

DANIEL K. INOUE, HAWAII
KENT CONRAD, NORTH DAKOTA
DANIEL K. AKAKA, HAWAII
TIM JOHNSON, SOUTH DAKOTA
MARIA CANTWELL, WASHINGTON
CLAIRE McCASKILL, MISSOURI
JON TESTER, MONTANA

JOHN McCAIN, ARIZONA
TOM COBURN, M.D., OKLAHOMA
JOHN BARRASSO, WYOMING
PETE V. DOMENICI, NEW MEXICO
GORDON SMITH, OREGON
RICHARD BURR, NORTH CAROLINA

United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

ALLISON BINNEY, MAJORITY STAFF DIRECTOR
DAVID A. MULLON JR., MINORITY STAFF DIRECTOR

OIL AND GAS DEVELOPMENT ON THE FORT BERTHOLD INDIAN RESERVATION

Prepared for Senator Byron L. Dorgan
By Committee on Indian Affairs

June 4, 2008

Issue. Oil and gas development on tribal and individual Indian trust lands on the Fort Berthold Reservation (“Indian lands”) lags behind development on private lands both within and surrounding the reservation boundaries. These delays are prohibiting timely development of energy resources on the Reservation and are causing financial detriment to the Indian and tribal landowners and local communities.

Committee staff studied data from December 2006 to May 21, 2008. We found that:

- 1,421 leases/agreements on Indian lands have been approved;
- 220 leases/agreements on Indian lands are still pending approval;
- There are 4 permits for drilling rigs on Indian lands currently being processed;
- There has only been one permit issued for one active drilling rig on Indian lands – however, this was for an agreement that was negotiated in 2005;
- There are 49 active drilling rigs just over the Reservation boundary in counties to the North, South, and West of the Reservation; and
- There are 70 active drilling rigs in the State of North Dakota.

Causes Of Delays in the Development of Energy Resources. There are three reasons for the delays in oil and gas development on Indian lands:

- Oil and gas development on Indian lands is subject to more extensive federal requirements than private lands;

- The Bureau of Indian Affairs (BIA) Fort Berthold Agency Office lacks sufficient realty staff to manage federal requirements and the level of interest in oil and gas development on the Reservation; and
- In this Administration, leadership positions within the Bureau of Indian Affairs are often vacant and lack consistent leadership.

Extensive Federal Process Prohibits Timely Development. Leasing and Permitting on Indian lands involves four agencies and offices at the Department of the Interior, including: the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Minerals Management Service, and Office of the Special Trustee for American Indians.

Further, these offices must comply with a variety of out-dated federal statutes and regulations that govern the lease and permitting process on Indian lands, including:

- The Act of March 3, 1909, Leases of Allotted Land for Mining Purposes;
- The Act of June 30, 1919, Leases of Unallotted Mineral Lands Withdrawn from Entry Under Mining Laws;
- The Indian Mineral Leasing Act of 1938;
- The Indian Mineral Development Act of 1982;
- The Act of July 7, 1998, Fort Berthold Mineral Leasing Act;
- The National Environmental Policy Act;
- The National Historic Preservation Act;
- Regulations governing Leasing of Tribal Lands for Mineral Development;
- Regulations governing Leasing of Allotted Lands for Mineral Development; and,
- Regulations governing Oil and Gas, Geothermal, and Solid Minerals Agreements.

In order to comply with these laws, the BIA and the BLM have developed a 49-step process for obtaining processing leases and permits on Indian lands. Major steps include:

- **Pre-sale:** identifying lands, verifying legal descriptions, establishing terms, notifying mineral owners, advertising and conducting the sale.
- **Contract award:** depositing and returning bids, obtaining BLM assessments of the bids, gathering title information, awarding the contract, and notifying mineral owners.
- **Lease approval:** setting up and reviewing lease files, verifying owners consent, and obtaining approval from the Superintendent.

- **Encoding and recording of leases:** entering lease information into the national system for tracking interests in Indian lands, performing quality assurances, submitting leases for recording, and filing leases.
- **Invoicing and payment for leases:** generating and mailing invoices; monitoring deposits, and assessing administrative fees.
- **Application for a permit to drill:** this process includes on-site inspection, environmental assessment, cultural resource surveys, and preparing a grant of easement for right-of-ways.

The overall process can be intensive - involving numerous mineral owners, legal and data accuracy, resolving disputes, and conducting environmental reviews. For example, on the Fort Berthold Reservation there are 4,170 Indian land owners who hold 84,424 interests in land. In addition, to obtain a permit, information must be gathered to conduct an National Environmental Policy Act (NEPA) review, Endangered Species Act (ESA) surveys, and cultural resource surveys. Necessary right-of-ways must also be negotiated and obtained to ensure access to where oil wells will be located. Although the federal agencies are responsible for developing and gathering this information, many oil and gas companies typically develop drafts of this information for inclusion in their permit application to speed the process up.

If staff were available to devote 100% of their time to this above process, the steps described above could be completed in approximately 6 months for a single lease/permit.

In Comparison, State Law Allows for Timely Development. In comparison, there are four primary steps for obtaining a lease and a permit to drill on private lands within North Dakota:

- **Lease negotiation.** An oil and gas company must negotiate a lease/agreement with the private land owner.
- **Obtain Permit.** A permit to drill from the North Dakota Industrial Commission (NDIC) must be obtained. The primary requirement is a survey and an accurate description of the drilling activity.
- **Register with the secretary of state.** An oil and gas company must register with the Secretary of State for North Dakota.
- **File Bond.** A bond must be filed with NDIC.

According to the Permit Manager for the NDIC, it is currently taking his office about a week and a half to issue permits associated with oil development on the Bakken Formation. This is longer than normal since the level of activity is higher than normal.

Local Offices of the Bureau of Indian Affairs Lack Sufficient Staff To Timely Process Leases and Permits. The BIA Fort Berthold Agency Office is understaffed to manage oil and gas development on the scale currently experienced on the Bakken Formation. During the study period there have been two to four realty staff available to work on oil and gas development.

- December 2006 to December 2007 - one to two realty staff are available. Of these two staff, one is also the office supervisor with managerial responsibilities and unable to devote significant time to the review and processing of leases and permits.
- February 2008 - one additional realty staff is hired to enter lease data into the BIA's national database. There remains only one realty staffer assigned to reviewing leases.
- March 2008 – one additional realty staff is hired to process applications to drill and handle right-of-way issues.
- March 21, 2008 - four realty staff working on oil and gas development. However, one serves as a manager for all realty activities and one performs data entry duties. Only two of these staff deal with the front line oil and gas issues – leasing and permitting.

Lease review is primarily handled by one permanent realty staffer in the Fort Berthold Agency Office. This staff person is tasked with reviewing and offering recommendations on approximately 1,500 auction and negotiated leases. Final approval of leases must then be obtained from the Agency Superintendent or Deputy Superintendent. After lease approval, one permanent realty staffer is available to handle permitting, including coordinating environmental and cultural reviews with the BLM, ensuring the accuracy of review documents, and compliance with eventual permits.

Chairman Dorgan Urges More Resources to be Sent to Local Office. In the Fall of 2007, Chairman Dorgan urged the Assistant Secretary for Indian Affairs to send more resources to the Fort Berthold Agency Office to ensure timely development of energy resources. In response, the Assistant Secretary for Indian Affairs worked with the BIA Regional Office in

Aberdeen, South Dakota, to develop an “Oil and Gas Project Team” to assist the Fort Berthold Agency Office.

This team comprised up to eleven staff members and contractors who were temporarily “detailed” on a weekly basis to the Fort Berthold Agency Office. The team members assisted with the invoicing and filing of lease documents so that the Agency Office staff could focus on the review of leases. Detailed employees often spend one or two days a week traveling, may not be familiar with local issues, and continue to be responsible for work in their home office. The Regional Office reports that detailing these employees away from their home office caused a strain on regional programs.

To cover the costs of detailing the team members to the Fort Berthold Agency Office, the Assistant Secretary provided \$100,000 in additional funding on two occasions (November 2007 and March 2008) to cover the travel and overtime costs of the detailed employees.

The Fort Berthold Agency Office Requests Additional Permanent Staff. In the Winter of 2007, the Fort Berthold Agency Office indicated that more permanent staff was needed to ensure timely development of energy resources on the Reservation. In response, the Assistant Secretary of Indian Affairs requested that the Regional Office and the Agency Office submit a business plan describing oil and gas development on the Reservation, the staff needed to timely process leases and permits, and the resources necessary to fund this staff.

On February 2, 2008, the Regional and Agency Offices submitted the requested business plan describing a need for ten additional staff at a budget of \$878,022. As of the date of this white paper, there has been no response to the business plan from Departmental leadership.

Other Agency Offices Have More Staff. Committee staff also found that other agency offices, with less extensive energy development activities, have more staff than the Fort Berthold Agency Office. While it is difficult to compare staff levels across agency offices, a general comparison shows the levels of staffing that are possible on other Indian reservations.

The table below shows realty staffing levels at reservations similar in size to the Fort Berthold Reservation, and with similar leasing activities. The offices compared are from BIA's Rocky Mountain Region.

Reservation	Number of Realty Staff
Fort Berthold	6
Fort Belknap	13
Fort Peck	17
Wind River	11

As the staffing data shows, other agency offices have two to three times the staff as the Fort Berthold Agency Office. In addition, at Fort Berthold the oil and gas development is much more extensive and the land issues are much more complex.

Vacancies in the Bureau of Indian Affairs Leadership Positions Contribute to Delays. At the Department of the Interior, leadership positions at all levels of Indian Affairs have been vacant and suffer from high turnover rates. The Assistant Secretary for Indian Affairs position has been filled three times during this Administration. At one point, the position was vacant for two years and is currently vacant. The last Assistant Secretary served little more than a year. Currently, the responsibilities of the Assistant Secretary have been temporarily delegated to the Acting Interior Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs.

Further, the Great Plains Regional Office has been without a Director since May 2007. Career staffs have been serving in an "acting" capacity. Recently a Director was selected for this office. However, due to training and the hiring process, he will probably not take over until August or September of 2008.

The Fort Berthold Agency Office was also without a Superintendent for at least two years from 2005 to 2007. These two years were at the beginning of the interest in oil and gas development on the Fort Berthold Indian Reservation. The current Superintendent began on November 1, 2007, approximately two weeks before the Agency Office led its most recent auction, which included 964 tracts of land.

Committee staffs have determined that these vacancies and lack of consistent leadership have been detrimental to the timely development of energy resources on the Fort Berthold Reservation. A lack of consistent leadership hampered the ability of the Bureau of Indian Affairs to foresee many of the problems faced by the Fort Berthold Agency Office in the development of energy resources on the Reservation. Additionally, vacancies in leadership positions are contributing to the failure of the Department to respond to the local needs and development of long-term plans.

Committee staffs believe that without some sort of congressional intervention, energy development on the Fort Berthold Reservation will continue to suffer and lag significantly behind development on private lands. Ultimately, this will result in financial harm to individual Indians, tribal governments, and the local economy.