

**Statement of Vernon Hill
Chairman of the Eastern Shoshone Business Council of the
Wind River Indian Reservation**

**Before the United States Senate
Committee on Indian Affairs**

**On
Legislation Relating to Indian Energy:
S. 424, the Tribal Energy Self-Sufficiency Act and
S. 522, the Native American Energy Development and Self-Determination Act
of 2003**

March 19, 2003

INTRODUCTION

Good afternoon Mr. Chairman and Mr. Vice-Chairman and members of the Committee. For the record, my name is Vernon Hill. I am Chairman of the Eastern Shoshone Business Council of the Wind River Reservation in Wyoming. I am pleased to be with you today to testify on pending legislation relating to Indian energy development, namely S. 424, entitled the Tribal Energy Self-Sufficiency Act and S. 522, the Native American Energy and Self-Determination Act of 2003. I am presenting this statement on behalf of both Eastern Shoshone Tribe and the Northern Arapaho Tribe, both share the Wind River Reservation. Our Tribes support provisions in both S. 424 and S. 522, and we also have concerns with provisions in these proposals. Before discussing the specifics of our Tribes' position on these bills, my statement will first provide information regarding our Tribal governmental operations as well as the current and potential energy production on the Wind River Indian Reservation.

BACKGROUND OF THE RESERVATION AND ECONOMY

The Wind River Reservation was established by the Treaty of July 3, 1868 and is the only Indian Reservation in Wyoming. The Reservation is located in central Wyoming and is named after the scenic Wind River Canyon. The Reservation is an area about 3,500 square miles just east of the Continental Divide and is bordered roughly on the north by the Owl Creek Mountains which join the Rocky Mountains and east to Wind River Canyon. The Bridger and Shoshone National Forests and the Wind River Mountains serve as a border for the western segment. From these areas, streams flow south and east into the foothills and plains which constitute two-thirds of the reservation.

The Eastern Shoshone Tribe shares the Reservation with the Northern Arapaho Tribe which encompasses over 2.2 million acres with significant quantities of oil and gas reserves. The Reservation has about 23,000 residents, over 50% of whom are Tribal members whose lives are directly impacted by the development of the Tribes' mineral resources.

The Tribes on the Wind River Reservation generate nearly \$180 million in economic activity primarily from oil and gas production, and 1600 jobs within Fremont County. Some private businesses and tourism also contribute to the Reservation's economy. Many of the Tribal members work on expansive ranches and farms, including the Eastern Shoshone Ranch as agriculture is a big part of the economy of the people. The Bureau of Indian Affairs, Indian Health Service and the Tribal government are the primary employers for many tribal members. The Reservation has the highest unemployment rates in the State of Wyoming and Fremont County (where 99.5 percent of the Tribal members reside) has one of the highest drug and alcohol abuse problems in the Nation. Unfortunately, many of our Tribal members as well as other Reservation residents must leave the area in order to locate work.

RELIANCE ON REVENUE FROM OIL AND GAS PRODUCTION

Clearly, the production of oil and gas reserves on the Wind River Reservation is the primary source of revenue for the Tribes. The Tribes have always undertaken a balanced approach to use our natural resources recognizing the importance and quality of our wildlife and grazing use on the same lands where we develop our oil and gas reserves. This production is not only important in the region, but also hold national significance: there are currently 852 producing wells on the Reservation; the production of natural gas from the Reservation represents 7% of all gas royalties paid from production on American Indian Reservation in the Lower 48 States, and the production of oil from the Reservation represents 21% of all oil royalties paid from production on American Indian Reservation.

The Tribes impose a severance tax of 8% the revenue of which is used for education, law enforcement, environmental protection, social services, fire protection, wildlife management and other governmental services. The revenue from the Tribes' oil and gas royalties and taxes is responsible for over 90% of the Tribes' governmental revenue. Approximately 85% of the royalty income is paid out to Tribal members on a monthly basis and is used for food, heat, electricity. For some Tribal members, this is their only income.

The development of energy resources on the Wind River Reservation is inhibited by the State of Wyoming's imposition and collection of a 6% severance tax, a 7.5% ad valorem tax and a .5% conservation tax. As a result of these State taxes imposed on top of the Tribal tax, production of our oil and gas reserves is subject to an extreme total tax burden of 22%, thereby stifling production. Moreover, of the 14% (approximately \$12 million) of the revenue stream drawn off the Reservation by State taxes, under 65% (approximately \$7.2 million) of those funds are returned to the Reservation in the form of services. In addition, Fremont County collects \$14

million from the ad valorem tax assessment and the Tribes receive less than half of this back in programs and services. To exacerbate this issue, the school district boundaries of the Reservation are gerrymandered so that most of the valuation from the Reservation goes to non-Indian school districts. The Tribes have made progress in working with the State Legislature in addressing some of these issues, and bring this reality to Congress attention to demonstrate the daily and severe challenges to developing our nonrenewable resources.

For these reasons, the Tribes support federal tax incentives that would off-set the impact of the dual taxation burdens on Indian oil and gas production. In the 107th Congress, we supported S. 1106 introduced by Senator Domenici to establish a federal tax credit based on the volume of production of oil and gas from Indian lands. This type of a credit would make production of our reserves more competitive and increase the return on our nonrenewable trust resources. By generating significant new revenue to tribal mineral owners, in the form of tax credits, royalties, and tribal taxes, tax incentives like the one embodied in Senator Domenici's proposal, would stimulate tribal economies and increase the overall domestic oil and gas supplies, thereby reducing our Nation's dependency on foreign sources of energy. Although neither S. 424 nor S. 522 contains tax provisions, the Tribes believe that any comprehensive energy legislation must include meaningful tax incentives to encourage, promote and foster energy production on Indian lands. In addition, the Tribes own fee lands that contain energy potential, these bills should provide some preference or direction to the Secretary of the Interior in processing fee to trust applications for energy development purposes.

COMMENTS ON S. 424 & S. 522

Given our Tribes' reliance on oil and gas production, this statement on S. 424 and S. 522 will primarily focus on provisions from the perspective of oil and gas reserves.

Congressional Findings and Definitions

Neither the 1992 Energy Act nor S. 424 contain congressional findings. S. 522 includes section on congressional findings which sets forth the background and factual information regarding energy resources on Indian lands. Accordingly, more than 10% of all energy reserves in the United States is from Indian lands:

- 30% of known coal deposits,
- 5% of known onshore oil deposits, and
- 10% of known onshore natural gas deposits.

According to S. 522's findings, the Department of the Interior (DOI) estimates that only 25% of the oil and less than 20% of all natural gas reserves on Indian lands have been developed, and that additional development of these reserves would benefit tribal community development as well as reducing the United States' dependence on foreign sources of energy.

While the findings in S. 522 powerfully illustrate the untapped energy potential on Indian lands, the bill should also include a statement of the legal and economic barriers that have limited the

development of tribal energy resources, namely dual taxation burdens as well as transactional and other regulatory costs associated with business development on remote reservation lands.

With respect to the definitions section, in S. 522 defines “Tribal Consortium” as an organization that consists of at 3 entities, 1 of which is an Indian tribe. This definition is somewhat vague, confusing and may need further clarification. Providing a more concrete definition is important given the enormous resources and access to programs that tribal consortia will be eligible to receive.

Both S. 424 and S. 522 exclude from their definition sections the meaning of an “Indian energy resource.” It may be advisable to include a definition of Indian energy resources to tighten the bill.

Comprehensive Indian Energy Policy and Program Office in DOE

Our Tribes support the provisions in both S. 424 and S. 522 which establish and enhance Indian energy policy and programs within the Department of the Energy, with the accompanying authorization of appropriations for such programs. S. 424 would formally establish the Office of Indian Energy Policy and Programs (OIEPP) within the Department of Energy (DOE), and therefore subsequent Energy Secretaries would be bound by DOE's organizational structure and would not have the discretion to eliminate the office. For these reasons, our Tribes support the approach embodied in S. 424 regarding the establishment of the OIEPP.

With respect to the grant programs supporting the development of Indian energy resources, our Tribes endorse the approach in S. 424 which establishes criteria for the awarding of grants, subject the specific recommendations outlined below.

Given the vast acreage of the Wind River Reservation, like other large land-based tribes, and the Tribes' service population, we believe that the inclusion of criteria for competitive grants may be advisable. S. 424 assigns priority to Indian tribes whose application demonstrates “inadequate electric service” as determined by the discretion of the Director. Our Tribes agree with the designation of this priority but believe it should be clarified to reflect the housing demand and the lack of affordable energy to serve this need. Moreover, due to the specific concerns regarding the location of our Tribes on a single Indian Reservation, our Tribes recommend changes in the bill to reflect this circumstance.

The loan guarantees in S. 424 would be limited to an aggregate amount of \$2 million, and not to exceed more than 90% of the unpaid principal and interest due on any loan made to an Indian tribe for energy development and for transmission and delivery mechanisms for energy produced on Indian lands. Given the great demand for access to capital for the development of Indian energy projects, we recommend that the guarantee amount be increased to \$5 million.

In light of the vast undeveloped energy resources on the Wind River Reservation, S. 424's provision which requires examining the financial or other assets available to an Indian tribe from **any** source could arguably include these untapped resources. Therefore, our Tribes oppose the

inclusion of this factor in deciding whether to award grants to Indian tribes. This provision should either be removed or exclude from its definition any undeveloped natural resource on an Indian reservation. Indeed, it would be counter-intuitive for Congress to pursue legislation focusing on development of energy resources on Indian reservations while at the same time penalize tribes for owning undeveloped resources. Our Tribes also support S. 522's provisions strengthening enforcement of tribal laws. See Section 2604 in S. 522 entitled "Indian Tribal Resource Regulation provisions."

Streamlining the Regulatory Process for Approval of Leases and Rights-Of-Way

The centerpiece for both S. 424 and S. 522 is the "streamlining" of the approval processes for energy leases and rights-of-way related to energy development on Indian lands. Under current law, the Secretary of the Interior is required to approve each of these agreements which convey and interest or otherwise encumber an Indian tribe's energy and natural resources. Both bills propose a framework wherein tribal governments would have the option to promulgate regulations, under tribal law and in accordance with specific conditions or requirements set forth in the bills, and submit these regulations for approval by the Secretary of the Interior. Once approved, the tribal government would have the primary governmental responsibility in approving energy development related leases and rights-of-way without having to submit each proposed agreement to the Secretary for approval. If an Indian tribe opts to develop tribal regulations and secure secretarial approval of them, both bills would completely release the United States from any liability associated with leases or rights-of-way executed under these regulations.

This streamlining proposal has been discussed over the past few years and has gained the support of the Council of Energy Resource Tribes (CERT), of which both Eastern Shoshone and the Northern Arapaho Tribes are founding members. Other energy producing Indian tribes also support this streamlining proposal. However, with regard to our experience in the oil and gas production arena, reform of the regulatory process in itself will not provide meaningful incentives to increase production of our oil and gas reserves. This streamlining could benefit potential wind energy production on the Wind River Reservation, as a secondary energy resource.

Our Tribes are concerned that the streamlining proposals embodied in both bills would require participating Indian tribes to absorb all of the costs and liability associated with approving business leases and rights-of-way. Many direct-service tribes may not be prepared to assume these responsibilities and costs. Moreover, this approach essentially removes the federal government from exercising its trust responsibilities over energy resource development. For these reasons, our Tribes do not believe a streamlining of the regulatory processes for oil and gas production is warranted. The current federal regime for oil and gas leasing places responsibilities on the Bureau of Indian Affairs, Bureau of Land Management and the Minerals Management Service.

From our experience, our Tribes cannot, at this point in time, support an approach that would release these federal agencies from their responsibilities in the valuation, leasing, accounting and

distribution of royalties and other payments with respect to oil and gas production on the Wind River Reservation. Our concerns are limited to oil and gas production on the Wind River Reservation. We respect the position of CERT and other energy tribes who endorse a streamlining approach for other energy development purposes.

Accordingly, our Tribes offer the following specific comments on the proposed streamlining process, discussed by category:

1. Secretarial Approval of Tribal Regulations:

Both bills set forth criteria for the Secretary to approve regulations issued under tribal law and would require the Secretary to either approve or disapprove the regulations. Under S. 424, the Secretary would be authorized to approve tribal regulations, within **270 days** upon submission, if she determines that such regulations:

- Are comprehensive in nature;
- Include provisions securing necessary information from the applicant, address the term of any conveyance, any amendments and renewals, the consideration for the lease or right-of-way, any technical and environmental requirements, the identification of final approval authority and public notification of final approvals;
- Establish a process for consultation with any affected States with respect to “potential” off-reservation impact associated with a lease or right-of-way proposed to be granted.

Similarly, S. 522 would require the Secretary to either approve or disapprove tribal regulations within **120 days** upon submission by a tribe. The Secretary would be authorized to approve tribal regulations if she determines that such regulations:

- Ensure the acquisition of necessary information from the applicant;
- Address the term of the lease or right-of-way;
- Address amendment and renewals;
- Include the consideration for the lease or right-of-way;
- Address technical or other relevant requirements;
- Ensure compliance with all applicable environmental laws;
- Identify final approval authority;
- Provide for public notification of final approvals;
- Establish a process for consultation with any affected States concerning potential off-reservation impacts associated with the lease or right-of-way.

The bills should be amended to require a consultation process with the affected States concerning "direct or adverse" off-reservation impacts associated with the lease or right-of-way. A higher threshold should be adopted to weed out any unreasonable concerns that may be inserted into the process.

2. Specific Requirements Regarding Tribal Environmental Review Process:

Both bills set forth specific requirements an Indian tribe would have to meet in establishing an environmental review process. This specific process would be required to be included in all

tribal regulations submitted for secretarial approval. Under both bills, a tribal environmental review process must include:

- An identification and evaluation of all significant environmental impacts of the proposed action as compared to a no action alternative;
- Identification of proposed mitigation;
- A process for ensuring that the public is informed of and has an opportunity to comment on the proposed action prior to tribal approval of the lease or right-of-way; and
- Sufficient administrative support and technical capability to carry out the environmental review process.

The bills should be amended to provide Indian tribes adequate resources to assume these comprehensive federal responsibilities. Providing these resources is consistent with the federal trust responsibility and comports with the longstanding policies supporting and promoting tribal self-determination and tribal energy self-sufficiency.

3. *Timeframe and Standards for Secretarial Approval or Disapproval of Tribal Regulations:*

S. 424 would require the Secretary to act, within 270 days,¹ of a tribe's submission of its regulations for approval. S. 522 provides that the Secretary shall approve or disapprove regulations submitted by an Indian tribe for approval not later than 120 days, or by a later date agreed to by the secretary and the Indian tribe. Both bills include a provision authorizing the Secretary to provide notice and opportunity for public comment on the tribal regulations submitted for approval. If the Secretary disapproves the regulations, she would be required to:

- Notify the Indian tribe in writing of the basis for the disapproval;
- Identify what changes or other actions are necessary to address her concerns; and
- While implied in S. 424, S. 522 contains a provision which requires the Secretary to provide the Indian tribe with an opportunity to revise and resubmit the regulations.

With respect to regulations that are approved by the Secretary, a tribe would be required to:

- Submit to the Secretary a copy of the lease or right-of-way executed under the regulations, including all amendments to and renewals of the document; and
- Documentation of the payments paid directly to the tribe in accordance with the instrument.²

¹ This section provides the Secretary with the authority to extend this deadline "after consultation with the Indian tribe."

² This provision specifically states that such documentation is needed "to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law." Given the recent Supreme Court ruling in *United States v. Navajo Nation*, this provision is essentially meaningless, without further explanation. This is especially glaring given other language in this section which shields the United States from any liability in association with leases or rights-of-way executed in accordance with tribal regulations.

As previously highlighted, these section set forth a lengthy and costly approval regime which would require tribes to meet with specificity comprehensive environmental requirements and to absorb the costs of complying with these requirements. Both bills contain an express provision shielding the United States from any liability for any loss sustained by any party, including any Indian tribe or member of an Indian tribe, to a lease executed in accordance with duly approved tribal regulations. The provision in both bills which requires the submission of documentation of payments made directly to an Indian Tribe in order “to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law”³ is confusing and makes no sense given the overall framework which essentially removes the federal government from any direct involvement or for any liability relating to agreements or rights-of-way executed under tribal regulations.

4. Secretarial Review of a Tribe’s Compliance with Duly-Approved Regulations:

Both bills contain sections that permit the Secretary to review whether an Indian tribe is in compliance with tribal regulations authorized by the legislation. S. 424 would allow an “*interested party*”⁴ after exhaustion of tribal remedies, to timely submit to the Secretary of the Interior a petition for review of whether an Indian tribe has complied with any tribal regulations duly approved under this section. By contrast, S. 522 would allow *any person* to petition the Secretary to review a tribe’s compliance with tribal regulations approved under this section. S. 522 would not require exhaustion of tribal remedies prior to filing the petition for review.

S. 424 would require the Secretary to conduct a review within 60 days of submission of the petition, while S. 522 would require to act within 90 days of submission of the petition. Under both bills, if Secretary determines that the tribe has violated regulations, the Secretary could take the following action(s):

- Rescind or suspend the lease or right or way until the violation is cured; and
- Rescind approval of the tribal regulations and reassume responsibility for approval of leases or rights-of-way associated with the energy pipeline or distribution line at issue.

If the Secretary seeks to compel compliance with tribal regulations, the Secretary shall:

- Provide the Indian tribe with written notice of the violation with the written determination describing the manner in which the tribal regulations have been violated; and
- Prior to taking an action to remedy the alleged violation, provide the tribe a hearing and a "reasonable opportunity" to attain compliance with the regulations; and
- The tribe would have the ability to appeal the Secretary’s determination “as provided by regulations promulgated by the Secretary.”

³ See S. 424, Section 103 (f)(5)(B) and S.522, Section 2605 (e)(5)(B).

⁴ An “interested party” is defined as a State or other person the interests of which could be adversely affected by a decision of an Indian tribe to grant a lease or right-of-way in accordance with this section. This definition appears to be very broad in nature and could possibly allow parties with very little connection to an agreement the standing to petition the Secretary of the Interior for relief.

Our Tribes support S. 424's provision which requires exhaustion of tribal remedies prior to petitioning for secretarial review of an Indian tribe's compliance with its regulations. We also support S. 424's limitation that only "interested parties" should be allowed to seek secretarial review of a tribe's compliance with tribal regulations. Both bills should also strengthen and make clear that the Indian tribal government is the undisputed primary governmental authority to regulate and govern all persons and entities in the context of duly approved tribal regulations, and further emphasize all persons and entities are subject to tribal jurisdiction and laws of the tribe. It may be advisable to include provisions that address the fact that two separate tribes occupy a single Indian reservation.

Other miscellaneous provisions in this section of both bills include:

- Waiving the contracting requirements of 25 U.S.C. § 81 where leases or rights-of-way have been the subject of an environmental review process;
- Providing that nothing in this section modifies or otherwise affects the applicability of any provision in the Indian Mineral Leasing Act of 1938, the Indian Mineral Development Act of 1982 and the Surface Mining Control and Reclamation Act of 1977 or any environmental laws of the United States.

The scope and depth of these laws and their interrelationships with the comprehensive tribal regulations approval regime set forth in both S. 424 and S. 522 merit additional review and analysis, not contained in this statement.

OTHER PROVISIONS

Summary

Both bills contain provisions designed to encourage energy efficiency and assistance to low income consumers. S. 522 focuses on energy efficiency in housing. Both bills direct the Secretary of HUD to work with Indian tribes to provide nonprofit and community organization technical assistance in using energy-saving technologies. Our Tribes support an approach that would allow funding to flow directly to the tribal government.

S. 424 would create a competitive grant program for local governments, private, nonprofit community development organizations, and tribal economic development entities. S. 424 contains a specific title on Renewable Energy and Rural Construction Grants and designate Indian tribes eligible for funding from existing DOE programs. The Wind River Reservation has wind energy potential and therefore, our Tribes support the inclusion of these proposals in an comprehensive Indian energy bill.

S. 522 would require the Secretary to submit a report to Congress after two years following enactment of the legislation, and every two years thereafter, on energy development potential on Indian land which identifies barriers and recommendations to remove such barriers. S. 522 also includes, like the 1992 Energy Act, the establishment of an Indian Energy Resource Commission which would be required to report on proposal and recommendations regarding energy development on Indian lands.

In the past 11 years since the passage of the 1992 Energy Policy Act, there have been many studies and assessments of energy needs and potential on Indian lands. A wholesale adoption of all of the studies called for in both S. 424 and S. 522 may be unnecessary and redundant. Consequently, the establishment of a 20-member energy commission and the resources necessary to fund and staff this commission may not be a priority for addressing energy development on Indian lands. Therefore, our Tribes do not support the establishment and funding of this commission-- resources could be used for other priorities.

Finally, as discussed previously in this statement, both S. 424 and S. 522 lack tax incentives for energy development on Indian lands. Our Tribes have firsthand knowledge of the fact that tax incentives indeed stimulate activity on reservation. Currently, the oil and gas production on the Wind River Reservation suffers from triple taxation burdens. Support for a tax incentive, like the one embodied in S. 1106 introduced by Senator Domenici in the 107th Congress, would provide needed incentives to encourage energy development on the Wind River Reservation. Therefore, our Tribes believe it is necessary to apprise the Committee of our concerns and energy experience and urge the Committee to support the inclusion in a comprehensive Indian energy bill of tax provisions that provide meaningful incentives for development of energy resources on Indian lands.

CONCLUSION

In closing, on behalf of the Eastern Shoshone Tribe and the Northern Arapaho Tribe, I would like to commend Chairman Campbell, Vice-Chairman Inouye, Senator Bingaman, Senator Domenici and the other sponsors for their hard work in developing these bills. Strong and persistent congressional focus on Indian energy development is needed to ensure the enactment of a comprehensive Indian energy measure.

Thank you again for the opportunity to testify before the committee on these critically important matters.