clarify the Federal Government's trust responsibility in relation to a TERA, and provide a potential funding source for Tribes to run TERA programs.

MHA Nation and the oil and gas development on our Reservation could benefit from these proposed changes to the TERA program. Oil and gas development is permitting intensive and we are constantly struggling with the Federal Government's bureaucratic permitting processes. The proposed changes to the TERA program would make it possible for MHA Nation to take over the oil and gas permitting process from the Secretary, or to greatly streamline the permitting process by creating a Tribally owned energy company to develop our energy resources. The changes in S. 1684 might also provide some funding from the Department of the Interior (DOI) to help support the increased responsibilities we would be assuming.

In addition to these changes, I ask that the Committee consider a few more changes to the TERA program. First, MHA Nation would be in a better position to take over the oil and gas permitting process from DOI and establish its own energy company if S. 1684 provided more reliable source of funding than annual funding agreements with DOI. To help make the changes proposed in S. 1684 a reality for the MHA Nation and other Tribes, S. 1684 should also affirm the exclusive authority of Indian Tribes to tax energy activities on our lands. As I mentioned above, Tribal governments need access to the same tax revenues that other governments rely on to support energy and economic development. If the state or local governments provide any services on the Reservation in support of this energy and economic development, then the law could provide for fair reimbursement by Tribes for state and local services.

Second, to help make the TERA application process even more certain, S. 1684 should include a one-revision limit on a TERA application. In response to an initial application, DOI should get one bite at the apple in requesting revisions. If DOI requires any additional changes beyond this first round, DOI should have to show cause for why such changes were not requested the first time, and Tribes should be able to appeal any DOI requests to revise the same application multiple times.

Finally, the MHA Nation appreciates S. 1684's new language that would help clarify the Secretary of the Interior's trust responsibility in relation to leases and agreements made under a TERA. S. 1684 should also include an additional requirement for the Secretary to further consult with Tribes on the effect of a TERA on the Secretary's trust responsibility. The Secretary should then be required to ensure that the results of this consultation are included in the regulations for implementing the TERA program. The trust responsibility is an expression of the government-to-government treaty relationship between Indian Tribes and the Federal Government. When laws like the TERA program are enacted, we should all fully discuss and understand any consequences.

S. 1684 includes a variety of other changes and initiatives that the MHA Nation also supports. In some cases, we ask that the Committee revise these proposals to make them more likely to benefit Indian energy development. First, the MHA Nation supports a legislative directive for the Secretary to include Tribes in well-spacing decisions. As a part of the Coalition of Large Tribes, the MHA Nation is seeking this same change administratively.

Second, we support changes in S. 1684 that would make it more likely that the Department of Energy (DOE) would implement its long overdue Indian Energy Loan Guarantee Program. However, the language in S. 1684 falls short of requiring the Secretary of Energy to implement this program as was required for DOE's Title XVII, Energy Innovations Loan Guarantee Program. DOE should be required to offer loan guarantees to Indian Tribes. Indian energy loan guarantees are likely to be more successful than the Title XVII program because of the vast unlocked potential of Indian energy resources. As an example, DOI is already running a successful Indian loan guarantee program but it lacks the budget to fund expensive energy projects.

Finally, the MHA Nation supports changes in S. 1684 that would allow Tribes to apply for direct weatherization funding from DOE. However, S. 1684 only goes halfway to solving the problem. Allowing Tribes to simply apply for direct funding is an important change, but Indian Tribes need a weatherization program that is tailored to Indian Country.

The MHA Nation included needed changes to DOE's weatherization program in its legislative proposals. In addition to direct funding, DOE should reduce reporting

requirements for Indian Tribes, use weatherization standards that reflect the status of housing in Indian Country, and provide training for energy auditors in Indian Country. The weatherization program is a low-income program and its funding should go to those that need it most—in Indian Country poverty rates are two and half times the national average.

The decades old weatherization program and its management by DOE is an affront to the Federal Government's trust responsibility and DOE's own "American Indian Tribal Government Interactions and Policy." Funding intended, in part, for the members of Indian Tribes should not be distributed through state governments who then distribute the funding through state non-profits. Regardless of whether this legislation is passed by Congress, DOE should immediately reform its weatherization program consistent with federal trust responsibilities.

MHA Nation Proposals that Should be Included in any Indian Energy Legislation

The MHA Nation asks that the Committee review the legislative proposals submitted by the MHA Nation and other Indian energy legislation to increase the scope and benefits that S. 1684 would provide. If Indian Tribes are going to unlock the potential of their energy resources and provided needed domestic energy supplies, we need real changes in the law. Changes that affirm Tribal authority, provide Tribes access to funding and financing opportunities, and allow Tribes to participate in federal energy programs that have overlooked Tribes for decades. Below we highlight some of the most important changes needed in law.

First, similar to Congressman Don Young's bill, H.R. 3973, the Committee should include authority for establishing Indian Energy Development Offices in areas of high energy demand. These "one-stop shops" would encourage the hiring of staff with energy expertise by the Bureau of Indian Affairs (BIA) and promote communication and efficiency among the DOI agencies that are involved in energy permitting on Indian lands. While MHA already has a virtual "one-stop shop," this provision would make the office permanent in law. As former Senator Dorgan reported, the one-stop shop increased permitting on the Fort Berthold Reservation by four times.

Second, the Committee should prohibit the Bureau of Land Management (BLM) from applying regulations developed for public lands to Indian lands. Indian lands are not public lands, yet the Bureau of Land Management has been incorrectly using its authority under the Federal Land Policy and Management Act of 1976 to regulate activities on Indian lands. In the most recent example, the BLM is developing regulations for hydraulic fracturing activities for public lands and intends to apply those regulations to Indian lands. The proposed regulations would eliminate much of the oil and gas development the MHA Nation has been working so hard to establish. Indian lands are for the use and benefit of Indian Tribes and the Committee should develop legislation that either precludes BLM from exercising authority on Indian lands, or require that BLM develop regulations consistent with its trust responsibility to Indian Tribes and not public interest standards.

Third, the Committee should prohibit the Environmental Protection Agency (EPA) from implementing its new synthetic minor source rule for two years to ensure appropriate staffing is in place to administer any new permitting requirements. Energy development on the Fort Berthold Reservation is already limited by layers of bureaucratic federal oversight and federal agencies that are too short-staffed to manage existing requirements. EPA should be prohibited from implementing this new rule, or any new rule, until it can prove that it has the staff resources in place.

Fourth, as described above, S. 1684 should affirm that Tribes have exclusive authority to raise taxes from activities on Indian lands. Because federal courts have allowed other governments to tax energy development on Indian lands, Tribes are unable to impose their own taxes or can only impose partial taxes. Without tax revenues, Tribal infrastructure, law enforcement, and social services cannot keep up with the burdens imposed by increased energy development. This authority is essential for Tribal governments to exercise self-determination over our energy resources. We cannot be asked to take over more responsibilities for the Federal Government without the ability to raise the revenues needed to support those responsibilities.

Fifth, we also need to clarify Tribal jurisdiction over Reservation activities and any rights-of-way granted by an Indian Tribe. Courts have created uncertainty in the law and this uncertainty is yet another disincentive to the energy business.

Sixth, the Committee should develop legislation to expand and clarify the "Buy Indian Act," 25 U.S.C. § 47. As a part of its government-to-government and trust relationship to Indian Tribes, the Federal Government should be required to purchase Tribally produced or owned energy resources. As an example, the MHA Nation is

developing an oil refinery that could supply federal agencies and the Defense Department with Tribally produced and owned domestic energy supplies.

Seventh, S. 1684 should address delays in payments of oil and gas royalties due to approval of Communitization Agreements. Under current law, royalties are due within 30 days of the first month of production. However, without any authority, the BLM has allowed royalty payments to be delayed for months and years pending the approval of Communitization Agreements. This violation of the law cannot be allowed to continue.

Where feasible, S. 1684 should require Communitization Agreements to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account.

Eighth, S. 1684 should eliminate BLM oil and gas fees on Indian lands. BLM fees for oil and gas activities on Indian lands create additional disincentives for development on Indian lands and in the case of shallow wells may make development uneconomical. In addition, where an Indian Tribe is seeking to develop its own resources, BLM should not charge Tribes to carry out its trust responsibilities to the Tribe. We included a legislative proposal that would prohibit BLM from charging fees for oil and gas activities on Indian trust and restricted fee lands, including fees for: (1) applications for permits to drill; (2) fees for oil and gas inspections; and, (3) fees for non-producing acreage.

Ninth, S. 1684 should create a low sulfur diesel tax credit for Tribal refineries. This credit would be in addition to the existing credit for small business refiners. This legislation would retain the 1,500 employee cap and 5 cents per gallon credit, but remove the barrel and time limits, and provide that the credit may be sold for equity.

Finally, in addition to the weatherization program discussed above, S. 1684 should open the doors of DOE's energy efficiency programs to Indian Tribes. Despite a longstanding state program, there are no ongoing programs to support Tribal energy efficiency efforts. DOE should allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian Tribes interested in conducting energy efficiency activities for their lands and buildings.

The MHA Nation has included in its legislative proposals a Tribal energy efficiency program that is modeled after the successful Energy Efficiency Block Grant (EEBG) program. Despite its success, the EEBG program was only funded one time—under the American Reinvestment and Recovery Act of 2009. To ensure an ongoing source of funding for Tribal energy efficiency efforts, Tribes should be provided a portion of the funding for state energy efficiency efforts.

Conclusion

I want to thank Chairman Akaka, Vice Chairman Barrasso and the members of the Committee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources. We ask that you consider legislation to address many of the issues we have described.

Senator BARRASSO. Thank you very much, Mr. Hall.

We are joined by two Senators, Senator Franken of Minnesota and Senator Conrad of North Dakota. Since we have just heard from a member from North Dakota, perhaps you might want to make some opening comments and then Senator Franken, if you wouldn't mind, after Senator Conrad. Then we will go and pick up with Mr. Finely if you would like.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. I thank the Senator for his courtesy, and I thank the Senator from Minnesota for his courtesy as well.

I just want to say very briefly how delighted we are to have Chairman Hall here, how delighted we are that his health is recovering after a very serious health scare. Chairman Hall is somebody who has provided leadership not only in North Dakota, but across the Country. We deeply appreciate the extraordinary leadership he

has provided. He has become somebody that is a trusted friend and somebody who has enormous credibility on the national stage as well as in the State of North Dakota.

So welcome to Washington. I am so glad that you are here, so glad that you are feeling better. And so glad that you dodged a really tough bullet.

Senator BARRASSO. Thank you, Senator.
Senator Franken?

**STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. I think this is a very, very important hearing. I thank the Vice Chairman for calling this and for writing an Indian energy bill. I think there may be some more things that we can do, but I commend the Chairman for that.

And I just really believe that there is tremendous potential for economic development in Indian Country. I look forward to your testimony and look forward to asking some questions. Thank you.

Senator BARRASSO. Thank you, Senator.
Mr. Finley?

**STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN,
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

Mr. FINLEY. Good afternoon, Vice Chairman Barrasso.

I want to thank the Committee for holding this hearing today, as well as being a part of this distinguished panel. I share the words that were shared earlier, that we are happy to have Mr. Hall among us today. We are happy to see that he is having a speedy recovery. He is truly a powerhouse in Indian Country and I am always happy to serve next to him. So thank you.

Today my testimony will focus on Section 202 of Senate Bill 1684, as introduced. Section 202 is of particular interest to the Colville Tribes because of our historic background and natural resources, particularly forest products and the logging industry. Starting back in 2008, with the downturn in the market, we felt a tremendous impact on Colville, because historically, our economy was driven by forest products. As a result, we were forced to shut down our two mills that our corporations operated underneath the Colville business council.

As a result of that, the majority of our people went into unemployment and have been there since. Colville Tribes is the largest employer in North Central Washington State. But at the same time, we have some of the highest levels of unemployment on the reservation. We have a membership base of 9,400, of which about half live on or near the reservation. So our members rely heavily on the jobs that our Tribe creates for them.

And because many of the people, many of our working class members, their number one trade is logging or forest products-derived employment, they rely on us to keep these jobs going. Because our land base consists of 660,000 acres of commercial timber property, being the stewards of the lands as we always have been, we take great pride in making sure that our forest's health is up to par and that we manage it in a sustainable fashion.

But with the downturn in the market, it has left us very little money to move forward with some of these efforts. And Section 202 would allow for us to build a greater capacity for a project that we want to do, which is a woody biomass project, which this provision is meant to help promote.

And in doing this, we originally were going to try to do this underneath the Tribal Forest Protection Act. But because of some of the limitations and because of some of it being unknown to many of the Forest Service entities throughout the United States, you see that there are very few Tribes that have actually taken advantage of it. So this would actually be an amendment to that.

And we were hoping that we would get more longevity out of a potential contract that could come from it, whether or not the Secretary is granted that authority. This in itself would give us the ability to approach financial institutions who want to go into business with the Colville Tribes to fund such a grandiose project. We were looking at a project that would cost about \$150 million. It would be a 40 megawatt woody biomass plant.

But because of all the excess material that we have on Colville, in the past we have previously burned it because we had no other place to take it. If this project were to move forward, we would then have a place to take this excess material and actually create energy with it.

For us, it is right in line with our traditional thinking. It is going green, it is a sustainable plan. But without the ability to go into a contract with the Federal Forest Service to the north of our reservation, we would have to downscale that project to a smaller plant.

But looking outside of that, there are other reasons why we would want to do this. We have the forest health issues that, as I mentioned earlier, there is a fear of wildfire and some of the spruce bud epidemics moving south from the north of our reservation. We are starting to see a little bit of that right now within our forest. We have concern over that.

With the recent settlements that have taken place, Colville included, we have a large sum of money to start to address some of our forest health concerns that have been epidemic over the years. We have a huge problem with an abundance of Douglas fir that currently exists within our forest. Historically and traditionally, it has always been primarily Ponderosa pine.

So our intent with some of that money is to send our people out in the forest and to overturn that, and get some of that Douglas Fir, that smaller size Douglas Fir, out. But there always isn't a market out there for it. So our intent is to get some of that to this plant, if and when it does move forward.

But as I stated earlier, and I cannot stress enough that we need that excess material off the Forest Service lands, as well as to create more of a healthy forest there. We believe that with our integrated resources management plan, which we go by, it is a sustainable plan, that we can do that better than the Federal entity. Because let's face it, a lot of times there isn't enough money appropriated for them to even properly manage their forest to begin with.

And I have to agree with my counterpart, Tex Hall, that it troubles us to have people that aren't even from our area commenting on these little projects that we are trying to do that are ultimately going to be to the benefit of not just the Colville Tribes, but to all the U.S. citizens that live in that area. Because those forests need to be managed in a sustainable fashion, and presently they are not. Our intent is to use that excess material for the benefit of everybody and to create more energy and to create jobs for our people who, daily I am getting emails and phone calls asking when they are going to be put back to work. As their leader, I need to ensure that they have something that they can rely on to feed their families.

With that, you have my testimony and I stand for questions. Thank you.

[The prepared statement of Mr. Finley follows:]

PREPARED STATEMENT OF HON. MICHAEL O. FINLEY, CHAIRMAN, CONFEDERATED
TRIBES OF THE COLVILLE RESERVATION

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 de-

velopment 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.

Senator BARRASSO. Mr. Finley, thank you. Thank you for being here.

Ms. Cuch?

STATEMENT OF HON. IRENE C. CUCH, CHAIRWOMAN, UTE TRIBAL BUSINESS COMMITTEE

Ms. CUCH. Good afternoon, Vice Chairman Barrasso and members of the Committee.

My name is Irene Cuch. I am the Chairwoman of the Ute Indian Tribe. Thank you for the opportunity to testify today.

Before I go any further, I would like to introduce some of my people who came with me. I would like to introduce Manuel Myore, who is the Director of our Energy and Minerals Department. He is sitting back there. Also Rose Taveapont, Oil and Gas Landman. And Rollie Wilson, our Tribal attorney.

Senator BARRASSO. Thank you. Welcome to the Committee.

Ms. CUCH. The Tribe is a major oil and gas producer. Production of oil and gas began on our reservation in the 1940s and has been ongoing for 70 years. We have 7,000 wells that produce about 45,000 barrels of oil a day, and we produce about 900 million cubic feet of gas per day. This energy development is a primary source of funding for our Tribal Government and the services we provide to our members.

The Tribe also invests in businesses and is an engine for economic growth. One of the Tribe's businesses is Ute Energy and Oil and Gas Development Company. We recently approved plans for Ute Energy to become a publicly-traded company. With this investment, improvements to the oil and gas permitting process are vital to our long-term success.

The best example of the need for improvements comes from the oil and gas companies themselves. They tell us that interior permitting process is the single biggest risk factor in their operations. We take this issue very seriously, because the number of permits

that Interior is able to process is directly related to the funding the Tribe has to serve its members.

As you may know, oil and gas development is dependent on drilling rigs. Drilling rigs are expensive equipment that move from site to site, creating wells. On our reservation, a rig can drill about 20 wells a year. In the first year, the Tribe will earn about \$16 million from those 20 wells. Over the life of those wells, we earn about \$82 million. Every time a drilling rig leaves the reservation because of permitting delays and does not come back, the Tribe loses \$16 million in short-term and \$82 million in the long term.

The Tribe has made a lot of progress, but our ability to fully benefit from our resources is limited by the agencies overseeing energy development on the reservation. We cannot forget that every single well on our reservation began with a permit that had to make its way through a bureaucratic maze of 49 steps involving at least four understaffed Federal agencies.

To promote Indian energy development and increase domestic production we need Congress to provide funding for BIA, BLM, and other agencies to hire more staff with energy expertise. The BIA has dozens of people who can approve a grazing lease. We need people who understand energy resources and keep up with the pace of energy development.

In the rest of my testimony I will focus on specific sections of S. 1684 and highlight some of the Tribe's 32 proposals that should be included in the bill. The Tribe supports the bill and believes it is a good start. In particular, changes to the TERA program will benefit the Tribe.

We strongly support providing Tribes with demonstrated experience. The authority to approve agreements with Tribal energy development organizations. This change would promote Tribal self-determination over our energy resources and allow us to avoid understaffed and bureaucratic agencies. We would be free to develop our own processes for approving agreement with Tribally-owned companies.

We also strongly support requiring the Secretary to make funds available to Tribes who take over permitting. If Tribes are going to take over Federal responsibilities, then the government must provide adequate funding. In addition to any funding that may be available, Tribal self-determination would be better advanced if Congress affirmed Tribes' exclusive authority to tax activities on Indian lands. Managing energy resources and providing infrastructure is an expensive undertaking for any government. A Tribe needs the same authority and revenue set as a government relies on to support energy development.

We support the bill's effort to include Tribes in well spacing decisions, implement DOE's loan guarantee program, provide Tribes the same hydropower preference as any other government, and allow Tribes to seek weatherization funding directly. However, for many of these, the bill only goes halfway. We need real changes in the law.

First, DOE must be required to provide energy loan guarantees the same as DOE's Title 17 loan guarantee program. This is needed because financing energy projects is one of the most significant barriers Tribes face.

Second, the bill's limitations on Tribal hydropower preferences are not necessary. Existing laws already protect previously issued permits and encourage competition for licenses.

Third, DOE weatherization program should be further modified so that it will work in Indian Country. We need Tribally-based standards and training for energy auditors.

Finally, I ask that you review the Tribe's 32 legislative proposals and expand the bill to address more of the barriers that Tribes face in developing and managing our energy resources. In particular, I ask that you support the creation of an Indian energy development office to improve energy permitting. Former Senator Dorgan called these one stop shops. There are three one stop shops already in Indian Country. Senator Dorgan reported that the one stop shop on Fort Berthold Reservation helped to increase oil and gas permit approvals by four times.

On our reservation, we need ten times as many permits to be approved, currently about 48 permits are approved each year. We estimate that about 400 permits will be needed each year as we expand our investment. The Tribe believes that one stop shop is the best way to get the agencies to hire energy staff, and working together to manage the high level of permitting needed on our reservation.

I would like to thank the Committee for the opportunity to present this testimony. The Tribe is ready to work to find ways to eliminate barriers to Indian energy development. The current barriers have direct effect on the Tribe's revenues, our ability to invest in the future and the services we provide to our members, our children and grandchildren.

Towaok, thank you.

[The prepared statement of Ms. Cuch follows:]

PREPARED STATEMENT OF HON. IRENE C. CUCH, CHAIRWOMAN, UTE TRIBAL
BUSINESS COMMITTEE

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs, my name is Irene Cuch. I am the Chairwoman of the Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. Our Reservation is located in northeastern Utah. Thank you for the opportunity to testify on S. 1684, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011."

I. Introduction

The Ute Indian Tribe is a major oil and gas producer in the United States. Production of oil and gas began on the Reservation in the 1940's and has been ongoing for the past 70 years with significant periods of expansion. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per day. And, we have plans for expansion. The Tribe is currently in process of opening up an additional 150,000 acres to mineral leases on the Reservation with an \$80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our Tribal government and the services we provide. We use these revenues to govern and provide services on the second largest reservations in the United States. Our Reservation covers more than 4.5 million acres and we have 3,175 members living on the Reservation.

Our Tribal government provides services to our members and manages the Reservation through 60 Tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine

for economic growth in northeastern Utah. Tribal businesses include a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water Services LLC, and Ute Energy LLC. Our governmental programs and Tribal enterprises employ 450 people, 75 percent of whom are Tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources as a majority owner of Ute Energy LLC which has an annual capital budget of \$216 million. In addition to numerous oil and gas wells, Ute Energy teamed with the Anadarko Petroleum Corporation to establish and jointly own the Chipeta gas processing and delivery plant in the Uintah Basin. The Tribe recently approved plans for Ute Energy to become a publically traded company. This investment will allow us to expand our energy development and increase revenues.

Despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. As former Senator Dorgan highlighted, a single oil and gas permit must make its way through a bureaucratic 49 step maze to be approved. This process involves at least 4 routinely understaffed federal agencies.

The Tribe estimates that an oil and gas permit could be processed through these steps in about 60 to 90 days. That is about how long it takes a permit to be approved on the Fort Berthold Reservation in North Dakota, where the Department of the Interior (DOI) utilizes a "virtual one-stop shop" to oversee and streamline permitting. On our Reservation, a typical permit can take about 480 days to be processed—more than one year.

The Tribe takes delays in the permitting process seriously because the number of permits approved is directly related to the revenues the Tribe has available to fund our government and provide services to our members. For example, the Tribe understands that oil and gas companies operating on the Reservation are currently limiting operations based on the number of permits the agencies are able to process. In particular, companies are limiting the number of drilling rigs they are willing to operate on the Reservation.

Drilling rigs are expensive operations that move from site to site to drill new wells. Oil and gas companies often contract for the use of drilling rigs. Any time a drilling rig is not actively drilling a new well, it amounts to an unwanted expense. Consequently, oil and gas companies will only employ as many drilling rigs as permit processing will support. On our Reservation, the Tribe understands that some oil and gas companies who are currently using one drilling rig would increase their operations to three drilling rigs if permit processing could support this increase.

One example of this is the Anadarko Petroleum Corporation's operations on the Reservation. Anadarko reported that it needed 23 well locations approved per month in 2011 and beyond, but in 2010, their permits were approved at a rate of 1.7 per month. Anadarko informed the Tribe that unpredictable approvals of permits forces the company to alter its operational plans at the last minute and often results in the company temporarily moving its operations off the Reservation to state and private lands. With consistent and reliable permit approvals, the Tribe is hopeful additional drilling rigs will move on to Tribal lands and increase the revenues available for the Tribal government, our members, and our investments.

To improve the permitting process, the Tribe has been directly seeking legislative and administrative improvements to the permitting process for oil and gas development on Indian lands. The Tribe is working with the Administration on its own and as a part of the Coalition of Large Tribes (COLT) to improve the oil and gas permitting process. The Tribe hosted tours of oil and gas development on the Reservation for government officials, attended meetings with high ranking Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM) officials, and is planning energy summits and conferences to work collaboratively with other Tribes and industry partners in seeking improvements to the permitting process.

The Tribe is also working directly with Congress to improve the permitting process. In the 111th Congress and the current Congress, the Tribe participated in the development of Indian energy legislation to help resolve these permitting issues. In the current Congress, the Tribe attended two listening sessions on a draft of S. 1684. At these listening sessions, Committee staff asked Tribes to submit legislative ideas that would facilitate Indian energy development. In response, the Ute Indian Tribe developed 32 legislative proposals to overcome barriers and improve the management of Indian energy resources. These proposals were submitted to the Committee in July 2011. In February 2012, the Committee held an oversight hearing

on Indian energy development. The Tribe attended that hearing and submitted extensive testimony for the hearing record.

Today, the Tribe is again providing testimony on needed legislative changes. My testimony will focus on the specific sections of S. 1684. I will also highlight some of the Tribe's 32 legislative proposals that need to be included in S. 1684 to further improve the permitting process and provide additional tools for Indian Tribes to manage their energy resources. For your convenience, I have attached the Tribe's 32 legislative proposals to my testimony.*

II. S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011

The Tribe supports S. 1684 and believes that it is a good start. S. 1684 would amend existing laws to provide Tribes with improved opportunities to manage their own energy resources. However, S. 1684 only addresses a few areas of the law. On its own, the Tribe came up with 32 areas of law that need revision. Much more needs to be done to overcome barriers Tribes face in Indian energy development and to put Tribes on an equal playing field with state governments and other energy developers. Before discussing what else is needed, below I specifically discuss the substantive sections of S. 1684.

A. Section 101. Indian Tribal Energy Resource Development

The Tribe supports the amendments proposed in Section 101, but, in at least one case, more is necessary. First, this section would require the Secretary to consult an Indian Tribe when adopting or approving an oil and gas well-spacing program or plan on the Tribe's lands. This proposal was among the 32 legislative proposals submitted by the Tribe. For too long the BLM, on behalf of the Secretary, has approved well-spacing plans on Indian lands without involving Tribes. Tribes should be involved in this decisionmaking process to ensure that Indian lands are being developed efficiently, that protected areas are avoided, and to ensure that Tribes have every opportunity to work closely with their industry partners.

Over the past year, the Tribe has been working as a part of COLT to seek an administrative change from the BLM on the issue of well-spacing. BLM officials in attendance at these meetings have been supportive of including Tribes in well-spacing decisions, but the BLM has yet to issue any sort of policy directive to ensure that Tribes are included. By making this change legislatively, the Congress would advance an issue that the Tribe and COLT has been seeking for almost a year, and which appears to have the support of the Administration.

Second, Section 101 also extends important planning authority to the Secretary of the Interior. When the Energy Policy Act of 2005 was passed, two Indian energy offices were created—one in the DOI and one in the Department of Energy (DOE). The DOE office was provided specific authority to assist Tribes in overall energy planning. The DOI office was not provided similar authority.

Both offices need this specific planning authority. Federal energy policy has long overlooked or ignored Tribes. Today Tribes are catching up quickly and need the same or similar federal assistance that states rely on to manage their energy resources. In addition, Congress must support this statutory authority with needed appropriations to help Tribes overcome decades of neglect by federal energy policy makers.

Third, Section 101 would require the Secretary of Energy to develop regulations for a long-overdue Indian energy loan guarantee program that was originally authorized in 2005 but never implemented. The Tribe believes that developing regulations would go a long way toward implementing the program and ensuring needed appropriations from Congress, but more is needed.

The law also needed to be changed to actually require the Secretary of Energy to provide these loan guarantees. Current law only states that the Secretary "may" provide guarantees. Making the program mandatory would provide the Indian energy loan guarantee program with the same authority provided to the Title XVII loan guarantee program which was authorized at the same time for energy innovations. Under the Title XVII program, the law stated that the Secretary "shall" provide guarantees.

We need similar energy innovations on Indian lands and we need similar laws to require that they be implemented. The Tribe specifically included this recommendation among its 32 legislative proposals because financing expensive energy projects is one of the most significant barriers to Indian energy development. Providing Tribes with the opportunity to secure government backed financing would promote Tribal self-determination in the development of energy resources because Tribes

*The information referred to has been retained in the Committee files.

would have the opportunity to be the owners of their development companies rather than relying on others to develop Tribal resources.

DOI currently manages a successful Indian loan guarantee program for Tribal businesses, but it lacks the budget for more expensive energy projects. Tribes need the level of funding proposed by the DOE loan guarantee program to cover the investment needed for energy projects. With this level of funding Tribes will be encouraged to be owners of their own energy projects and vast untapped Tribal energy resources can be developed for the long-term benefit of Tribal communities and the Nation's domestic energy supplies.

B. Section 102. Indian Tribal Energy Resource Regulation

The amendments in this section would extend DOI funding opportunities for energy surveys and inventories to a new entity called a "Tribal energy development organization" that is defined elsewhere. The Tribe believes that it would be useful for Tribal energy development organizations to be able to receive funding through this program. However, it is more important and would advance Indian self-determination for Congress to provide sufficient appropriations to fund Indian energy surveys and inventories in the first instance. Funding is needed to ensure that Tribes can enter into energy development negotiations with sufficient information and thereby promote Indian energy development.

C. Section 103. Tribal Energy Resource Agreements

The Tribe supports the changes Section 103 would make to the existing Tribal Energy Resource Agreement (TERA) program. As you know, the TERA program generally provides a process for Indian Tribes to apply and potentially gain authority to approve leases, business agreements, and rights-of-way for energy development or transmission on their lands without Secretarial review. Many of the proposed changes in Section 103 would make the existing TERA application process more certain by providing timelines, requiring the Secretary to act on a TERA or it is deemed approved, and making more specific the reasons the Secretary may disapprove a TERA application. These are needed changes. I understand that since the program was created in 2005, no Tribe has applied for a TERA, in part, because of the lengthy and uncertain application process.

Section 103 would also expand some TERA authority to a new category of Tribes. This new category would be Tribes who have carried out a contract or compact under the Indian Self-Determination and Education Assistance Act (ISDEAA) involving activities related to the management of Tribal land for not less than three years and without a material auditing exception. This new category of Tribes may exercise TERA authority when the other party to the lease is a "certified" Tribal energy development organization that is majority-owned and controlled by the Tribe, or the Tribe and one or more other Tribes.

The Tribe strongly supports this change to the TERA program. This change would provide Tribes, with demonstrated experience, the authority to approve some of their own leases, business agreements, and rights-of-way without the delays inherent in Secretarial review and approval. The Tribe has long managed its own energy development, lands and natural and cultural resources. The Tribe's experience in these areas should be recognized by the Federal Government without the Tribe being forced to take the additional, extensive, and uncertain step of completing a TERA application.

This change also promotes Tribal self-determination and local control over the development of Tribal energy resources. Tribes would be encouraged to develop Tribally owned energy companies to develop their resources because Tribes could enter into leases and agreements with Tribally owned businesses without Secretarial oversight. This change allows Tribes to avoid understaffed and bureaucratic federal agencies and the permitting delays associated with those agencies. Instead, Tribes would be free to develop their own processes for more efficiently reviewing and approving leases and agreements with Tribally owned businesses.

The Tribe also strongly supports changes proposed in Section 103 that would require the Secretary to make funds available to Tribes operating an approved TERA pursuant to annual funding agreements—similar to ISDEAA contracts. If the Tribes are going to take over these responsibilities for the Federal Government, then the Federal Government must provide adequate funding to Tribes. Although it is unclear how much funding would be available from the Secretary for , any new opportunity for funding energy activities is a significant change.

In addition to any federal funding may become available, Tribal self-determination in the area of energy development would be better advanced if Congress affirmed Tribes' exclusive authority to tax activities on Indian lands. Managing the permitting of energy resources, not to mention the infrastructure needs, is an expen-

sive undertaking for any government. Tribes need the same revenues that other governments rely on to oversee and provide the needed infrastructure for energy development.

Finally, the Tribe supports changes in Section 103 that would help to clarify the Secretary's trust responsibilities for leases and agreements negotiated pursuant to a TERA. The proposed changes use language that is similar to existing law for Indian Mineral Development Agreements 25 U.S.C. §§ 2101–08 (1982) (IMDA). The IMDA's explanation of the Secretary's trust responsibilities has stood the test of time and is an appropriate model for the Secretary's trust responsibilities pursuant to a TERA.

D. Section 104. Conforming Amendments

Section 104 expands the definition of "Tribal energy development organizations" to include a greater variety of Tribally owned business entities that can utilize the authorities provided to Tribal energy development organizations. The Tribe supports this change. The Tribe agrees that it is important and will advance Indian energy development to specifically recognize and extend authorities to Tribally owned business entities. In many cases, Tribally owned business entities, as opposed to just Tribal governments themselves, are needed for the practical and efficient development of resources.

E. Section 201. Issuance of Preliminary Permits or Licenses

The Tribe supports Section 201 which would provide Tribes with the same preference that states and municipalities have over private applicants for hydroelectric preliminary permits or licenses. It is appropriate to extend this preference to Indian Tribes because Tribal governments have many of the same public water development needs as state and municipal governments.

However, subsection 201(b) "Applicability" is neither appropriate nor needed and should be deleted from S. 1684. This subsection would limit the Tribal preference and is intended to protect previously issued preliminary permits and original licenses that had been accepted for filing. Subsection 201(b) is not needed because the underlying law, 16 U.S.C. § 800(a), already provides protection for previously issued preliminary permits. Section 800(a) provides that governments may only receive this preference "where no preliminary permit has been issued."

Subsection 201(b) also not an appropriate protection for original licenses that have been accepted for filing. Congress already provided a process for "competing" license applications at 16 U.S.C. § 808 and subsection 201(b) should not attempt to override existing law. In Section 808, Congress encourages competition for licenses and provides standards to ensure the best development of public waterways. The proposed changes in subsection 201(b) would limit competition and result in water projects that are not the best available for Tribal and public waterways.

F. Section 202. Tribal Biomass Demonstration Project

The Tribe supports Section 202 and requests that these provisions be made permanent and available to many Tribes rather than just a limited demonstration project. Section 202 would require the Secretary of Agriculture or the Secretary of the Interior to enter into long-term contracts with Tribes to collect woody debris on federal lands for biomass energy production. Longer contract terms are needed to help finance and justify the investment in biomass energy generation facilities. The Tribe could utilize a longer-term contract to test development of biomass facilities and make use of National Forests that have been included within our Reservation.

G. Section 203. Weatherization Program

The Tribe supports the change proposed in Section 203, but thinks that it does not go far enough to make weatherization programs work in Indian Country. The Tribe requests that Section 203 be replaced with the weatherization proposal included among the Tribe's 32 legislative proposals. The Tribe's proposal includes a number of changes to the weatherization program so that it would work in Indian Country.

Section 203 would provide Tribes with the ability to apply for direct access to weatherization funding. This authority should have been provided long ago. Under current law, Indian Tribes are supposed to receive federal weatherization funding through state programs funded by DOE. However, very little funding reaches Indian Tribes, despite significant weatherization needs.

If a Tribe wants to receive direct funding from DOE, it must prove to DOE that it is not receiving funding that is equal to what the state is providing its non-Indian population. This arrangement is a violation of the government-to-government relationship between Indian Tribes and the Federal Government, and the federal trust responsibility. DOE does not even track the weatherization needs of Indian Tribes

or the funding distributed to Tribes. When former Senator Dorgan raised this issue with DOE in the 111th Congress, DOE reported that it had no idea how much weatherization funding was actually received by Indian Tribes.

Over the years that the weatherization program has been in existence, Tribes have missed out on millions in funding. Each year the weatherization program is funded at around \$50 million per year, and under the American Reinvestment and Recovery Act of 2009 \$4 billion was provided for weatherization needs. This funding is intended for low-income households and should go to those who need it most. On Indian reservations poverty rates are 2 to 3 times higher than national averages.

Section 203 should include additional changes to the weatherization program otherwise Indian Tribes will still not be able to utilize the funding. As written, Section 203 requires Tribes to comply with the same standards as state governments who have been receiving weatherization assistance for decades. This puts the burden on Tribes to overcome decades of neglect by the Federal Government for energy use and management on Indian reservations. Without standards and training that are appropriate to Indian country, many Indian Tribes will still not be able to utilize this funding opportunity. Section 203 should include reporting standards that make sense in Indian country and provide for training of energy auditors to serve Indian reservations.

III. Additional Changes Needed to Promote Indian Energy

I ask that you review the Tribe's legislative proposals and expand the bill to address more of the barriers that Tribes face in managing our energy resources. I have attached the Tribe's 32 legislative proposals to my testimony for your convenience and so that they will be part of the hearing record.

In particular, the Tribe asks that the Committee support the creation of Indian Energy Development Offices to improve both traditional and renewable energy permitting. On the House side, Congressman Don Young has already included this proposal in H.R. 3973, his "Native American Energy Act." As former Senator Dorgan and many in Congress have noted, the oil and gas permitting process is a bureaucratic maze of federal agencies. Indian Energy Development Offices would bring all of the agencies into the same room and would streamline permit processing. These agencies could then work collaboratively to eliminate backlogs and delays in approving leases, rights-of-way, and applications for permits to drill.

Former Senator Dorgan referred to these offices as one-stop shops. There are 3 one-stop shops already in Indian Country. There is one at Navajo, in Oklahoma, and a virtual one-stop shop on the Fort Berthold Reservation in North Dakota. Former Senator Dorgan reported that the one-stop shop at Fort Berthold helped to increase oil and gas permit approvals by 4 times.

On our Reservation, the Ute Indian Tribe needs 10 times as many oil and gas permits to be approved. Currently, about 48 Applications for Permits to Drill (APD) permits are approved each year on the Reservation. The Tribe and its business partners estimate that about 450 APDs will be needed each year as the Tribe expands its operations. The Tribe believes that a one-stop shop is the best way to get the BIA, the BLM, and other federal agencies working efficiently with the Tribe to manage the high level of permitting needed on the Reservation.

Just as important, the BIA, BLM and other federal agencies that oversee the permitting process do so without the staffing and expertise needed to fully support Indian energy development. A one-stop shop would encourage DOI to hire staff with Indian energy expertise. The BIA may be the most important federal agency responsible for supporting Indian energy development, yet there are only a handful of BIA employees with energy expertise. Congress needs to provide the authority and budgets so that the BIA can hire energy experts.

The Tribe also believes that we need to remove as many disincentives to energy development on Indian reservations as we can. For example, the fees that the BLM charges for oil and gas activities on Indian lands are a disincentive to Indian energy development and encourage developers to move just over the Reservation boundary to private lands where there are no BLM fees. In the case of shallow wells, these fees may make development completely uneconomical. In addition, when the Tribe is developing its own resources, it is outrageous that the Tribe's federal trustee would charge us for performing its trust responsibility. The BLM should be prohibited from charging fees for oil and gas activities on Indian lands.

We also need clarifications in the law to encourage energy development and other economic activities. Legislation should clarify that Indian Tribes retain their inherent sovereign authority and jurisdiction over any rights-of-way they have granted. Over the last 30 years, jurisdiction over rights-of-way has been treated differently by various federal courts. Each time an issue arises, another federal court undertakes a new examination. This leads to uncertainty in the law and a lack of depend-

ability about the rules that apply on a right-of-way. This hinders our ability to develop energy resources because all parties need certainty in the law.

The law should also be clarified to ensure that Tribes can raise needed tax revenues to support and oversee energy development. Currently, federal courts allow other governments to tax energy development on Indian lands. This limits and even prevents Tribes from earning tax revenues from development on our lands. Without tax revenues, Tribal infrastructure, law enforcement, and other services cannot keep up with the burdens imposed by energy development, and we remain dependent upon funding from the Federal Government.

The Tribe also asks that Committee not overlook the important role DOE could be playing in the management of Indian energy resources. In general, DOE ignores Indian Tribes in its programs and in setting national energy policies. The relatively new Office of Indian Energy Policies and Programs is making progress, but Tribes are left out of the vast majority of DOE programs. The Committee could hold an entire hearing on the lost opportunities. Tribes need full access to existing DOE programs for energy loan guarantees, energy efficiency, weatherization assistance, and renewable energy research and development.

At a minimum, DOE should fully include Tribes in federal energy efficiency and weatherization programs. The Federal Government provides about \$100 million every year to fund these programs at the state level. This funding should go to those who need it most, but for decades these programs have ignored the needs of Tribes. The Tribe asks that these programs be expanded to include set-asides for Tribal governments. These programs would help Tribes reduce energy costs and manage energy use in government buildings and reservation homes.

IV. Regulatory Barriers to Indian Energy Development

Finally, the Tribe asks that the Committee monitor agency actions to create additional barriers to Indian energy development. Two recent examples are the BLM's decision to develop regulations for hydraulic fracturing activities on public lands, and the Environmental Protection Agency's (EPA) implementation of its Minor Source Rule for air permits. The Committee may need to hold oversight hearings on these issues or develop legislative solutions depending upon how the agencies proceed in developing or implementing these rules.

There are a variety of problems with the BLM's proposed regulation of hydraulic fracturing. First, the BLM has never initiated a discussion with Indian Tribes about the need for the regulations, alternatives that could preserve Tribal authority for Tribes to regulate the issue ourselves, or even a government-to-government discussion of the substance of the proposed regulations. All of which fails to fulfill DOI's four month old Policy on Consultation with Indian Tribes (December 2011) and Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments. The Tribe requests that the Committee inquire with BLM regarding its plan for ensuring that Tribal concerns are considered in the development of any regulations.

Second, Indian lands are not public lands. Indian lands are for the exclusive use and benefit on Indian Tribes. Any BLM oversight of activities on our lands is in fulfillment of the BLM's trust responsibility to the Tribe. The BLM should not apply public interest standards to Indian lands. The Tribe requests that the Committee and Congress pass legislation that would prevent Indian lands from being swept into laws and policies for public lands.

Third, as written, the proposed rule would increase delays in obtaining oil and gas permits. The very delays the Tribe has been working so hard to overcome. The proposed rule would require separate approval of hydraulic fracturing plans. This will add time to the oil and gas permitting process, increase the costs of developing energy on Indian lands, and overburden already short-staffed BLM offices. Oil and gas operators seeking permits to develop oil and gas on Indian lands already undergo an extensive environmental review process before they can begin drilling activities. As written, BLM's proposed regulations add additional unnecessary steps to the process.

While EPA's Minor Source Rule, to date, has not had a significant impact on the oil and gas industry on our Reservation, we understand that it has impacted some of our sister Tribes. First, EPA also did not engage in meaningful Tribal consultation prior to finalizing the rule and subsequent publication in the Federal Register. Any agency action without meaningful consultation impacts us greatly.

Second, although EPA delayed implementation of part of the rule for three years while it hires the necessary staff and develops its permitting process, one significant part of the rule took effect almost immediately, the Synthetic Minor Source Rule (SMSR). EPA implemented the rule despite not knowing what the SMSR permit should look like or exactly what it should contain. To date, EPA has yet to share

with our industry partners what a SMSR permit should look like and what it should contain. EPA plans to phase the SMSR rule in over the next year. To prevent any impacts to energy development on Indian lands, we ask the Committee to develop legislation that would delay implementation of the SMSR part until September 2013 in order for the EPA to develop its permitting process fully.

V. Conclusion

I would like to thank Chairman Akaka, Vice Chairman Barrasso and members of the Committee for the opportunity to present this testimony on behalf of the Tribe. The Tribe stands ready to work with the Committee to find ways to eliminate barriers to Indian energy development. The current barriers have a direct effect on the Tribe's revenues, our ability to invest in the future, and the services we are able to provide our members, our children and grandchildren.

Towaok (Thank You)

Senator BARRASSO. Thank you very much. Thank you for bringing a number of members of your organizational staff, and thank you for the 32 recommendations. We will take them most seriously. Thank you.

Mr. Groen?

STATEMENT OF WILSON GROEN, PRESIDENT/CEO, NAVAJO NATION OIL AND GAS COMPANY

Mr. GROEN. Thank you, Vice Chair, Senators. I appreciate the opportunity to testify before you.

I am Wilson Groen, President and CEO of Navajo Nation Oil and Gas Company. Navajo Nation Oil and Gas Company, or NNOGC, as we refer to ourselves frequently, is a Section 17 federally-chartered corporation, wholly owned by the Navajo Nation. So all of our shareholders, our directors, are members of the Navajo Nation.

Just in a quick summary, and right to the point, we do fully support the work that the Committee has been doing and the direction that this legislation is taking. We appreciate your efforts in that way.

A brief background on the company, as I said, we are wholly owned by the Navajo Nation. We are a for-profit and fairly successful oil and gas company. We operate in the Four Corners area and we also have some activities off the Navajo Nation, currently up in Montana. Most of our production and exploration activities are in southeast Utah and northwest New Mexico. We have, there is major energy development in new projects. But as kind of a gist of where we are going, the company just last week either purchased or signed purchase sale agreements to add 41 percent additional reserves and production base to the company's bottom line. That creates lots of new opportunities for the company, and it also creates a major revenue source for the Navajo Nation.

We currently, before these acquisitions, have direct payments back to the Nation in royalties, taxes, bonuses, other activities, in excess of \$14 million. This will probably exceed \$20 million next year. And under the current budget, we will contribute approximately \$35 million to the Navajo Nation economy.

Why do I bring these subjects up? I think the key thing, and one of the major aspects of this bill and the 415(e) amendments that the House is working on is, how do we improve the working relationships and minimize some of the hurdles, so that we can work very efficiently, move our projects forward in an efficient manner.

I think that is the gist of S. 1684 legislation, and again, I commend the Committee for moving this in this direction.

A couple of other things, though. How are we going to administer this? Are there concerns with the Nation's ability to oversee and regulate these? What are some of the other obstacles? The Navajo Nation has a very well-developed network of departments that focus on Navajo, it has Navajo EPA, Water, Water Resources, Minerals Department, Fish and Wildlife, Historic Preservation. All of these departments have been around 10 or more years and have guided both the Nation and been the basis for the formation of this company to better develop and reacquire the resources of the Nation. And again, our focus really is how can we even make it more efficient to continue to grow the company more effectively.

But we can do it with these departments and so on, we do have very strict guidelines that we follow, along with a lot of the discussions recently on the fracturing and so on. We cement all of our wells from TD to surface to ensure that they are going to maximize the well integrity, to give the least potential of any failure of contamination of water and other resources.

So I want to again thank the Committee for the support of this direction they are going. It will make the development of the resources on the Navajo Nation much more efficient and cost-effective and timely, because time does cost us money.

And even we as a wholly-owned company do have to consider the timely use of our capital. If we can't timely deploy it on the Nation, we deploy it elsewhere. Thank you.

[The prepared statement of Mr. Groen follows:]

PREPARED STATEMENT OF WILSON GROEN, PRESIDENT/CEO, NAVAJO NATION OIL
AND GAS COMPANY

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 (the 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 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 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 one 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 three 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.

NNOGC also appreciates the changes proposed in section 104(a) altering the name of a “tribal energy resource development organization” to “tribal energy development organization,” and including in such organization “any enterprise, partnership, consortium, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe (including an organization incorporated pursuant to section 17 of the Indian Reorganization Act of 1934) or section 3 of the Oklahoma Indian Welfare Act; or (B) any organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan or other assistance, or to enter a lease or business agreement with, or acquire a right of way from, an Indian tribe.”

Similarly, section 104(b) makes clarifying amendments by substituting the term “tribal energy development organization” for the term “tribal energy resource development organization.” These proposed changes will add flexibility and creativity in how energy development projects are structured. NNOGC strongly supports these changes.

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.

Senator BARRASSO. Thank you, each and every one of you, for your testimony.

I have a few questions for the record, but first I want to remind everyone that the hearing record will be open for two additional weeks, so that additional comments may be provided. So if you have additional comments, we would like to have them.

Mr. Olguin, it has been over six years since Title 5 of the Energy Policy Act of 2005 was passed, yet no Tribes have applied for a TERA. In your view, what are the most significant obstacles that the Tribes face that discourage them from entering into such a process?

Mr. OLGUIN. I believe, as I stated, we are looking at the cost. The Tribe is taking on the responsibility of the Federal Government, are there going to be funds available to provide that? I think that is a big issue.

Also the Federal inherent trust responsibility along that line, too, are the Tribes going to have that ability to really manage their assets here?

Senator BARRASSO. Mr. Hall, you see Senator Hoeven, your other Senator from North Dakota. You have people up here to sing your praises. You have a Republican and a Democrat, both sides of the aisle. You obviously have made a lot of friends from all of your leadership.

I was very impressed with your testimony. We will make your entire written testimony part of the record. You talked about, since 2008 there have been no new wells, how it's hard to go through the 49 steps, and you said you felt like either a mouse or a rat in a maze. And now the EPA has come forward and now you are being treated as if you are under EPA's public lands area. You said we needed to go further with the bill. I didn't know if there was anything additional that came to your mind that you would like to share with us in terms of significant obstacles that you are facing that discourage the Tribes from entering into a TERA.

Mr. HALL. Mr. Chairman, it is a longstanding history where the Federal Government has done this for us. The BIA, the BLM, the EPA. And the Oil and Gas Leasing Act of 1938, Tribes weren't at the table. That is when big brother was going to say, this is how it is going to be done. And so we weren't at the table, so we kind of had to take it. Our grandfathers had to sit here and take it and do those things.

But Tribes have actually bypassed the Federal Government. Our staff are more educated, we have more staff, we have an energy office, an environmental office. We have an oil and gas company. We have a water office, we have a health clinic, we have law enforcement, we have every agency that we provide these services, and have to supplement. Our Tribe supplements the Federal budget that we get through 638 contracts, \$42 million a year. That is how understaffed and underfunded our Federal agencies are.

So as this TERA is coming, as Vice Chairman Mike here had mentioned, the money, what additional costs? Is there going to be money? Are there going to be some resources that are going to add

to this? So that way we can have this adding to what the Tribes' capabilities already are.

So the one stop shop that Irene was talking about is not funded. And Senator Dorgan did a great job advocating for it, but it is not funded, it is not permanent. It might be something that Tribes are scared of, is that a one time funding thing, or is it going to be a permanent funding base so you can count on it every single year? Because we are going to have 10 more years of drilling and about 30 or 40 more years of production.

So this economy is something that we want to continue to grow, and it is not going to go away.

Then finally, the trust responsibility. What happens if there is an accident or if an allottee says, well, there has been a breach, there has been a breach of that trust responsibility on my land? Who is responsible, the Tribe? Or is it the Federal Government? So that is what I really want to be clear on.

But as far as the TERA removing Federal obstacles, there is no question about it, we are tired of being under the thumb.

Senator BARRASSO. Thank you very much.

My time has expired. Senator Tester, did you want to make an opening statement?

Senator TESTER. No, thank you, Mr. Chairman.

Senator BARRASSO. Okay, then Senator Franken is next in line for questioning. I am going to have to excuse myself and Senator Hoeven will take the gavel. Thank you.

Senator FRANKEN. Sure, great. Thank you, Mr. Vice Chairman.

This is really to the entire panel. In the Midwest, we have a lot of wind. A number of Tribes in my home State of Minnesota have put up turbines, wind turbines to provide electricity to their communities.

Southwest Tribes also have vast solar resources. But many Tribes still must rely on old, inefficient, dirty sources of energy, such as coal-fired power plants. And Tribes still struggle to provide reliable and affordable energy to their own members.

Can any of you talk about the potential for distributed energy generation in Indian Country and what could the Federal Government do to help Tribes provide for their own energy needs?

Mr. Finley?

Mr. FINLEY. One of the problems we have in the northwest is that BPA is near full capacity on their grid. So a lot of Tribes want to develop energy development, they want to develop energy projects. But with the uncertainty of not being able to wheel your power and move it, what is the need to even try to move forward with the project, if you can't move the power. Ultimately, many Tribes have some of the highest rates in electricity in their area, particularly us at Colville. Although we have the largest hydroelectric dam in North America, and the second largest, or one of the third or fourth largest on our reservation, we pay some of the highest electricity rates in the State.

Senator FRANKEN. So the hydroelectric plant is on your reservation?

Mr. FINLEY. Yes, they are federally-operated. But not one megawatt of power, not a single gallon of irrigation water has been

made available to the Tribes. It all goes the opposite direction from the reservation.

Senator FRANKEN. Anyone else have any thoughts on that? Because this is what I have heard, this is what I understand, is that there are Tribes that have all kinds of solar energy beating down on them and yet are paying for their electricity. Chairman Hall?

Mr. HALL. Senator, in the Dakotas, we have WAPA, which has been an agency, Western Area Power Administration. It has not been willing to work or provide any space on the grid, as Chairman Finley was talking about. And they do have the lines, because we are by the river, and we have the dams, the Garrison Dam. We have seven dams from Fort Peck Dam down to Lake Oahe. But Tribes are not under that, and those, the Federal power should give Indian Tribes a little space on that grid. And we have some of the most, all the wind studies that have been done for almost all of us, 16 Dakota Tribes, have all shown that we have tremendous wind capacity in the Dakotas.

But WAPA has just been hesitant to help provide any space on their grid, even though they have all the power lines running through our reservations.

Senator FRANKEN. Thank you.

Those are separate but related issues, which is, having the transmission in order to send out power that you are creating on your land, but also the idea of paying out, as Mr. Finley said, paying out for your own power, when you are making it, basically, on your land.

Mr. Olguin, in your testimony you mentioned your involvement in the development of Chairman Dorgan's Indian Energy Parity Act. I was also a co-sponsor of that legislation and believed it would have been a huge step forward for Tribal energy development, especially renewable energy development. S. 1684 is a much more narrowly-tailored bill, many provisions that were part of the Indian Energy Parity Act did not make it into S. 1684.

Can you discuss any specific provisions from Senator Dorgan's bill that you think would greatly improve the prospects for Tribal renewable energy development if it were included in the bill?

Mr. OLGUIN. Along this line, we are still going to have to go back and look at that further. Right now, with 1684 we see that as the opportunity to streamline particularly the TERAs going forward. But as far as what you are asking, we will have to look at that further.

Senator FRANKEN. Thank you. I see that my time has expired.

**STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. [Presiding.] At this point, we will go to Senator Tester, then I will conclude. And we can come back for another round, Senator Franken, if you have additional questions or would like additional time. Senator Tester?

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman, and I want to thank everybody who testified today.

Research development can do a lot of good things for Indian Country, and a lot of good things for this Country. Particularly, and I don't know what it is on each one of your reservations, but in Montana, unemployment is damned high. There is opportunity to employ people, whether you are talking about conventional energy or renewable energy or utilizing your wood products, the list goes on and on and on.

My question is, and anybody can answer this if it applies to them, if you have high unemployment, the work that you are doing or the Tribal colleges that you have, are you able to train the people that are your neighbors to be able to obtain the jobs when those jobs come available?

Mr. FINLEY. Well, on the provision that I shared, that was a part of my testimony earlier, one of the things that we are seeing on the reservation is a lot of the younger generation are not taking an interest in forest products and some of the logging practices that we do on Colville. It is something that our older loggers have observed and shared with us as leaders, that some of the younger generation, they are not taking an interest in that.

So if we are going to consider things outside of this endeavor that we have of building this woody biomass demonstration project, it is something that we are going to have to take into consideration. Obviously there is not a whole lot of training that goes into some of those jobs, but some of them are pretty technical. Some of them have a high risk as far as injury and there have been many deaths as a result of that. I think I have seen statistics in the past where it is one of the high risk jobs in the United States, being a logger.

But having said that, I know that our older generation is prepared to move forward, and hopefully as the jobs are created with this legislation and with some of the projects that we want to move forward, that our younger generation will step up and that knowledge that has been developed over the course of several generations won't be lost, and it will be shared.

Senator TESTER. Do you have a Tribal college on your reservation?

Mr. FINLEY. Yes, we do. It doesn't focus on woody biomass or the forest products division. It is more so with core classes to help develop the classes they need to move on to a four-year institution.

Senator TESTER. Do each one of you have a Tribal college on your reservation? You do, Tex?

Mr. HALL. Yes.

Senator TESTER. You do, Wilson?

Mr. GROEN. Yes.

Senator TESTER. I will kick it over to Tex, because I have a question for Wilson in a minute. Does your Tribal college train folks that you need to work in the fields?

Mr. HALL. It does, Senator Tester. It is probably the bigger one is TERO, the TERO office. Every Tribe should have a Tribal employment rights office. These were designed about 35 years ago for

employment and training of Indian Tribal members of that Tribe. So there is a TERO fee for every company, as I mentioned earlier, I don't know if you were in chambers, we have 950 small businesses. About 200 of those are Native businesses. And some of them didn't even know how to start a corporation, write a business plan or do a financial spreadsheet. But they all do now. They have been forced, it is sink or swim.

Senator TESTER. Yes, and as energy development has already happened in your neck of the woods, and is probably going to be happening more so and more so in my neck of the woods, are you able to share your challenges with other Tribes around the Country?

Mr. HALL. Absolutely. We have an expo at Fort Beck, Crow, Southern Ute, and everybody here is invited, May 8th and 9th. It is our annual MHA Oil and Gas Expo. We are going to do an actual tour of rigs to show production, drilling and hydrofracking, and then all the jobs, the TERO office, the Tribal college, all of this tour is going to be part of that regular conference agenda.

Senator TESTER. Very good. I commend you in that.

Wilson, curiosity always gets me. In your testimony you talked about developing a partnership with Montana companies. Can you give me any sort of idea who you are partnering with or is that a trade secret?

Mr. GROEN. It is not a trade secret. We are involved with a small company out of Texas, actually, called Vecta, and we are in the Central Montana uplift area applying some new, latest technology, multi-component seismic, to help figure out where those fractures are and what direction we may want to drill the wells.

Senator TESTER. So are you looking at oil, natural gas or something else?

Mr. GROEN. Principally oil.

Senator TESTER. Okay.

Mr. GROEN. Along the line of your training and schools, the Navajo Nation does have a community college, Dine Community College. It is not focused really on oil and gas and that type of technology.

However, in Farmington, New Mexico, there is a community college and it has one of the best reputations for training not only oil field services but gas plant and other types of training facilities for power plants, gas plants and other types of things. So they have a very good program.

Additionally, our company itself, we commit approximately 1 percent, a little over 1 percent of our net income every year in support of scholarships for the Navajo Nation students. We want to build a well-trained, quality Navajo workforce to run this company well into the future.

Senator TESTER. I appreciate that, I think that is smart. You need to be commended for that, allowing folks who need jobs to be able to have the mental infrastructure to be able to go get those jobs is critically important.

I don't know how aggressive you all are being, so I will just leave you with a comment. That is, there is incredible opportunity to put some folks to work here. Some of them are very skilled jobs, some of them are pretty regular kinds of jobs, too, that don't require a big skill set.

And I would just say that if it is firing up the Tribal colleges or partnering with community colleges or partnering with other reservations around the Country, I think it would be a missed opportunity. I just had the Blackfeet in my office earlier this week, and they are looking at some energy development. I said, boy, if you don't aggressively get after it, you are missing a big opportunity to employ your own people. Because if you don't do it, somebody from Texas will come up and do it for you.

So with that, thank you very much for your testimony.

Senator HOEVEN. Several questions. I want to start out with Chairman Hall. Chairman, it is good to see you. It looks like you are on the mend. Matter of fact, you look better even than the last time I saw you.

Mr. HALL. I still have yet to get on a horse, though.

Senator HOEVEN. Oh, well, you had better. I am counting on a ride together.

Thanks to all of you for being here. We appreciate it very much. I am just going to follow up on something that you mentioned earlier, Chairman Hall, and that is in regard to the permitting for oil and gas development on the reservation. And the first would be, give me your sense of where you feel the Tribe is with EPA on the minor source rule. We have been talking to Region 8, we are determined to bring them out there. They have now committed to come back out. As you know, I feel there is real work to do here.

Just give me an update as to where you think we are at this point and what your communication has been with the EPA on this synthetic minor source rule.

Mr. HALL. The latest information, Senator Hoeven, we have is that they have only put out five permits for the Federal Register for public comment. So I stressed to, I think his name is Carl Bailey, who is the head of Air Quality at Denver, so we were on a conference call recently and I told Carl, I said, I don't think that is enough. He begged to differ, he thought that was enough.

So I said, so what happens after 30 days, Carl? If somebody from New York objects to an oil well on our family's property on Fort Berthold in North Dakota, do they get another 30 days? He just kind of asked somebody next to him and they said, well, I think so.

So there is really nothing cut and dried that says after 30 days. We went through this with the refinery, it took us eight years to get a permit for the refinery. So we just feel they don't have enough permits in the queue in order to really, I think they are going to stymie development. And I don't think you can develop an oil and gas field, a full field. The Mandaree Field, the Spotted Horn Field, I don't think you can develop that field if you are going to do it just piecemeal, with five permits at a time. You are just going to develop that one well, and that is not a way to do oil and gas development. I don't think EPA understands that, and I don't think they care.

Senator HOEVEN. That is exactly my sense as well. And exactly the sense that I am getting from the oil companies. They are getting frustrated as well. You have done a tremendous job of oil and gas development on the reservation. The companies want to continue to come there and do business. I think the Tribes do an in-

credible job. You talked about some of the things that you have put in place that were needed. And working with the State, it has been a very good working relationship.

But we absolutely need to get EPA to work with the Tribe, listen to the Tribe and work with you on this minor source rule and the permitting process. We have talked to them and we just feel we have to get them up there to sit down with you on the reservation, have a meeting and go through this.

Mr. HALL. Carl Bailey and the director, Jim Martin have never been to the —

Senator HOEVEN. And they need to come. Like I say, we have talked to them and we are going to get them up there.

I think the best way, I have met with them in my office, I think the best thing is for them to come up and sit down with you on the reservation to see what you are doing and really get down to what needs to happen. A follow-on there is the one stop shop. You talked about it, Senator Dorgan was involved in getting it set up with you and others on the reservation. But where are we? My understanding is that there really, there is some concern on your part in terms of staffing and supporting that one stop shop to handle the volume that you have on the reservation. Is that the case, and what do you think needs to happen?

Mr. HALL. The one stop shop is absent, even though it was in the green book, Senator Hoeven. The green book said it was a million dollars for oil and gas development on Fort Berthold. We don't know where that million dollars is. So I have been working with the Administration trying to identify where that money went. Hopefully we will get an answer.

But we just found out that Dickinson doesn't have a BLM director now. So we just got through the communitization agreement backlog and the APD backlog. Well, now the CAs are backlogging again because there is no director. The one stop shop person would have been able to coordinate all of the agencies, including EPA, and schedule them for these visits on Fort Berthold. That way, these could have been foreseen. And actually, some of these functions could be 638, under Public Law 638 to the Tribe. The Tribe could be doing some of those functions at BLM. But it has never been shared with us.

So again, that one stop shop director should be on Fort Berthold and helping to coordinate all that, sir.

Senator HOEVEN. Did Secretary Salazar give you any indication when he was up several weeks ago as to what would happen with the one stop shop?

Mr. HALL. He stressed it was a priority for him. And I think Mike Black was the, Larry Echo Hawk wasn't there, so I think he is going, anyway. It is actually, he has six more days left. But actually, Mike Black is the head of the BIA and I believe Karen Atkinson or Del Lavadure, who is Acting Assistant Secretary of Indian Affairs after six days, will be the responsibility.

But it is in the Office of Indian Energy Development at BIA and Karen Atkinson is over that. So she is coming out to our oil and gas expo on May 8th and 9th. So we are hopeful that Karen can meet with Del, meet with Mike and give us some direction on what

happened to the money and see if we can get a plan to get this implemented.

If they don't want the Tribe to do it, do it yourself, BIA. We don't care. But don't just hang on to the million dollars.

Senator HOEVEN. And maybe that is the next best step. If not, you and I should maybe develop a letter to Secretary Salazar, asking specifically what they are going to do. We can have that meeting first at your energy expo and see where that goes. But we definitely need to follow up. Because that was the commitment, was to provide that assistance. And clearly, you need it with, how many wells are you up to on the reservation now?

Mr. HALL. Four hundred fifty, including fee.

Senator HOEVEN. Four hundred and fifty wells. And I know you have applications for many, 200 more. So we are talking a lot of jobs and a lot of revenue for the Tribe.

Mr. HALL. Are you coming to the expo?

Senator HOEVEN. I sure hope to be able to come, absolutely. Did I get invited?

Mr. HALL. Can you speak at our expo, Mr. Senator?

[Laughter.]

Senator HOEVEN. I would love to.

Mr. HALL. Okay. Thank you.

[Laughter.]

Senator HOEVEN. Good to have you here. I am going to, at this point, go to, Senator Franken, did you have something or should we go to Senator Udall first?

Senator FRANKEN. We should go to Senator Udall.

Senator HOEVEN. Senator Udall.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you.

Sorry for being a little late here. I had some other commitments, but I know that this has been very lively. Part of this question I am going to ask I think was asked by Senator Franken to Mike Olguin. But I would like the rest of the panel to address it. That question is, what additional provisions should the Committee add to the Barrasso-Akaka bill? Are there provisions from Senator Dorgan's 2010 bill we should include, like access to tax credits, leasing reform or Tribal funding?

Irene, do you want to start there?

Ms. CUCH. Yes. I believe the Ute Tribe has submitted 32 proposals. And in there, that is our proposal to the present bill, the bill that Barrasso is sponsoring. That bill is asking for the Secretary to make funds available to take over the Tribes that want to take over permitting. I believe it is pretty much self-explanatory, that 34 proposals in there. That is what we would like to add to it.

Senator UDALL. Thank you.

Ms. CUCH. I believe, Senator, the Vice Chairman Barrasso did say he was going to look at the 32 proposals, which we just to here.

Senator UDALL. Thank you.

Mr. FINLEY. Our hope is that the bill moves forward. We realize that there may be things that get tied into other committees or

may even stretch into other jurisdictions of other committees, and some may have concern over little minor things. For the most part, the pieces that don't cost money, the pieces that make sense, that aren't going to be a tremendous burden on the Federal Government, move forward. We just want movement.

Senator UDALL. Do you have any specific recommendations of additional?

Mr. FINLEY. Well, our provision that we are championing doesn't cost the Federal Government any money. So I can't speak to the rest of it. It is a great bill, it is going to do a lot of good things for Indian Country. But we spent a great deal of resources helping develop that provision. It appeared in the last Congress under Dorgan's bill and it is here again. We were hoping there would have been movement then, there wasn't. We just want there to be movement today.

Senator UDALL. Tex, do you have anything to add there?

Mr. HALL. Senator, it is in our written testimony but I can three just on the top of my head. One is that we need to clarify, under the TERA, under that section of the bill, the additional resources from Department of Energy need to be added, a budget needs to be added, because Tribes are taking on more responsibility. You are doing it instead of the Federal Government. Trust responsibility should be clarified. If there is a violation or dumping occurring, if Tribes don't have an environmental code that prohibits that kind of activity.

Second, I think that there needs to be something in the bill that clarifies Tribal lands or reservation, Indian lands are not public lands. BLM and EPA, you can't treat us as public lands, because we are not. By treaty it is set aside and that treaty is supposed to be the supreme law of the land, according to our Constitution.

Finally, I think Cotton Petroleum needs to be reviewed and overturned.

Senator UDALL. Thank you, Tex. Wilson, do you have anything to add here?

Mr. GROEN. I guess my key point would be, I like the provisions of S. 1684. There are some, the House Subcommittee on Alaskan and Indian Affairs has an amendment to 415(e) which I think there are some aspects of that that could be blended into this bill that would further enhance it.

Senator UDALL. Wilson, it is good to see you here. I would like to give you an opportunity to expand on your testimony about the Nation's proposal to do its own subsurface leasing. What are the benefits and how would the Nation protect its land and water resources?

Mr. GROEN. Thank you. We have, the Navajo Nation has a very extensive department that focuses on the environment, fish and wildlife, historic preservation. I know I interacted, long before I worked for Navajo Oil and Gas back in the 1980s and early 1990s, I interacted with these departments and they had very detailed provisions, oversight and regulations that we had to follow as an operating company from the outside. The Nation has these capabilities.

So I really feel that a lot of the oversight from the BIA and others on this is duplicative. They are basically kind of a rubber stamp

of all of the work. When we bring a new operating agreement in front of the Nation to develop additional resources on the Nation, we are treated, for all practical purposes, just like an outside for-profit company. And it goes through all of the departments, it goes through various committees of the council, it goes back then in front of the full council for approval. Once that is signed, that is usually when we pay our bonus payment to the nation for a lease bonus.

Having said that, we can't start our activities then until this agreement has been approved by the Bureau of Indian Affairs. The most current one that, most current approved one was approved in October by the council and was approved by the Bureau of Indian Affairs in August, after much arm twisting and discussions. The previous one took over 400 days. This current one that took over nine months, we had paid out over \$8 million in bonus fees to the Nation and over \$12 million to the Nation in bonuses and rentals before we could drill our first well. These types of delays are just too onerous. Basically that's the reason a lot of other companies won't work on the Nation's lands. There's too many delays.

Senator UDALL. Thank you, and thank all the witnesses for their testimony. Senator Hoeven, thank you for letting me go over a minute or so.

Senator HOEVEN. Senator Udall, if you have anything else, go ahead and finish up, rather than another round, then we will go to Senator Franken.

Senator UDALL. Sure. I have one more question. How is your proposal, the one we just talked about here on subsurface leasing, different than the proposal being made in the Barrasso-Akaka legislation?

Mr. GROEN. I believe it gives a little more flexibility to the Nation and more independence to the Nation to move forward. I think there are some similarities, but it gives another alternative to TERA and to move it forward. That is my understanding.

Senator UDALL. Great, thank you very much. Thanks, Senator Hoeven.

Senator HOEVEN. Senator Franken?

Senator FRANKEN. Thank you, Senator Hoeven.

Just a couple of questions here. On weatherization, this bill would allow Tribes to get direct weatherization funding instead of funding through the State. Weatherization has a lot of positive impacts, it reduces energy costs, protects the environment and reduces demand on power generation. Can each of you, whoever wants to, talk about the importance of weatherization funding to your Tribes and do your Tribes have the systems in place in order to take advantage of this new stream of funding?

Mr. OLGUIN. Yes, at Southern Ute, we do have our own housing department, and they are utilizing these types of funds to weatherize through replacement of windows, doors, on multiple homes. We are actually in phase four of that program.

Senator FRANKEN. And it puts people to work doing that, too.

Mr. OLGUIN. Yes.

Senator FRANKEN. And it saves energy. Anybody else?

Chairman Finley, you were talking about the use of woody biomass. Minnesota also has a lot of woody biomass and other bio-

mass. Does anyone here think that it would help, in Minnesota we have a renewable energy standard of 25 percent by 2025. We are actually ahead of the game on that. If we put in, we have a clean energy standard that Chairman Bingaman has authorized. Does anyone feel that a renewable energy standard within a clean energy standard or a national renewable energy standard would help Indian Country because utilities and others would be wanting to use the biomass and other renewables, solar and wind, that is available in Indian Country?

Mr. FINLEY. I think it would be a tremendous help. Probably for the concern I raised earlier, the inability to wheel the power because of the various entities, the Federal entities, ours being BPA, that are near full capacity on their grid. If there was a need or a requirement for green energy from Indian Tribes, a hard percentage, that would put us in the driver's seat, that would give us a stronger foothold to develop these projects.

I think that would be more appealing to some of the outside entities that would like to partner with the Tribe, to come in on the reservation and do it.

Senator FRANKEN. Give them an incentive to invest.

Mr. FINLEY. Correct.

Senator FRANKEN. To meet the renewable energy requirement that they have.

Mr. FINLEY. Correct.

Senator FRANKEN. I saw, Chairman Hall, you are nodding. I know you have a tremendous amount of oil and gas and that is a great thing. Senator Hoeven, I have asked him many times to discover oil in Minnesota and he has yet to do it. He seems to refuse.

[Laughter.]

Senator FRANKEN. But you do have wind.

Mr. HALL. Oh, yes.

Senator FRANKEN. Would a renewable energy standard be of help in that regard?

Mr. HALL. No question about it. When I think of just oil and gas, getting back to our point, Senator Franken, there are probably 30, 40 of us, there are 565 Tribes, the super majority have renewable. They have wind, they have solar, they have wood, whatever else. They have the resources. A lot of them have the studies. So I certainly agree, that is an income that is sitting on the table not being utilized.

Senator FRANKEN. Chairwoman Cuch?

Ms. CUCH. I wanted to make a comment on the weatherization question you asked.

The Department of Energy weatherization program, it goes to the States and they have been handling it for the last 30 years. It rarely comes to the Tribe. But it should be further modified so that it will work in Indian Country. We need Tribally-based standards and training for energy auditors. That is my comment.

Senator FRANKEN. Thank you so much for that comment.

Yes, Mr. Vice Chairman.

Mr. OLGUIN. I would like to make a comment here just from the standpoint of Southern Ute, through its business opportunities—not mentioning any names here—but we attempted to partner with another Tribe on a wind energy project. Along that line, when we

look at the Federal rules and regulations, it is very difficult for certain Tribes to really enter into types of agreements, even with other Tribes. It diminishes opportunities. We are here, we are available and willing to assist other Tribes, but when we are hitting a roadblock, those opportunities unfortunately fall to the way-side.

So I see opportunities increase for Indian Country as a whole, where other Tribes are ready and willing to help as well.

Senator FRANKEN. Thank you, and thank you, Senator Hoeven. Senator HOEVEN. Thank you, Senator Franken.

One follow-up question I have before we close, and I am going to start with Chairman Hall, and that is hydraulic fracturing. Just discuss your thoughts on hydraulic fracturing. I know you work very closely with the State, it seems to be going well. EPA is doing various studies. It recently came out, I think yesterday or the day before, with a 600-page report in regard to handling methane, if it is found in the hydraulic fracturing process.

So just give me a status report, Chairman, where you are with the hydraulic fracturing on the reservation.

Mr. HALL. When I look at the overall numbers, over 6,000 wells in North Dakota, over 450 wells on Fort Berthold, not one single incident of any contamination of any of the groundwater, we have deep, deep wells. We are 10,000 feet down vertically, up to a mile horizontally and longer, on a longer lateral. And the casing, the industry, I have been out to a rig, I have seen the hydrofracking. There are experts, there are expert companies that have like Schlumberger and Halliburton that have safety certificates hanging on their walls since the 1970s. The statistics are there.

We have to have the hydrofracking in our Bakken formation in order to crack the shale. It is just an injection of a million gallons of water, sand and some chemicals. That is all it is. We think BLM stepped way out in front where their nose don't belong. They are treating us as public lands. They got the rule with no consultation. So they are violating their own policy. We don't think they have the authority, if you look at the Federal Land Policy Management Act of 1976 it does not give them the authority.

I listened to that one guy, whatever his name was, Sipstack, at the House this morning, and he said he got it, he thought, from the 1938 Act. We looked at the 1938 Oil and Gas Act, it isn't there either. Actually BLM wasn't even born in 1938. So I don't know what he is talking about. And he admitted, after Chairman Young got out his, all the cities, because he was saying that he went to Bismark, well, Bismark wasn't even on their list. But he was talking about Farmington, Tulsa, Billings, and I don't know where else.

But there was no Tribal input. He said, well, yes, toward the end of the meeting we did hand out the rule, toward the end of the meeting. There was not one committee member that said that was right, both Republican or Democrat. None of them said that was right. That wasn't right to treat Indian lands as public lands. And for you to give a piece of paper at the end of the meeting and say, go ahead, by the way, read this, this is the new rule.

The problem is at OMB. So I was on a conference call two days ago and they said they are embargoed to talk about it. They are

just there to listen. I said, you aren't any good to us, if you are just going to listen.

So we asked Chairman Young to do something. So they are looking at legislation or appropriations or something. But we need all the help we can get, Senator Hoeven. Everyone here that testified this morning is on the same page, all the Tribes.

Senator HOEVEN. Thank you, Chairman Hall. That is exactly where I was going next, is just to get comments from anyone else on the same issue, if you do have oil and gas on the reservation. Chairman Finley?

Mr. FINLEY. The only well you will find on the Colville Reservation is a water well. So I will defer to my counterparts on this one.

Senator HOEVEN. All right.

Ms. CUCH. Yes, your question is on hydraulic fracturing. The Ute Tribe is concerned about this, because of the pollution or contamination it might create with our drinking water. And the other problem is, there was no adequate consultation, or I guess you could say no consultation done with my Tribe. The only thing is, the closest to consultation was a meeting they held in Salt Lake City. I believe that is what is on their schedule.

But some of our Tribal, well, he is sitting here in the audience, Manuel Myore, who is the Director of our Energy and Mineral Resource Department. He went to that meeting. He said as far as he could see, there was no consultation, just only discussion at that meeting.

Senator HOEVEN. Thank you. President Groen, your thoughts on the matter?

Mr. GROEN. Very similar to what has already been spoken by Chairman Hall and Vice Chair Olguin. We have new play potential on the Nation. We have a new resource play that is being developed. These new rules could easily set this play back significantly. So we much appreciate the comments that were made and we strongly feel that there has to be real consultation with the Tribe. I cannot officially speak for the Nation itself, but I know they have very similar feelings and concerns.

Senator HOEVEN. Thank you, I agree. I think it is very important that there be a consultation.

Vice Chairman Olguin?

Mr. OLGUIN. Yes, from Southern Ute's standpoint, we have been in the gas and oil industry business there for several decades, probably as early as the early 1950s. We have over 3,000 wells on Southern Ute reservation and probably over 90 percent of those have been fracked.

We are currently at the point where we are looking at the horizontal drilling. We have never had experience that we are aware of where we have had issue with the fracking.

Senator HOEVEN. And this goes back how long, did you say?

Mr. OLGUIN. Back to the 1950s.

And along that line, there are many rules, regulations that the Tribe itself imposes. An example of that is cementing to the surface as far as the seal, versus requiring cement bond logs on every well. So definitely the concern with the fracking on the rule and regs, there are the costs again. And the rule imposes a definite threat to the economy in the southwest there, as well, as we are on the

State line. A lot of the service providers do come from New Mexico. So we do serve the Four Corners region from an economic standpoint.

Plus when we look at the opportunity, even with the 1684 TERA opportunity here again, get the Federal system out of the Tribal business opportunities and in essence, get them out of the way.

Senator HOEVEN. I want to thank all of you for coming today and for your testimony. I think you really demonstrated not only a lot of knowledge but a lot of work on issues that are very important. I always go back to, job creation is job one. And this discussion has been about energy, but it really goes to job creation, which is so important to the future of your respective Tribes.

So thank you for your good work. Thank you for being here. In closing, I want to remind everyone, the witnesses and any other interested parties, that the hearing record will be open for two additional weeks. So additional comments may be submitted.

Again thanks to all of you for coming today. We truly appreciate it. And this hearing is adjourned.

[Whereupon, at 3:44 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE CROW NATION

I. Introduction

The Crow Nation welcomes this opportunity to provide comments on S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. The Crow Nation is a sovereign government located in southeastern Montana. The Crow Nation occupies a reservation of approximately 2.2 million acres, with abundant natural resources including coal, oil, natural gas, and bentonite. We also are also actively working to develop hydropower and wind power projects utilizing renewable energy resources. The Crow Nation is uniquely positioned to contribute to the energy independence of our country.

We are encouraged to see the Committee working to address a number of the issues that impact energy development opportunities in Indian Country. Eliminating obstacles to energy project development and empowering tribes to regulate development on their own reservations, along with providing incentives to secure and expand Indian energy projects, will build additional capacity to create more jobs in the national economy. We must work together to address the barriers that currently limit project development in order to fully realize the potential for energy development that exists in Indian Country, and for the nation.

We believe that S. 1684 makes significant strides encouraging energy project development in Indian Country. Based on our experiences working with industry partners in the coal, oil, and natural gas extraction industries, we will also suggest additional provisions that would further promote this objective, and that would expand the impact of S. 1684 in addressing longstanding disparities in energy project development.

II. Comments on Existing Provisions in S. 1684

The current provisions of S. 1684 are all pointed in the right direction to eliminate obstacles to Tribal energy development and to facilitate efforts by Indian Tribes to control their own energy development.

In particular, the amendments to the 2005 Act's Tribal Energy Resource Agreement (TERA) statutes go a long ways toward making it possible for Tribes to take advantage of the authorization to approve their own energy development agreements and associated rights-of-way pursuant to an approved TERA. The time limits on approval by the Secretary of the Interior help assure that a TERA application will not languish for years due to staff shortages, or sheer inertia, within the Bureau of Indian Affairs. Providing Tribes with clear timeframes for TERA application processing should only serve to encourage tribal participation.

The additional criterion for determining whether the tribe has sufficient capacity to regulate—based on its operation of programs under the Indian Self-Determination and Education Assistance Act for three consecutive years—should greatly facilitate what could otherwise be a complex and uncertain TERA approval process. The Crow Nation, and undoubtedly many other energy Tribes, have long histories of successful administration of P.L. 93-638 contracts and grants. We agree with the author and sponsors of S. 1684 that proficient consistent implementation of 638 contracts do, in fact, demonstrate a Tribe's capacity to implement a TERA. There is no need to put tribes through the time and resources to demonstrate capacity, nor to spend limited federal resources evaluating tribal capacity needlessly.

Further, the amendments providing for certification of "tribal energy development organizations" provide an important alternative route for tribes to approve their own energy development agreements, when the tribe maintains majority control of the organization. The Crow Tribe has formed such an organization, Apsaalooke Energy Company, LLC, under its own limited liability company act. Financial and other constraints have thus far severely limited our ability to maintain majority control of projects, when all the investment dollars are furnished by the outside developer. However, the potential advantages of operating a project through a tribal

energy development organization, as afforded by the amendments in S. 1684, may also help facilitate that goal.

The funding mechanism included in the S. 1684 amendments assures tribes that at least some of their efforts in regulating their own resources will be paid for by funds that would otherwise be expended by federal agencies in carrying out their trust responsibilities. Whether this approach truly makes tribes whole will depend to a large extent on the scope and clarity of the Secretary's regulations promulgated under the Act. In any event, additional funding is needed for tribes to create, expand or improve some tribal regulatory structures *before* undertaking new responsibilities under a TERA.

Finally, we appreciate that S. 1684 includes clarifying provisions that expressly maintain the United States' responsibility for losses not resulting from negotiated terms. Ultimately, Crow Nation's ability to apply for a TERA or certification will depend on a consensus that the advantages are more than offset by any risks of future uncompensated losses that could threaten the tribes' long-term financial viability.

Apart from the TERA amendments, the other existing provisions of S. 1684 are also positive steps in eliminating barriers to Indian energy development and enhancing tribal self-determination. The amendments to the Federal Power Act would place tribes on an equal footing with states and municipalities in terms of preferences for FERC hydropower licenses. For the Crow Nation, the amendments supplement the exclusive rights to develop and market hydropower on the Yellowtail Afterbay Dam recognized in the 2010 Crow Tribe Water Rights Settlement Act (Pub. L. 11-291). The Nation is actively pursuing this hydropower development project to complement our portfolio of nonrenewable energy development projects. The amendments to provide weatherization assistance funding directly to tribes, rather than through the states, also recognizes the status of sovereign tribal governments.

III. Recommendations for Additional Provisions

A. BLM Oil and Gas Fees

In order to address a long-standing concern of the Crow Nation, the Senate bill should include language prohibiting collection of any fee by the Secretary of Interior, through the Bureau of Land Management, for any application for a permit to drill oil and gas wells on Indian land.

Beginning with the FY 2008 Appropriations Act for the Department of Interior, Congress required the Bureau of Land Management to charge a \$4,000 fee to process every Application for Permit to Drill (APD) on the federal lands, which BLM has also applied to Indian lands on which it supervises oil and gas development activity. The APD Fee has since been increased by subsequent appropriations legislation to \$6,500 for each new well. The Crow Nation has continually protested the application of this fee to tribal lands, and has sought relief in numerous ways.

This \$6,500 fee compares to drilling permit fees of less than \$100 off the Reservation in the State of Montana. Obviously, this creates a disincentive to explore for oil and gas on Indian lands compared to off-reservation State and fee lands. It has been a major factor in the suspension of additional natural gas field exploration and development on the Crow Reservation. The APD fee is a particular burden for the type of shallow (less than 1500' deep), low-producing gas wells on the Crow Reservation. The cost of completing these types of wells—and the gas production volume—is quite low, so the APD Fee substantially increases the capital investment necessary to bring additional wells into production.

The APD Fee also discourages efficient development and slows exploration efforts. For exploratory "wildcat" drilling where success is speculative, the developer can only afford to get permits for a couple of wells at a time, see if they hit gas, and if so, file APDs for another couple of wells, and repeat the cycle. Without the high APD Fee, the developer would be able to obtain many permits and immediately drill additional wells if the first ones are successful. Considering the lead time for issuance of the drilling permits (more than 90 days), the APD fee causes delays of up to a year in developing a handful of new wildcat wells, in addition to adding tens of thousands of dollars of non-productive costs that limit the Crow Nation's ability to charge taxes and collect royalties on future oil and natural gas production.

Language eliminating the collection of APD fees on Indian lands will eliminate the disparity that currently exists between drilling on Crow lands and drilling on adjacent State fee lands. Such a provision will enable expanded and more efficient oil and gas development on the Crow Reservation, and conform to our longstanding belief that Indian lands should not be treated the same as federal "public lands." This additional language would also be consistent with the amendment in Section 101 of the Bill that requires the BLM to consult with tribes with respect to well spacing decisions.

B. Leases of Restricted Lands

The Crow Nation seeks authority to lease surface rights for not more than 99 years by being added to the long list of tribes in 25 USC 415 (a). Having the authority to provide longer term surface leases will allow the Crow Nation to more effectively attract energy partners considering costly, long-term equipment installations, such coal-to-liquids plants or other clean coal conversion facilities.

C. Certainty in Tax Incentives

There are several current federal tax incentives for economic development in Indian Country, including an accelerated depreciation provision, an Indian wage tax credit, and for energy in particular, the Indian Coal Production Tax Credit.

Each of these tax incentives has substantial limitations restricting their usefulness for major Tribal energy development projects. More importantly, however, all of these tax incentives are set to expire at the end of this year, and in the past they have been extended only one year at a time. For major Tribal energy projects, such as a coal mine or a coal conversion project with 6–10 year development lead times, the inability to rely on the continued availability of these incentives means that they cannot be factored into the economic evaluations that are necessary for investment decisions. Permanent extensions and appropriate modifications to these existing tax incentives will facilitate job creation and economic development, particularly in energy development, on the Crow Reservation and for all of Indian Country.

1. Indian Coal Production Tax Credit

The Crow Nation has leased a portion of its coal reserves for 38 continuous years to Westmoreland Resources Inc (WRI). WRI owns and operates the Absaloka Mine, a 15,000-acre single pit surface coal mine complex on the northern border of the Crow Reservation. The Absaloka Mine was expressly developed to supply Powder River Basin coal to Midwestern utilities and has produced over 170 million tons of coal to date. WRI annually pays substantial production taxes and coal royalties to the Crow Nation: \$9.9 million of taxes and \$9.1 million in royalties were paid to the Crow Nation in 2010. A major portion of the Crow Nation's non-federal budget, approximately two-thirds, comes from Absaloka Mine coal revenues. Additionally, WRI employs a 70 percent tribal workforce, with an average annual salary of over \$62,000, and averages a total annual employment expense of approximately \$16 million. The Absaloka Mine is the largest private employer of Crow Tribal members on the Crow Reservation, where the unemployment rate exceeds 47 percent. The importance of the Absaloka Mine to the economy of the Crow Reservation cannot be overstated. Without question, the Absaloka Mine is critical to the Crow Nation's financial independence now, over the past 38 years, and well into the future.

Several factors have contributed to the longevity of the Absaloka Mine and the partnership between the Crow Nation and WRI, but a critical element in keeping the Absaloka Mine in operation has been the Indian Coal Production Tax Credit (ICPTC).

The 2005 Energy Policy Act authorized the ICPTC beginning in tax year 2006, based upon the number of tons of Indian coal produced and sold to an unrelated party. "Indian coal" is coal produced from reserves owned by an Indian Tribe, or held in trust by the United States for the benefit of an Indian Tribe, as of June 14, 2005, from facilities placed in service before January 1, 2009. The tax credit is calculated by totaling the number of tons of Indian coal produced and sold, then multiplying that number by \$1.50 (for calendar years 2006 through 2010). For tax years between 2010 and December 31, 2012, the total number is multiplied by \$2.00.

The origin of this production tax credit was an effort to neutralize the impact of price differentials created by sulfur dioxide (SO₂) emissions allowances, thereby keeping Indian coal competitive in the regional market. Without the credit, the Absaloka Mine would have lost some of its supply major coal supply contracts and would likely have closed in 2005, which would have had a devastating impact on the Nation. The ICPTC has worked to keep the Absaloka mine competitive and open, as it struggles to compete with much larger Powder River Basin coal mines producing federal coal. This tax credit remains critically important because, without it, the Absaloka Mine's economic viability would be in serious jeopardy. Continuation of the ICPTC will also provide an important incentive to help us attract additional investment for future energy projects utilizing our vast coal resources, estimated at 9 billion tons.

In order to protect existing operations and encourage growth, the ICPTC (a) should be made permanent, (b) should be allowed to be used against alternative minimum tax, (c) the "placed in service" date should be extended by at least 15 years (from 2009), and (d) the requirement that the coal be sold to an unrelated per-

son should be deleted to allow and encourage mine-mouth conversion projects and facilities owned, in whole or in part, by Indian Nations to participate and benefit from the credit.

The continued operation of the mine has been significantly facilitated by the tax benefits made possible by the ICPTC. Without the ICPTC, the Absaloka Mine would likely have ceased to operate, thereby ending a major revenue and employment source for the Crow Nation. Continuance of the ICPTC is critical to the future of the Absaloka Mine and to attract new investment for developing other Crow coal resources.

2. Accelerated Depreciation Allowance

Included in the *Omnibus Budget Reconciliation Act of 1993*, Pub. L. 103–66, 107 Stat. 558–63, codified at 26 U.S.C. 168(j), 38(b), and 45(A), are two Indian reservation-based Federal tax incentives designed to increase investment and employment on Indian lands. The theory behind these incentives was that they would act in tandem to encourage *private sector* investment and economic activity on Indian lands across the United States. Neither incentive is available for gaming-related infrastructure or activities. The incentives—an accelerated depreciation allowance for “qualified property” placed in service on an Indian reservation and an Indian employment credit to employers that hire “qualified employees”—expired on December 31, 2003, and have been included in the short-term “extenders packages” of expiring incentives since that time.

Energy projects require significant equipment and physical infrastructure, and involve the hiring of large numbers of employees. Crow is not alone in holding vast untapped natural resources; for several Indian nations, estimates of proven and undeveloped energy resources on Indian lands suggest that revenues to tribal owners would exceed tens of billions in current dollars.

Unfortunately, one-year or two-year extensions of the accelerated-depreciation provision do not provide an incentive for investment of new capital in Indian country for significant energy projects. Development of major projects generally takes a decade or longer. Investors need certainty that the benefit will be available when the project initiates operations in order to factor that benefit into their economic models and investment decisions. A permanent extension would address this problem, making the incentive attractive to investors for long-term energy projects on Indian lands.

As currently written, the depreciation allowance could be interpreted to exclude certain types of infrastructure related to energy resource production, generation, transportation, transmission, distribution and even carbon sequestration activities. We recommend that language be inserted to statutorily clarify that this type of physical infrastructure expressly qualifies for the accelerated depreciation provision. In proposing this clarification, it is not our objective to eliminate non-energy activities that might benefit from the depreciation allowance and, if adopted, the language we propose would still encourage other forms of economic development in Indian country.

By providing clarifying language and this permanent extension, the accelerated depreciation provision will finally accomplish its purpose—enhancing the ability of Indian nations to attract energy industry partners to develop long-term projects utilizing the available Indian resources.

3. Indian Employment Wage Credit

The 1993 Act also included an “Indian employment wage credit” with a cap not to exceed twenty percent (20 percent) of the excess of qualified wages and health insurance costs that an employer pays or incurs. “Qualified employees” are defined as enrolled members of an Indian tribe or the spouse of an enrolled member of an Indian tribe, where substantially all of the services performed during the period of employment are performed within an Indian reservation, and the principal residence of such employee while performing such services is on or near the reservation in which the services are to be performed. *See* 26 U.S.C. 45(c)(1)(A)–(C). The employee will not be treated as a “qualified employee” if the total amount of annual employee compensation exceeds \$35,000.

As written, the wage tax credit does not attract private-sector investment in energy projects within Indian country. The provision is too complicated, the wage ceiling is too low for good energy sector jobs, and private entities conclude that the cost and effort of calculating the credit outweighs any benefit that it may provide. We therefore propose that the wage and health credit be revised along the lines of the much-heralded Work Opportunity Tax Credit, which is less complicated and more likely to be used by the business community. We propose retaining the prohibition contained in the existing wage and health credit against terminating and rehiring

an employee and propose to alter the definition of the term “Indian Reservation” to capture legitimate opportunities for employing tribal members who live on their reservations, even though the actual business activity may be off-reservation. These amendments would allow the Indian Employment Wage Credit to more effectively fulfill the purpose for which it was originally enacted.

4. Alternative Fuel Excise Tax Credit

Several coal-to-liquids (CTL) projects have been announced in the United States. However, all of these projects are struggling due to the high financial commitment needed to plan and implement these projects in an uncertain economic and energy policy environment.

The Crow Nation’s Many Stars CTL Project has not been immune from these challenges. Although progress on Many Stars has been suspended while we seek a new industry sponsor for the project, the Crow Nation remains committed to development of a major clean coal conversion facility as the best way to monetize our very large coal resource base over the long term. Among other potential actions that the federal government could take to encourage the development of new technology in this area, the extension of the Alternative Fuel Excise Tax Credit is critical.

The current Alternative Fuel Excise Tax Credit provides for a 50-cent per gallon credit. We would propose to extend the expiration of the tax credit for a definitive time period, rather than year-to-year extensions as has been done recently. Since it could take roughly 6–10 years for a CTL project to be fully planned, implemented, and operational, investors cannot count on incentives that will expire before the plant starts operation. An addition to S. 1684 should address this concern by providing the tax credit for a period of at least 10 years following start-up for those projects that utilize Indian coal as defined in the ICPTC provisions.

IV. Conclusion

It is critical that Congress act to protect Indian nations’ sovereignty over their natural resources and secure Indian nations as the primary governing entity over their own homelands. This will have numerous benefits for the local communities as well as the Federal Government.

The Crow Nation aspires to develop its vast coal and other natural resources not only for itself, but to assist the United States realize the long-sought goals of achieving energy independence, securing a stable domestic supply of energy, and protecting national security. These goals are consistent with the provisions in S. 1684, and can be furthered by the additional provisions we suggest adding to the Bill.

Thank you for the opportunity to provide these comments and to suggest additional measures to encourage energy development and self-determination in Indian Country.

PREPARED STATEMENT OF HON. RANDY KING, CHAIRMAN, SHINNECOCK INDIAN NATION

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs. My name is Randy King. I am the Chairman of the Shinnecock Nation Board of Trustees. Thank you for the opportunity to testify on S. 1684, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.” The Shinnecock Nation supports S. 1684, but asks that existing sections be strengthened and additional provisions be added to increase renewable energy and energy management opportunities for Indian tribes.

I. Introduction

The Shinnecock Nation’s Reservation is located within the geographic boundaries of Suffolk County, New York—on Long Island. The Nation has maintained its existence on Long Island as a self-governing nation with a land base that it has exercised jurisdiction over since time immemorial. Despite this long history, the Nation was only recently acknowledged by the federal government. Federal acknowledgment opens up new opportunities for the Nation to provide for the critical needs of its communities, including implementation of energy development and efficiency measures.

Our Nation is facing impacts from climate change, growing energy costs, and the need to provide jobs for tribal members. In order to provide long-term economic opportunities for our people, protect our Reservation homelands, and address the imminent challenges of climate change, the Nation must plan for its energy future. We have already begun by working to partner with local organizations, including exploration of a potential partnership with Stony Brook University, to develop and implement renewable energy projects that will benefit both the Nation and the sur-

rounding communities. We also plan to utilize federal programs and grants to examine and support options for energy self-sufficiency, and economic development, including job training for tribal members, as well as energy efficiency programs.

Because the Nation's Reservation is geographically limited and surrounded on three sides by water, we have an acute sense of the growing threat of climate change and the need to plan for our energy future. The Nation's energy planning includes developing sustainable energy projects that will serve the immediate needs of the Nation, and longer term adaptive measures that will be needed in the face of climate change impacts over time. Energy independence will play a critical role in meeting these challenges. In order to be self-sufficient and sustainable as a Nation, the Shinnecock people will need to have sound reliable sources of energy. This includes not just generation resources, but also energy efficiency and weatherization measures that will help the Nation control energy costs and limit carbon emissions for itself and its members.

Environmentally sound energy development and the promotion of tribal energy sustainability would dramatically and positively impact the Shinnecock tribal economy by creating revenue through the sales of clean energy and, potentially, carbon credits, into the regional economy. Our effort to gain energy independence would promote the long-term security of our communities, provide a major regional economic boost, and provide a test-case in clean energy development that can assist the Department of the Interior (DOI), the Department of Energy (DOE), and other tribal communities seeking examples of successful tribal energy management and renewable energy development.

As an example, the Nation is currently exploring options for a potential partnership with Stony Brook University's Southampton Campus to develop clean renewable energy sources such as a hydrokinetic project. This potential project would allow a research facility to be put in place off the coast of the Nation's Reservation. Tribal members and the University would be able to gain practical engineering experience and electric market experience in the development of the project. Hydrokinetic power offers a clean reliable domestic source of energy that could have far reaching benefits not only for the Shinnecock Nation, but for all coastal communities.

II. Specific Comments on S. 1684

The Nation supports the Committee's interest in promoting Indian energy development, and generally support's Senator Barrasso's Indian energy bill, S. 1684. Promoting Indian energy and tribal management of energy resources is consistent with the Nation's energy planning and goals described above. S. 1684 makes some important changes to existing laws, but much more is needed. In addition to strengthening what is already in S. 1684, the Nation requests that the Committee include additional measures needed to promote renewable energy development and overcome barriers to Indian energy development.

A. Indian Energy Loan Guarantees

Section 101 of S. 1684 would require the Secretary of Energy to develop regulations for an Indian Energy Loan Guarantee Program that was originally authorized in 2005 but which was never implemented. We believe that requiring the Secretary to develop regulations would be helpful, but more is needed. The law also needs to be changed to require the Secretary of Energy to provide these loan guarantees so that Indian tribes can benefit from loan guarantees the same as other energy developers. Changing this law would help tribes overcome one of the major obstacles to Indian energy development—project financing.

Under current law, the Secretary "may" provide loan guarantees to Indian tribes. This program needs to be made mandatory so that Indian tribes can received the same loan guarantees currently provided to other energy developers through the Energy Innovations Loan Guarantee Program. The Energy Innovations Loan Guarantee Program was authorized by Title XVII of the Energy Policy Act of 2005. The Secretary was required to implement the program under Title XVII and the law should be changed to require the Secretary to implement the program under Title V.

Indian energy projects are innovative projects that are providing energy to generally underserved communities. These projects would bring economic and energy security to our communities while advancing national interests in increased domestic energy production. The Shinnecock Nation's energy plans to develop hydrokinetic, distributed energy and community transmission projects deserve the same support as the support provided by the Title XVII program.

Although the DOE stated that its Title XVII program is available to Indian tribes, the lack of tribal applicants and loan guarantees successfully awarded to tribes

demonstrates that the Title XVII program is not a tribal program. The Title V Indian Energy Loan Guarantee program is needed to address issues specific to Indian Country. First, the loan guarantees need to be marketed to tribes. Second, tribal applications should not have to compete with national energy developers who have decades of experience in the energy industry. And, third, the loan guarantees should be provided to tribes on terms that will work in Indian Country.

B. Tribal Energy Resource Agreements

Section 103 of S. 1684 would make changes to the existing Tribal Energy Resource Agreement (TERA) to increase tribal interest in the program. In general, the TERA program provides a process for Indian tribes to apply and potentially gain authority to approve leases, business agreements, and rights-of-way for energy development or transmission on their lands without Secretarial review. The changes proposed in S. 1684 would make the application process more certain and provide an alternative route for a tribe to obtain limited TERA authority.

While these are useful changes, the benefits of TERA authority seem limited to those tribes who are likely to be entering into many leases, business agreements and rights-of-way. It is not clear to us that tribes who may only enter into a handful of energy agreements would gain any benefit for the expense of going through the TERA application process. We propose additional changes that would benefit more tribes interested in energy development.

As you know, TERA was enacted to promote tribal self-determination in the development and management of Indian energy resources. TERA does this by focusing on the lease and agreement approval process. This is only half of the problem. In addition to the authority to approve our own energy agreements, tribes need the exclusive authority to tax and exercise jurisdiction over energy projects. Without these two important elements of governmental authority, tribes are being asked to take over more governmental responsibilities with one hand tied behind our back.

To really provide Indian energy self-determination and encourage Indian energy development we need Congress to affirm that Indian tribes have the same authorities that other governments use to support energy and economic development. First, we need to clarify that Indian tribes retain their inherent sovereign authority and jurisdiction over any energy rights-of-way they have granted. Over the last 30 years, jurisdiction over rights-of-way has been treated differently by various federal courts. Each time an issue arises, another federal court undertakes a new examination. This leads to uncertainty in the law and a lack of dependability about the rules that apply on a right-of-way. This hinders our ability to develop energy resources because all parties need certainty in the law.

Second, the law should be clarified to ensure that tribes can raise needed tax revenues to support and oversee energy development. Currently, federal courts allow other governments to tax energy development on Indian lands even though these other governments may not provide services to the tribal community. This limits and even prevents tribes from earning tax revenues from development on our lands. Without tax revenues, tribal infrastructure, law enforcement, and other services cannot keep up with the burdens imposed by energy development, and we remain dependent upon funding from the Federal Government.

Third, even more streamlined opportunities should be available for tribes to gain control over energy permitting within their jurisdictions. For example, similar to the Clean Water Act and Clean Air Act treatment-as-a-state programs, and energy permitting program could be developed to allow either DOE or DOI to certify tribal energy programs that could then issue tribal approvals for projects within the jurisdiction of the tribe. Another option would be a list of projects or a checklist of project components where if a project description meets the majority of the provisions in the checklist the project would be considered ministerial or qualify for a categorical exemption from review under the National Environmental Policy Act.

C. Hydroelectric Preliminary Permits and Licenses

We support Section 201 of S. 1684 which would provide us with the same preference that states and municipalities have over private applicants for hydroelectric preliminary permits or licenses. As with taxing and jurisdictional authority described above, tribal governments should have the same preferences as state and municipal governments in the development of our water supplies. However, subsection 201(b) should be deleted from S. 1684. This subsection is intended to protect previously issued preliminary permits and original licenses that had been accepted for filing. This subsection unnecessarily limits the tribal preference and restricts competition.

Subsection 201(b) is not needed because existing law, 16 U.S.C. § 800(a), already provides protection for previously issued preliminary permits. Section 800(a) pro-

vides that governments only receive this preference “where no preliminary permit has been issued.” Consequently, there is no reason to include an extra limitation on tribal applications for preliminary permits.

Subsection 201(b) also restricts competition for licenses contrary to prior Congressional intent. In Section 16 U.S.C. § 808, Congress recognizes and provides a process for competing license applications. Subsection 201(b) should not override this existing law and policy. In Section 808, Congress encourages competition for licenses and provides standards to ensure the best development of public waterways. The proposed changes in subsection 201(b) would limit competition and result in water projects that are not the best available for tribal and public waterways.

D. Weatherization Program

We support the changes proposed in Section 203 of S. 1684, but the changes do not go far enough to make weatherization programs work in Indian Country. Section 203 would provide tribes with the ability to apply for direct access to weatherization funding. This authority should have been provided long ago. Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs funded by DOE. Not only is this a violation of the federal government’s government-to-government relationship with Indian tribes, but distribution through state programs also severely limits the amount of funding tribes receive.

Instead, DOE should be required to establish a tribal set-aside and develop a weatherization program that will work in Indian Country. A tribal set-aside is needed to ensure that a portion of the approximately \$50 million per year that is devoted to weatherization assistance gets to Indian tribes and their members. The weatherization program is intended for low-income households and should go to those who need it most. On Indian reservations poverty rates are 2 to 3 times higher than national averages.

In addition, Section 203 should include changes that will allow tribes to put weatherization funding to work. Without standards and training that are appropriate to Indian country, many Indian tribes will still not be able to utilize weatherization funds. Training is needed for energy auditors in Indian Country and weatherization standards need to be adjusted to reflect the status of housing in much of Indian Country. For more than three decades, DOE has overlooked weatherization needs of Indian tribes and the program should be adjusted to reflect the unique challenges tribes face.

III. Additional Measures Needed

The Shinnecock Nation also asks that additional provisions be added to S. 1684 to increase renewable energy and energy management opportunities for Indian tribes.

A. Land Into Trust

We believe the need for energy security and a sound domestic energy supply justifies a clean Carcieri fix as well as an expedited fee to trust process for tribal energy projects. As a newly acknowledged tribe, the Shinnecock Nation needs support for the land into trust process for many of our activities including energy development. We believe resolving the Carcieri problem through adoption of a Carcieri fix will significantly assist tribal nations in moving forward with social welfare and economic development projects such as new more efficient housing and renewable energy projects.

For example, the Nation has an opportunity to purchase a number of tracts of land on eastern Long Island that could be utilized for the development of a solar power facility that would bring clean and reliable energy to Long Island. Currently, there are transmission constraints on Long Island that have impacted the ability for the eastern end of the Island to have reliable power. The Nation’s plan to acquire the lands and develop a solar facility on eastern Long Island would help meet New York State’s renewable portfolio standard and also provide local power without the constraints of wheeling power from other areas which would promote the reliability of electricity for the Nation and Long Island.

This potential project is also consistent with Governor Cuomo’s Energy Highway concept as it creates new clean sources of power to meet the needs of Downstate New York, while providing skilled jobs for tribal members and revenue for the Nation. This project will provide an opportunity for the Nation to work cooperative with the local governments for the benefit of both the Nation and the Long Island community generally.

However, in order to move forward with the proposed solar project, the Nation will need to acquire the land and have it placed into trust. The Nation recommends that the Committee seek passage of a clean Carcieri fix and develop legislation that would require the DOI to expedite fee to trust applications for tribal energy projects.

B. DOE Support for Hydrokinetic Projects

Committee member Senator Murkowski has introduced an important bill, S. 630, which will improve marine and hydrokinetic renewable energy research and development. However, the bill should include Indian tribes and Alaska Natives as eligible entities for grant funds to implement hydrokinetic test facilities. Currently, the bill does not.

The Nation requests that the Committee include the provisions of S. 630, and include tribes in those provisions, in S. 1684. In the alternative, if the Senate plans to move S. 630 on its own or part of a larger national energy bill, the Nation asks that the Committee and Senator Murkowski ensure that Indian tribes and Alaska Natives are included in the list of eligible entities. The Nation is seeking an equal opportunity to apply for such funding and participate with other entities on Long Island as an equal partner for implementation of a hydrokinetic project.

C. Distributed Energy and Community Transmission

The Nation asks that the Committee include provisions in S. 1684 that would support distributed energy and community transmission projects in Indian Country. In the Indian Energy Parity Act of 2010, former Senator Dorgan included a demonstration project that would provide just this kind of support. Senator Dorgan's provision directed the Secretary of Energy to conduct no fewer than 10 distributed energy demonstration projects to increase the energy resources available to Indian and Alaska Native homes, communities, and government buildings. Priority is given to projects that reduce or stabilize energy costs among other things.

Support for distributed energy and community transmission would help the Nation achieve energy independence and increase our energy security. While we have access to the traditional energy grid, supplies are geographically constrained. This is not unlike other tribes who are not connected to the traditional energy grid or have limited access. Currently, there are no existing federal programs that assist tribes in this situation.

D. Tribal Authority Over Energy Approval Processes

The Nation asks that Committee consider exempting energy projects in Indian country from some DOI approvals, or allowing tribes to take over certain approval processes. While the TERA program from the 2005 Energy Policy Act already allows tribes to do much of this, the TERA program requires tribes to take over most or all of the permitting. Very few tribes have the resources to completely take over energy permitting.

Instead, the Nation asks that the Committee recognize that every tribe is at a different place in its capacity to oversee energy projects and alternatives should be available for tribes to take over some DOI approvals, but not necessarily the entire energy permitting process. The Committee should consider exempting or allowing tribes to take over approval processes for appraisals, leases, rights-of-way, environmental reviews, and any other discrete parts of the energy development process. Having these options available will allow tribes to develop energy expertise and permitting capacity in manageable steps.

E. Inclusion of Tribes in Offshore Energy Projects

The Nation aspires to make President Barack Obama's Executive Order No. 13547, "Stewardship of the Ocean, Our Coasts and the Great Lakes" a reality. We plan to examine our opportunities for development of ocean energy technology, which will be a monumental step towards energy security and conservation for the entire Northeast Region. In order to be successful in this pursuit, the Nation will need to have the ability to permit such facilities, and have access to federal programs and funds that promote the development of offshore energy projects.

The Executive Order contemplates direct participation by tribal officials in the promotion of this policy, as well as tribal collaboration with state and Federal officials, with the goal of developing and implementing regional coastal and marine spatial planning that includes assessment and consideration of offshore renewable energy technologies.

The Nation asks that the Committee help to make sure that tribes are included in programs and legislation supporting offshore energy projects. The Nation intends to participate in the process and pursue the potential for clean renewable ocean energy development; including both the aforementioned hydrokinetic project, as well as examining the potential for offshore wind projects.

F. Renewable Energy Tax Credits

The Nation and many other tribes need to be able to take advantage of renewable energy tax credits. These tax credits are essential to financing renewable energy projects and lowering the cost of the energy produced. Tribes need to be able to

monetize these tax credits or share them with a private energy partner. Without the ability to utilize renewable energy tax credits tribes will continue to be priced out of the renewable energy market.

G. Energy Efficiency

The Nation asks that the Committee include provisions in S. 1684 that would allow tribes to participate in energy efficiency programs. Despite a longstanding state program, there are no ongoing programs to support tribal energy efficiency efforts. DOE should allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings.

S. 1684 could include a tribal energy efficiency program modeled after the successful Energy Efficiency Block Grant (EEBG) program. The EEBG program was very successful in providing funding to tribes to manage their energy resources, but it was only funded one time—under the American Reinvestment and Recovery Act of 2009. To ensure an ongoing source of funding for tribal energy efficiency efforts, tribes should be provided a portion of the funding for state energy efficiency efforts.

IV. Conclusion

I would like to thank Chairman Akaka, Vice Chairman Barrasso and Members of the Committee on Indian Affairs for the opportunity to present this testimony on behalf of the Shinnecock Nation.

PREPARED STATEMENT OF ROBERT ODAWI PORTER, PRESIDENT, SENECA NATION OF INDIANS

Dear Senator Akaka, Ranking Member Barrasso and Members of the Committee: On behalf of the Seneca Nation of Indians, thank you for the opportunity to add the voice of the Seneca Nation to the important topic of Indian Nation energy and economic development. The Seneca Nation has had the pleasure of addressing you and the Committee over the years and very much enjoys the strong working relationship with you and your staff. The Seneca Nation's is a leader in the development of economic opportunities for its citizens and the surrounding region of Western New York and is eager to protect and develop its renewable resources as part of its economic diversification.

The Seneca Nation submits this letter as comments for the record to the above-referenced legislative hearing on S. 1684, specifically concerning the necessity for stronger Federal Power Act amendments that clarify Indian Nation Self-Determination. To increase its economic diversification, the Seneca Nation is a competitor in the hydropower re-licensing proceeding to operate the Seneca Pumped Storage Project at Kinzua Dam, which uses Seneca Nation lands and waters; and the Nation has filed a preliminary permit to add a conventional hydropower project at Kinzua Dam to increase hydroelectric capacity from the water resource; also, the Seneca Nation is a stakeholder in the incumbent's attempt to continue its operation of the Seneca Pumped Storage Project. The Nation's role as a stakeholder and competitor for hydropower has provided the Nation with valuable experience concerning the failures of the Federal Power Act to support Indian Nation Self-Determination.

The "Seneca Pumped Storage Project" at Kinzua Dam requires the use of land and water that belongs to the Seneca Nation. However, the definition of "tribal lands embraced within Indian reservations" in the Federal Power Act has led to an inaccurate interpretation of "Indian reservations" by the Federal Energy Regulatory Commission. FERC has ordered that only lands held in trust status may be recognized as "tribal lands embraced within Indian reservations." This is contrary to Indian Country Self-Determination and the body of federal Indian law defining "Indian Country." As one of very few provisions in the Federal Power Act meant to protect Indian Country, it is important for Congress to clearly define the term "tribal lands embraced within Indian reservations" as it is understood in the body of federal Indian law.

In addition, in re-licensing proceedings for projects that use Indian nation lands and waters, Indian nations receive no preference. The proposed Section 201 of S. 1684 addresses Indian nation preference for original licensing and preliminary permits, and does not provide the same preference for re-licensing proceedings. The Seneca Nation and many other Indian Nations such as the Confederated Tribes of Warm Springs, the Crow Nation, and the Coeur d'Alene Tribe, have been historically burdened by private development of hydropower utilizing Indian lands and waters. For the Seneca Nation over the last 40 years, the Seneca Pumped Storage Project has eroded its lands, affected water quality and the ecosystem, disturbed cultural resources—and has done so without compensation or mitigation. The Sen-

Seneca Nation should be provided a preference in re-licensing where the project uses Seneca lands and waters in order to support Seneca Self-Determination, to regain control and management of our treaty protected resources, and for Seneca Nation economic development that will benefit local and regional economy.

When the Seneca Pumped Storage Project license was granted in 1965, the use of the Nation's lands and waters were ignored, environmental concerns to Seneca resources were not considered, and annual charges for the use of our lands were not paid. Minor amendments to the Federal Power Act today could provide protection to Indian lands and waters and clarify the meaning and use of "tribal lands" in the Seneca Nation's re-licensing efforts, as well as future development and participation in hydropower licensing by other Indian nations.

To assist in your further review of the Federal Power Act, the Seneca Nation will be submitting proposed amendments to the Federal Power Act to your staff and counsel. These amendments highlight the need to ensure the goal of renewable energy development in Indian Country so that Indian Nation governments are no longer excluded in hydropower licensing, are allowed at least an equal playing field for Indian nations whose lands and waters are used for hydropower purposes so that they receive annual fees to which they are entitled, and to support Indian Nation development of hydropower as part of its economic and energy long term strategies.

The National Congress of American Indians passed a Resolution, which called on Congress to explore the impact of dams in Indian Country, and to "amend the Federal Power Act to fully incorporate Indian Nations into the hydropower licensing and re-licensing processes wherever Indian Nation lands, former lands waters and on and off-reservation treaty rights are affected by dams and associated projects." A copy of this Resolution, ABQ-10-035 passed in November 2010, is attached hereto.

The strength of the Federal Power Act to Indian Country should be considered in S. 1684 as a potentially powerful way to protect (or usurp) Indian Nation sovereignty and energy development of our land and water resources, and can provide further opportunities (or hindrances) in the development of Indian Country renewable resources. The current re-licensing of the Seneca Pumped Storage Project allows the Nation to revisit the loss of land and use of our treaty protected lands and waters for hydropower purposes. The Seneca Nation's entry into the re-licensing of the Seneca Pumped Storage Project and its preliminary permit for conventional hydropower at Kinzua Dam will further redefine, and hopefully strengthen, the Seneca Nation's treaty relationship with the U.S. and its executive agencies, including the U.S. Army Corps of Engineers, the Department of the Interior, and the Forest Service. Most importantly the potential to obtain the license will grow the Seneca Nation's economic independence and mutual goals for economic sustainability.

The Seneca Nation would be grateful for the opportunity to discuss proposed amendments to the Federal Power Act to include in S. 1684 that will benefit Indian Country, at your convenience. The Nation looks eagerly toward the Committee's progress on these issues.

Attachment

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #ABQ-10-035

TITLE: CALL ON CONGRESS AND OBAMA ADMINISTRATION TO REDRESS EFFECTS OF FEDERAL DAMS AND WATER PROJECTS ON INDIAN LANDS AND WATERS AND INCORPORATE SOVEREIGNTY AND SELF-DETERMINATION INTO FUTURE USE

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Federal Government has a long history of building dams and related water projects that impact Indian Nation waterways and lands for various national flood control, navigation, water supply, pollution abatement, economic development and energy production efforts; and

WHEREAS, these dams and their associated projects have had dramatic and devastating effects on our Indian Nations, communities, lands, waterways, traditional ways, and resources and have resulted in legacies of removal, loss and trauma from which we have not recovered; and

WHEREAS, the continued operation of these dams and their associated projects creates disproportionate hardships for Indian Nations, including continued dislocation, loss of access to Indian Nation lands, poor water quality, increased trespassing and theft or damage to cultural resources, artificial sediment deposits that impact water infrastructure and contain unknown contaminants, harm to waterways and fisheries, loss of traditional medicines and plants, damage to riparian habitat and wildlife, and increased recreational traffic and impacts; and

WHEREAS, much of America benefits from the continued misuse of our Indian Nation lands and waters for flood control, water supply, pollution abatement, electricity and income generated therefrom, while our own communities enjoy few of these benefits, have had no control over the use of our lands and waters, and often have no voice in the process of determining continued use; and

WHEREAS, Indian Nation governments and communities have not been acknowledged as the owners and caretakers of their lands and waters, have not been fully compensated for their past losses nor ongoing impacts, nor fully consulted as impacted sovereigns on the current operations and effects of dams and their associated projects.

NOW THEREFORE BE IT RESOLVED, that NCAI calls on Congress to create a nine member Commission with a majority of tribal governmental representatives impacted by dams, to investigate and report on (1) the failure of Congress to fairly compensate Indian Nations for losses caused by dams and their associated projects, which Indian Nations have borne disproportionate burdens compared to the benefits received by the American people; (2) how Indian Nation sovereignty and self-determination can be supported so that Indian Nations maintain control of the use and enjoyment of their own lands and waters; and (3) how to compensate Indian Nations for past harms and future uses of Indian Nation lands and waters for dams and associated projects; and

BE IT FURTHER RESOLVED, that NCAI calls on Congress to respect Indian Nation sovereignty and self-determination and amend the Federal Power Act to fully incorporate Indian Nations into the hydropower licensing and re-licensing processes wherever Indian Nation lands, former lands waters and on and off-reservation treaty rights are affected by dams and associated projects; and

BE IT FURTHER RESOLVED, that NCAI calls on President Obama to issue an Executive Order calling on all federal entities, which have any role in administering dams, associated projects, or nearby lands (including but not limited to the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, the Department of the Interior, the National Park Service, the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service) to acknowledge and support Indian Nation sovereignty and self-determination in the control and management over their own lands and waters, and to fully consult and cooperate with Indian Nation governments, whose lands, waters and resources are affected by dams and associated projects, and to read existing statutes and interpret existing authorities in favor of Indian Nation rights, sovereignty, and self-determination; and

BE IT FURTHER RESOLVED, that NCAI calls on President Obama to include in his Executive Order a requirement of a joint consultation on issues impacting affected tribes including the designation of a lead agency; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2010 Annual Convention of the National Congress of American Indians, held at the Albuquerque Convention Center in Albuquerque, NM on November 14–19, 2010, with a quorum present.

PREPARED STATEMENT OF THE INTERTRIBAL TIMBER COUNCIL

The Executive Board of the Intertribal Timber Council (ITC) supports S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, and requests that this statement be included in the Committee's April 19, 2012 hearing record on the bill.

The ITC is a thirty-six year old association of sixty Indian tribes and Alaska Native organizations that collectively manage more than 90 percent of the 18 million acres of forest land held in trust by the Bureau of Indian Affairs. The ITC is dedicated to pursuing the best management and protection of tribal forests and other natural resources. We actively participated in the development of the National Indian Forest Resources Management Act (PL 101-630, 1990) and the Tribal Forest Protection Act (PL 108-278, 2004). It is our pleasure to now support S. 1684.

We wish to express our strong support for Section 202 which would establish Tribal Biomass Demonstration Projects. Such projects are sorely needed to improve forest health and reduce threats to lands held in trust for Indians. Tribal inquiries into biomass projects on federal public forests have often been thwarted by lack of federal direction, administrative timidity, and crippling slow decisionmaking. The demonstration projects will help overcome these obstacles by providing clear direction to the Forest Service and BLM and assuring that eligible projects are promptly selected and carried out.

Tribal forest lands frequently adjoin or are in close proximity to federal public forest land, much of which is in need of forest health treatments that can be carried out by tribal forestry operations. Biomass projects could help reduce threats to nearby Indian trust forest resources from fire, disease and insect infestation. Protection of these trust lands and resources is the basic premise of the Tribal Forest Protection Act. In addition, improvement of forest health and ecological functions are vital to maintain watersheds and fish and wildlife habitat on lands that may be subject to federally-reserved tribal rights.

Tribes are particularly well situated to undertake biomass projects. Some forested tribes have their own forest products processing facilities and many provide timber that supports other forest products milling facilities. Such infrastructure (roads, site, electricity, water, harvesting, transportation, and a trained work force) is essential for development of facilities that can use woody biomass for biofuels or renewable energy to contribute to national goals of energy independence and security.

Tribes, as America's first stewards, are committed to long-term, sustainable management of forests and other natural resources and have skilled and experienced professional staffs and field operations. The biomass demonstration project will help provide jobs, revenues, heat, fuel, or electricity for tribal and other rural communities. Some financial opportunities available to tribal governments, such as tax credits or bond financing, could also prove helpful in securing financing to develop and operate biomass facilities.

The ITC appreciates the thought and effort in developing Section 202. Among particular elements we note in the bill are—

- A minimum of four projects a year for the Project's five year authorization should provide an adequate opportunity for interested tribes to develop and submit applications to participate in the program. The eligibility criteria allow the Secretary, working with affected tribes and intertribal organizations, to flexibly tailor those requirements. The selection elements, drawn from the Tribal Forest Protection Act, include the Secretary's according weight and deference, pursuant that Act's Section 2(e)(2)(A), to the special and unique attributes of tribal governments, such as the government-to-government relationship between tribal governments and the U.S. and the sovereign authorities of tribal governments.
- The budget neutrality of the Project, including the specific limitations on direct service contracts and use of merchantable logs already identified for commercial sale to assure that neutrality.
- The prompt promulgation required for the Program.
- The authority for the Secretary to extend, as practicable, the tribe's forest management plan or Integrated Resource Management Plan to the biomass project. Such plans are already required by statute to be sustainable, and must have been approved by the Secretary to be in effect, and their potential application to the biomass project would substantially facilitate the project's implementation.
- The twenty-years-plus-ten year term for contracts (presuming that stewardship contracting authority will be extended) or agreements entered to carry out the Act. The potential to secure a thirty-year feedstock supply would provide sorely-needed support for financing biomass plants.

Lastly, the ITC recommends that the term "biomass" be defined in S. 1684. "Biomass" has been defined and referenced extensively, but inconsistently, in various

legislation and administrative policies.¹ To eliminate ambiguity, we recommend that “biomass” be defined the in the same manner as “renewable biomass” in the 2008 Farm Bill (PL 110–246). For Biomass projects to be successful, it is important for all potential feedstock to be available to provide diversity and stability of supply and to minimize the administrative costs of chain of custody requirements to qualify for classification as renewable fuels or renewable energy.

We look forward to the Senate’s consideration of S. 1684 this year, and hope the bill will promptly move through Congress.

PREPARED STATEMENT OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA)

Aloha e Committee Members. The Office of Hawaiian Affairs (OHA) thanks you for taking the time to conduct a legislative hearing on April 19, 2012 on S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. OHA is a unique, quasi-independent state agency established by the Hawai‘i State Constitution and state statutes to better the conditions of Native Hawaiians (Hawai‘i’s indigenous people). Guided by nine trustees elected by the voters of Hawai‘i, OHA advances the interests of Native Hawaiians and serves as a fiduciary for Native Hawaiian public trust funds and other resources. One of the ten strategic results identified in OHA’s strategic plan is to achieve pae ‘āina sustainability—i.e., to increase the amount of Hawaiian land that is managed in a sustainable and balanced manner to create economic value and to preserve cultural and natural resources and historic properties. Accordingly, OHA offers the following testimony in support of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011.

Native Hawaiians and Energy

Limited resources required Native Hawaiians to develop careful land and resource management practices to support individuals and society, as well as to maximize available resources. With that in mind, OHA carefully monitors existing and proposed energy projects.

As Hawai‘i moves towards a renewable energy future, energy is playing an increasingly important role in sustaining a thriving, self-determining Native Hawaiian community. Namely, the pono (balanced and proper) use of wind, solar, geothermal, hydro, bio-fuel, and other renewable energy sources that are abundantly found in Hawai‘i leads to increased employment, education, preservation of cultural and natural resources, and self-sufficiency, all of which are of critical importance to the self-determination of the Native Hawaiian community.

The Indian Tribal Energy Development and Self-Determination Act Amendments of 2011

The Indian Tribal Energy Development and Self-Determination Act Amendments would provide Indian tribes with technical assistance in planning energy resource development programs; make intertribal organizations eligible for Department of Energy program grants; make tribal energy development organizations eligible for Department of Energy development loan guarantees; allow for leases and business agreements that pool, unitize, or communitize tribal energy resources with other energy resources; and require energy-related tribal leases, business agreements, and grants of a right-of-way that are made without secretarial approval to meet certain standards.

OHA supports increased opportunities for Native communities to exercise their authority in the area of resource management and, specifically, in the area of energy resource development. Accordingly, OHA supports S. 1684, The Indian Tribal Energy Development and Self-Determination Act Amendments of 2011. Thank you for the opportunity to comment.



¹Bracmort, K. and R.W. Gorte. 2012. Biomass; Comparison of Definitions in Legislation Through the 111th Congress. Congressional Research Service Report R40529. March 7, 2012.